



CORRUPTION IN LAND GOVERNANCE

REVIEW OF LEGAL AND
POLICY FRAMEWORKS
GOVERNING LAND AND
HOUSING RIGHTS,
FORCED EVICTIONS AND
RESETTLEMENTS IN
KENYA



Corruption in Land Governance: Review of constitutional and legal framework governing land and housing rights, forced evictions and resettlements in Kenya

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Transparency International Kenya (TI-Kenya) is a not-for-profit organisation that exists to contribute to a transparent and corruption free-society. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that is bound by a common vision of a corruption-free world. TI-Kenya employs advocacy, research, citizen engagement, capacity strengthening, and partnerships development as the core strategies for the fight against corruption.

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Chapter 1 Background

1.1. Introduction

The rights to land and housing are core to realization of social and economic rights in any society. As population growth increases and consequential urbanization, the demand for land resources for housing and settlement continues to rise, which reduces the available land resources available for settlement and housing. This has resulted in competition for the available land resources and housing opportunities in rural and urban areas. Opportunistic behaviour such as rent seeking, corruption, inequity, greed, favouritism and nepotism emerge as drivers of forced evictions, irregular distribution of accessible opportunities for resettlements.

The Transparency International–Kenya commissioned an assessment to review the legal and constitutional framework governing housing rights, resettlement and forced evictions. The assessment is part of the Land and Corruption in Africa (LCAII) project that the Transparency International–Kenya is implementing in Kenya. The LCAII project is being implemented in 8 African countries namely Kenya, South Africa, Zimbabwe, Zambia, Madagascar, Cameroon, Uganda and Ghana. The project, is seeking to address land governance issues in Africa such as corruption in land governance and administration and consequential impact such forced evictions, forced resettlements, exclusion and discrimination against women, marginalized and indigenous groups. In Kenya, the project which will be implemented in Nairobi and Kwale counties.

1.2. Purpose of the assessment

The assessment was designed and undertaken to identify policy and legislative gaps in land governance in relation to housing rights, forced evictions and resettlement, associated corruption practices, especially in relation to forced evictions and resettlement and identification of opportunities for policy reforms in that land and housing ecosystem.

1.3. Scope of the assessment

The assessment primarily focused on review and analysis of legal and constitutional framework governing housing rights, forced evictions and resettlement in Kenya and related corruption practices. Specifically, the assessment sought to –

- Assess the effectiveness and impact of the legal framework governing land/housing rights, forced evictions and resettlement in Kenya
- Identify legal gaps in land governance and administration that predispose or contribute to corruption in governance of land/housing rights, forced evictions and resettlements

- Identify legal, institutional and regulatory gaps and challenges in implementation, enforcement and monitoring of laws and policies governing land/housing rights, forced evictions and resettlements
- Assess corruption's manifestation through forced evictions' value chain, root causes, vulnerabilities, roles played by various actors in public, private sector and local communities in driving corruption
- Explore opportunities for addressing corruption in land/housing sector, especially in relation to forced evictions and land grabbing
- Recommend legal and policy measures and interventions for enhancing transparency, accountability and oversight in land governance related to land/housing rights, forced evictions and resettlements

Since the project is being implemented in Nairobi and Kwale counties, the assessment sought to contextualize the case examples of incidences forced evictions in those two counties to enhance its relevance.

1.4. Methodology

The study was primarily undertaken through review and analysis of secondary information in the form of legal and policy instruments, research reports, international instruments, court decisions and media reports. Legal, policy instruments and reports analysed in the assessment were selected based on their relevance to the study.

Chapter 2

Review of Policy and Legal Framework Governing Land, Housing Rights and Settlements, Forced Evictions and Resettlement and Comparative Assessment of Housing Policies in other Jurisdictions

2.1. Introduction

Land is one of the factors of production. The right to land and housing is a social and economic right which safeguards social needs such as housing and economic needs such as production and productivity. Government has progressively sought to address the need for access to decent and affordable housing, especially in urban areas which have a high population density with limited availability of affordable land. The government has adopted various policies to govern land and housing, including rights and processes related to observance, protection and enforcement of the rights and duties related to land and housing rights.

2.2. Overview of past land and housing policies

2.2.1. Sessional Paper No. 3 of 1959 on Contractor Finance Proposals for Nairobi African Housing

The Sessional Paper No. 3 of 1959 on Contractor Finance Proposals for Nairobi African Housing¹ provided for the financing of housing programme in Ofaa, Nairobi City Council. The purpose of the housing programme was to provide affordable housing for the Africans, who had migrated into the city in large numbers, hence straining the limited housing opportunities.

2.2.2. Housing Policy for Kenya, 1966/67

The Sessional Paper No. 5 of 1966/67 on Housing Policy for Kenya² provided for development and improvement of housing status in urban and rural areas, mostly occupied by Africans. The increase in rural urban migration and rural reserves had called for government intervention in improvement of urban and rural housing through planning and fund housing development. The policy provided for various options for housing development such as government financing, self-help, cooperatives and provision of technical assistance by government.

¹ Colony Protectorate of Kenya (1959). Sessional Paper No. 3 of 1959 on Contractor Finance Proposals for Nairobi African Housing. Available at:

<https://repository.kippira.or.ke/bitstream/handle/123456789/1514/Sessional%20paper%20no%203%20of%201959%20Contractor%20Finance%20of%20proposals%20for%20Nairobi%20African%20Housing.pdf?sequence=1&isAllowed=y>

² GoK (1966/67). Sessional Paper No. 5 of 1966/67 on Housing Policy for Kenya. Available at:

<https://repository.kippira.or.ke/bitstream/handle/123456789/2701/Sessional%20Paper%20No.5%20of%201966-67.pdf?sequence=1&isAllowed=y>

2.2.3. Land Consolidation and Registration in Kenya

The Sessional Paper No. 6 of 1970 on Land Consolidation and Registration in Kenya³ provided for the consolidation of land in Kenya in a manner that took into consideration the economic viability of land across the country, through the land reform programme. The purpose of the programme was to consolidate land and ensure security of land tenure and minimization of individualization of land in large community land.

2.2.4. Kenya Housing Policy, 2004

The Sessional Paper No. 3 of 2004 on National Housing Policy for Kenya⁴ provided for a framework to improve access to housing through urban housing, upgrading slums and informal settlements, land use planning to promote housing development, supply of land at affordable, compulsory land acquisition, re-planning and re-development of existing housing estates, provision of incentives for squatters to buy land they occupy, development of low-cost housing, creation of the Slum Upgrading and Low-cost Housing Infrastructure Development Fund and conservation and increasing of housing stock by encouraging upgrading activities as opposed to demolitions in unplanned settlements.

2.3. Review of current policy framework governing right to land and housing

2.3.1. National Land Use Policy, 2017

The Sessional Paper No. 1 of 2017 on National Land Use Policy⁵ provides for governance and management of land use in the country. Regarding housing rights, the policy provides:

- That public utilities and infrastructure such as housing shall not be allocated or-redesigned for private development and shall remain public lands
- For encouragement of public-private partnerships in the provision of affordable housing
- Encouragement of development of affordable housing to meet the demand
- Establishment of land banks to make it easy for people to access affordable serviced land for housing development
- Adoption of programmes for development of social housing in all urban areas

³ GoK (1970). The Sessional Paper No. 6 of 1970 on Land Consolidation and Registration in Kenya. available at: <https://repository.kippira.or.ke/bitstream/handle/123456789/1615/Sessional%20paper%20no%206%20of%201970%20Land%20consolidation%20and%20registration%20in%20Kenya.pdf?sequence=1&isAllowed=y>

⁴ GoK (2003). Sessional Paper No. 3 on National Housing Policy Kenya. Available at: <https://repository.kippira.or.ke/bitstream/handle/123456789/1370/Sessional%20paper%20no%203%20of%202004%20on%20national%20housing%20policy%20for%20Kenya.pdf?sequence=1&isAllowed=y>

⁵ GoK (2017). Sessional Paper No. 1 of 2017 on National Land Use Policy. Available at: <https://repository.kippira.or.ke/bitstream/handle/123456789/489/Sessional%20paper%20no%201%20of%202017%20on%20national%20land%20use%20policy.pdf?sequence=1&isAllowed=y>

- Development of a comprehensive national plan for low income and high-density housing

2.3.2. National Slum Upgrading and Prevention Policy

The Sessional Paper No. 2 of 2016 on National Slum Upgrading and Prevention Policy⁶ provides for:

- Development and implementation of a land tenure that recognizes differentiated rights, right to access, transfer, manage and own land
- Promotion of multi-storey houses (tenements)
- Encouragement of community participation in slum upgrading
- Promotion of affordable slum upgrading
- Encouragement of occupational rights based on leasehold and temporary licenses

2.3.3. National Housing Policy for Kenya

The Session Paper No. 3 of 2016 on National Housing Policy for Kenya⁷ provides for the framework for promotion, development and access to housing in Kenya. The policy provides for:

- Encouragement of rental housing and rent-to -own forms of access to housing
- Development of affordable rental housing in urban areas
- Establishment of National Social Housing Fund
- Adoption of a programme for promotion and development of social housing
- Development of tenant-purchase housing schemes
- Development of social rental units
- Re-development of dilapidated urban housing through urban renewal programmes
- Development of social housing near central business district
- Development of public housing

2.3.4. National Land Policy

The Sessional Paper No. 3 of 2009 on National Land Policy⁸ provides for governance and management of land and land resources in Kenya. This policy provides:

⁶ GoK (2016). Sessional Paper No. 2 of 2016 on National Slum Upgrading and Prevention Policy. Available at: <https://repository.kippra.or.ke/bitstream/handle/123456789/588/Sessional%20paper%20no%20of%202016%20National%20slum%20upgrading%20%26%20prevention%20policy.pdf?sequence=1&isAllowed=y>

⁷ GoK (2016). Sessional Paper No. 3 of 2016 on National Housing Policy for Kenya. Available at: <https://repository.kippra.or.ke/bitstream/handle/123456789/589/Updated-Sessional-Paper-No.3-of-2016-National-Housing-Policy.pdf?sequence=3&isAllowed=y>

⁸ GoK (2009). Sessional Paper No. 3 of 2009 on National Land Policy. Available at: <https://repository.kippra.or.ke/bitstream/handle/123456789/1283/Sessional-paper-on-Kenya-National-Land-Policy.pdf?sequence=3&isAllowed=y>

- Review of legal framework for compulsory land acquisition
- Establishment of compulsory acquisition criteria, processes and procedures that are efficient, transparent and accountable
- Framework for identification, verifying and recording of genuine landless people
- Acquisition of land for establishment of settlement schemes
- Establishment of resettlement programmes
- Establishment of legal and administrative mechanism for redressing the historical land injustice in coastal region, especially the 10-mile coastal strip
- Establishment of mechanisms for removal of squatters from unsuitable land and their resettlement
- Resettlement of squatters
- Establishment of legal framework for eviction based on internationally acceptable guidelines
- Prevention of further slum development
- Adoption of anti-corruption strategies in land sector such as education programmes in the public sector

2.4. Review of current legal framework governing right to housing

2.4.1. Constitution of Kenya

The constitution of Kenya provides for the guiding legal framework for recognition and protection of right to housing and land as well as protection from unlawful forced eviction. Regarding land and housing rights, the constitution provides in:

- Art. 40 for the right to acquire and own property and protection from arbitrary deprivation of property or interest in any property
- Art. 43 (1) (b) for the right to accessible and adequate housing
- Art. 60 (1) (b) on security of land rights
- Art. 66 (1) on regulation of land in the interest of land use planning
- Section 20 of Part 2 of the Fourth Schedule, on the national government on housing policy
- Section 8 of Part 2 of the Fourth Schedule on county planning and development, which includes housing

2.4.2. Affordable Housing Act

The Affordable Housing Act, No. 2 of 2024 provides for legal framework for development of affordable housing and institutional housing schemes and imposition of a levy for development of affordable housing, among other provisions. The Act–

- Imposes a 5% levy on gross income
- Establishes the Affordable Housing Fund for purposes of the provision of funding for affordable housing and institutional housing schemes

- Establishes affordable housing Board to manage the Fund
- Provides for development of 5-year affordable housing scheme development programme
- Establishes County Rural and Urban Affordable Housing Committee that is responsible for developing a framework for affordable housing in the county, including development of affordable housing investment programme
- Designates public entities that would be involved in the development of affordable houses, which include the National Housing Corporation, County Governments, National Construction Authority,
- Prescribes process of development of the housing schemes under the Act, such as:
 - contracting process
 - funds allocations for development of affordable housing, institutional housing and social and physical infrastructure
 - community participation in the process such as use of locally available labour and building materials
 - relocation of slum residents who occupy a settlement designated for affordable housing and granting of priority for slum residents to be allocated houses after construction
- house allocation requirements such as qualification, criteria and application for houses

2.4.3. Housing Act

The Housing Act, Cap 117 provides for the:

- establishment of National Housing Corporation. The Corporation's responsibilities regarding the right to housing include promoting research and disseminating information on housing issues, providing training related to housing, and participating in public exhibitions to raise awareness. It also operates a housing finance institution to support residential housing development and may establish or support partnerships aimed at enhancing access to housing for individuals and communities
- establishment of National Housing Development Fund, which may be utilized for financing loans for housing development, construction of housing schemes, granting loans to local authorities (*including counties*) for development of housing

2.4.4. Land Act

The Land Act, Cap 280 provides for the governance and management of Land. The Act provides for:

- Compulsory acquisition of land where it is in public interest

- Protection of right to land ownership and preservation of interests in land
- Establishment of settlement schemes for provision of land for particular categories of groups in society such as squatters, persons displaced by natural causes, development projects, internal conflict, conservation or causes resulting in displacement of people
- Administration of the settlement programmes by national and county governments
- Establishment of land settlement fund
- Evictions of unlawful occupiers of public, community land private land, which requires that:
 - Eviction notices be issued
 - Service of the eviction notice to persons affected, national police services and deputy county commissioner

2.5. Comparative assessment of housing policies in other jurisdictions

2.5.1. Public housing in Singapore

Singapore has a population of 5.9 million people⁹. Public housing, which accounts for 80% of the Singapore resident population is developed and managed by Housing & Development Board (HBD), which is a public Authority¹⁰. The Board has developed over 1 million flats spread over 24 towns and 3 estates, which are mainly affordable flats. The Board develops public houses and offers them to the market at affordable prices. In Singapore, the government adopted a home ownership scheme whereby the plan is to have majority of citizens being homeowners. As a result, 90% of the resident population occupying homes developed by HBD are owners¹¹. The government adopt have applied the following mechanisms to ensure home ownership over time¹²:

- Flats are developed in various sizes such as 1-room, 2-room, 3-room
- Flats are allocated under Waiting List System, Booking System, Registration for Flats System and Build-To-Order System (which is applied currently)
- Allocation of flats takes into consideration racial diversity and each flat cannot be owned by more than 80% Malaysians (which are the predominant ethnic group)
- Homes are priced to ensure most potential homeowners can afford the homes
- First time families are granted priority

⁹ Government of Singapore (2024). Population overview. Available at: <https://www.population.gov.sg/our-population/population-trends/overview/>

¹⁰ Government of Singapore (2024). Public Housing— A Singapore Icon. Available at: <https://www.hdb.gov.sg/about-us/our-role/public-housing-a-singapore-icon>

¹¹ Ibid.

¹² Ibid

- Second time homebuyers are given a quota for the available houses, especially when they are upgrading their homes in terms of size
- Housing options for elderly are also available
- Financing is availed through grant and loan schemes
- The housing schemes are family and environmentally friendly

Lessons for Kenya

Kenya could learn from the Singapore approach in affordable housing in the following ways:

- Adopting an objective and predictable qualification and application process for acquisition of houses
- Differentiating categories of home ownership without discriminating based on age as Singapore has programmes targeting all age cohorts
- Affordable housing being integrated with wider spatial development and environment management
- Prioritizing first time homeowners
- Having strong and effective public sector housing development entities

2.5.2. Affordable Housing in United Kingdom

The United Kingdom (UK) government has adopted affordable housing policy agenda to meet the demand by low-income population. The UK's National Planning Policy Framework¹³ lays the policy direction regarding affordable housing development planning, which includes:

- Development of low-cost housing by the local authorities
- Planning availability of land for low-cost housing development in local planning areas
- Involving of residents in planning of low-cost housing through community-led housing development initiatives
- Housing development planning is undertaken for urban and rural areas
- Definition of affordable housing as:
 - Affordable housing for rent, which is less than 20% below local market rents, social rents, which is around 50% of local market rents, which are set in accordance with the government rent policy
 - Starter homes, which are first time homebuyers
 - Discounted market sales housing

¹³ UK government (2023). National Planning Policy Framework. Available at: https://assets.publishing.service.gov.uk/media/669a25e9a3c2a28abb50d2b4/NPPF_December_2023.pdf

- Other affordable home ownership routes such as shared ownership, appropriate equity homes and low-cost housing

The planning for affordable houses/homes is undertaken by local authorities and developed by registered social housing providers¹⁴. In England, affordable housing is funded through the government's Affordable Homes Scheme Programme (AHP) 2021 to 2026, mainly through affordable loans¹⁵. The funding is mainly for provision of new-build affordable housing for home for rent (affordable rent and social rent), homes for ownership and homes in rural settlement.

The Housing and Planning Act, 2016 provides for development and access to starter homes, which are part of affordable homes according to the National Planning Policy Framework¹⁶. A starter home is defined as a new dwelling available for purchase by qualifying first-time buyers only, that is sold at a discount of at least 20% of the market value or sold for less than the price cap¹⁷. For a person to qualify for a starter home, the person must be a first-time buyer, be at least 23 years old and below 40 years old.

Lessons for Kenya

Kenya could learn from the UK approach in affordable housing in the following ways:

- Defining clearly the meaning of affordable houses and setting economic and price parameters
- Differentiating and targeting affordable home ownership and rentals
- Local authorities (counties) taking a leading role in housing development

2.5.3. Affordable housing in South Africa

Housing, including affordable housing in South Africa is governed under the Housing Act, 1997¹⁸. The Housing Act:

- Obligates governments at all levels to –
 - prioritize the need of poor in respect to access to housing and housing development

¹⁴ UK Parliament (2024). Affordable housing in England. Available at:

<https://commonslibrary.parliament.uk/affordable-housing-in-england/#:~:text=Affordable%20housing%20can%20be%20funded,costs%20of%20developing%20affordable%20housing.>

¹⁵ Ibid.

¹⁶ UK Government (2016). Housing and Planning Act, 2016. Available at:

<https://www.legislation.gov.uk/ukpga/2016/22/part/1/chapter/1>

¹⁷ Ibid.

¹⁸ RSA (1997). Housing Act, No. 107 of 1997. Available at:

https://www.gov.za/sites/default/files/gcis_document/201409/a107-97.pdf

- support cooperatives, community self-help groups and associations to develop housing for their members and communities through providing access to land and funding
- Provides for housing subsidies, grants and loans to enable access to affordable housing
- Establishes South African Housing Development Board
- Establishes national housing information system or housing data bank for enabling planning of housing development, planning, policies and programmes
- Establishes South African Housing Fund for supporting financing of housing development and is mainly funded through appropriations by Parliament
- Affordable houses are developed by local authorities with the planning and national funding being undertaken by the national government

In 2007, the government of South Africa entered into a social contract called Framework for an Inclusionary Housing Policy (IHP) in South Africa, which was not legislated, with the private housing development sector¹⁹. Under the framework, the government and private sector agreed that:

- Every commercial development, including housing developments that are not directed to those earning R 1500 or less, spend a minimum of 20% of the project value on the construction of affordable housing (houses targeting households earning between R 1500 and 8000 per month)
- Affordable housing would either be for rental or for ownership
- A person must be earning between R 1500 to R 7000 per month and qualify for mortgage finance to qualify for the application for an affordable housing
- Government would provide incentives to the private sector in order to enable development of affordable housing

Lessons for Kenya

Kenya could learn from the South Africa approach in affordable housing in the following ways:

- Defining clearly the meaning of affordable houses and setting economic (monthly income) and price parameters
- Differentiating and targeting affordable home ownership and rentals
- Local authorities (counties) taking a leading role in housing development
- Establishing viable public -private partnership in developing affordable housing

¹⁹ RSA (2007). Framework for an Inclusionary Housing Policy (IHP) in South Africa. Available at: <https://housingfinanceafrica.org/app/uploads/Inclusionary-Housing-Policy-Framework-2007.pdf>

- National government focusing on financing and policy planning for affordable housing and counties developing housing

Chapter 3

Contextual analysis

Forced evictions are generally defined as permanent or temporary removal, eviction or displacement of individuals, families or communities from their land or homes/houses that they occupy or reside in against their will, and without provision of suitable

protections and alternatives that would be largely fair, equitable and acceptable, and without provision of or access to appropriate legal protections that are compliant with international human rights law²⁰. Persons facing forced eviction may fall under any of the circumstances below²¹.

Forced evictions related to public land/property

- Public houses or property lawfully occupied, mainly by tenants where government seeks to evict the tenants to create space for government to undertake public investment in development projects such as affordable housing public schools, dams, public hospitals, roads and other amenities such as airports and industrial parks
- Unlawfully acquired public land/property by persons who subsequently occupy the property or having sold to other persons
- Irregular or unlawful occupation of public land that is not available for settlement, by individuals or communities such as road reserves, public forests, public utility land, riparian land and river basin
- Occupation of public land by communities due to homelessness resulting from forced displacement or migration incidences such as ethnic clashes, climate change, conflicts, natural or man-made calamities/disasters
- Land historically occupied by traditional or marginalized communities that has subsequently been declared to be public land e.g. public forests where the communities are required to vacate/relocate

Forced evictions related to communal land/property

- Communal land lawfully occupied as settlement but without security of tenure e.g. informal settlements or slums where government plans to redevelop or upgrade the land through gentrification process, especially in urban areas
- Land historically occupied by communities but subject to disputed ownership partly due to historical injustices and unaddressed land administration issues or due to unprocedural or irregular excision of the land by some of the community members without consensus among the community landowners. This is a major challenge in coastal region

²⁰ See UN (2019). Guidelines for Implementing Right to Adequate Housing: Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context. (A/HRC/43/43).

²¹ GoK (2012). Land Act, Cap 280; Land Adjudication Act, Cap 284; Land Consolidation Act, Cap 283; Land Control Act, Cap 302; Land Registration Act, Cap 300; Community Land Act, Cap 287; Landlord and Tenant (Shops, Hotels and Catering Establishment Act, Cap 301; Law of Contract Act, Cap 23

Forced evictions related to private land/property

- Mortgage foreclosures, default on rent arrears or breach of lease conditions in tenancy agreements
- Land/property privately owned but with parallel titles acquired by unscrupulous land grabbers
- Land/property privately owned but subsequently compulsorily acquired by government to undertake public infrastructure development projects such as construction of dams, learning institutions, road reserves or undertaking public investment in development projects such as public schools, dams, public hospitals, roads and other amenities such as airports and industrial parks
- Unlawfully acquired private land/property and occupied by persons who grabbed the land or sold to other persons

Forced evictions “constitute prima facie violations of a wide range of internationally recognized human rights and can only be carried out under exceptional circumstances and in full accordance with international human rights law”²². Forced eviction, as derived from the term “forced” involves use of physical force that often results in injuries, physical and psychological abuse. Women, children, persons with disability, the poor, indigenous, marginalized communities and other vulnerable groups are most affected by forced evictions.

Forced eviction results in negative psychosocial and economic impact, landlessness, homelessness, destitution, loss of economic livelihood, destruction of property, disruption of family and social connections and ties and disruption of daily way of life for the affected individuals and families and disruption of social order and social activities such as education and health services

Forced evictions are normally aggravated by lack of security of tenure in land, manifested by possession of legal title to land or housing occupied by the inhabitants. Forced evictions may be effected lawfully through court process or government-led engagement processes, or unlawfully where inhabitants are forcefully evicted from their settlements with or without notice, leading to total destruction of property. Forced evictions may be followed by some form of compensation or no compensation at all.

²² UN (2007). Implementation of General Assembly Resolution 60/251 of 15th March 2006, Entitled “Human Rights Council”: Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. (A/HRC/4/18).

The recent flooding witnessed in Kenya left a trail of loss of life, damage and destruction of property, roads infrastructure and destitution. Nairobi was most affected, especially residents that had settled along the Ngong, Nairobi and Mathare Rivers. They witnessed their houses being swept away by the ravaging floods²³. As a result, the government embarked on massive demolition of property and forced eviction of resident that had settled along the riverine basins and riparian land, mostly in the informal settlements²⁴. This resulted in hue and cry in the manner with which the evictions were carried out. Prior to that, there have been other forced evictions in informal settlements in Mukuru Kayaba, Mukuru Kwa Njenga and Mukuru Kwa Reuben, in public forests such as in Mau and Embotut Forest among others There have also been incidences of forced evictions in Mavoko, Machakos county regarding land owned by East African Portland and in Syokimau²⁵.

Whereas the circumstances differ, the trend on forced evictions has been on land and settlements on public land such as road reserves, riparian land, water catchments, land traditionally claimed by indigenous and minority communities, land owned by private entities where communities have settled, and land traditionally claimed as community trust lands but subsequently owned by private entities. These cases and incidences have brought to the limelight the need to address the issues of forced evictions despite the circumstances of occupation on the land or property to safeguard the human rights. In Kwale county, residents have also experienced or faced the threat of forceful eviction due to historical land administration injustices. Recently, the 300 squatters in Gazi village faced eviction from 304 acres of land where they had been living with the claim that it was their ancestral land²⁶. In 2019, 3000 residents faced eviction from their land in Msambweni, Kwale county which was in private hands but they were claiming that it was their ancestral land and has lived in the parcel of land for decades²⁷.

²³ See: Amnesty International (2024). Solidarity Statement on the Recent Evictions in Nairobi Informal Settlements. Available at: <https://www.amnestykenya.org/solidarity-statement-on-the-recent-evictions-in-nairobi-informal-settlements/> ; GoK (2024). Cabinet Orders on moving out of risk prone and riparian areas. Available at: <https://www.president.go.ke/MOVE-OUT-OF-RISK-PRO/> ; Amnesty International (2018). Kenya: Evicting the Forest Guardians. Available at: <https://www.amnesty.org/en/latest/campaigns/2018/05/kenya-evicting-the-forest-guardians/>

²⁴ Ibid note 23.

²⁵ Saya M. (2023). Buyer beware! Portland Cement issued warning on Athi River land in 2016. Available at: <https://www.the-star.co.ke/news/realtime/2023-10-16-buyer-beware-portland-cement-issued-warning-on-athi-river-land-in-2016/>

²⁶ Muyanga P. (2024). Court returns land to owners, gives Kwale squatters six months to leave. Available at: <file:///Users/kiraguwachira/Documents/Core%20Folders/Consultancies/CONSULTANCIES%202/Transparency%20International/2024/Land%20Rights/Resources/Court%20returns%20land%20to%20owners,%20gives%20Kwale%20squatters%20six%20months%20to%20leave%20%7C%20Nation.html>

²⁷ Njeri M. (2023). 3,000 Kenyans Staring at Eviction Blame Politicians for Interfering with Court Case. Available at: <file:///Users/kiraguwachira/Documents/Core%20Folders/Consultancies/CONSULTANCIES%202/Transparency%20>

Chapter 4

Situational Assessment of Corruption Manifestation Related to Right to Housing, Forced Evictions and Resettlement

[nternational/2024/Land%20Rights/Resources/3,000%20Kenyans%20Staring%20at%20Eviction%20Blame%20Politicians%20for%20Interfering%20With%20Court%20Case%20-%20Kenyans.co.ke.html](https://www.kenyans.co.ke/2024/Land%20Rights/Resources/3,000%20Kenyans%20Staring%20at%20Eviction%20Blame%20Politicians%20for%20Interfering%20With%20Court%20Case%20-%20Kenyans.co.ke.html)

4.1.Introduction

Corruption affects both public and private sector. According to OECD, corruption is “the abuse of a public or private office for personal gain”²⁸. Transparency International defines corruption as “the abuse of entrusted power for private gain”.²⁹ The UN Convention Against Corruption (UNCAC) lays a foundation for prevention and curbing corruption at global level. It obligates State parties to adopt measures to prevent and curb corruption, which includes setting up of institutions or body charged with curbing corruption practices, awareness creation and public engagement among others. Corruption may range from petty corruption, grand corruption or state capture. Petty corruption involves minor incidences of the practices among ordinary citizens and officials while grand and state capture level corruption involves high level officials in public or private sector or political and business leadership and involves a lot of money.

Corruption takes place in different forms such as bribery, unfair recruitment, nepotism, inflation of costs of goods and services, use of public/organizational resources for personal gain, granting official favours in expectation of transactional returns in kind or cash and influence of decision where there is conflict of interest. Some of the opportunities of corruption are lobbying, conflict of interest, political influence, business interests and public decision making. Some of the drivers of corruption are greed for wealth and resources, high costs of living, poverty, inefficient public services, limited resources, ignorance, unfair competition, poor financial planning, desire for luxurious lifestyle and societal expectations among others.

Corruption significantly contributes to poverty, unequal distribution of resources, unequal competition, unfair processes, exclusion, plunder of public resources, inequalities, unavailability of sustainable public services, poor services, depletion of public resources, distortion of democracy and lack of trust in public institutions, poor quality of goods and services and state capture among others.

4.2.Corruption manifestation in forced evictions and resettlements related to public land/property

- (a) Public houses or property lawfully occupied, mainly by tenants where government seeks to evict the tenants to create space for government to

²⁸ <https://www.unodc.org/e4j/en/anti-corruption/module-1/key-issues/corruption---baseline-definition.html#:~:text=Moving%20away%20from%20the%20public,as%20%22the%20abuse%20of%20entrusted>

²⁹ Ibid note 1.

undertake public investment in development projects such as affordable housing or other public utilities.

Through the affordable housing programme, the national government has partnered with county governments to increase access to housing by upgrading already existing housing projects. Corruption may be manifested during eviction of the tenants or during allocation of newly constructed houses in the estate where the tenants were evicted from. Corruption may be manifested through–

- Evictions without notice by the government agencies and often in disregard to court orders. An example is the case of affordable housing programme in Buxton, Mombasa County that was developed through the *Urban Renewal and Redevelopment of Old Estates programme*. The tenants were evicted on very short notice without due regard to their plight while the court never issued injunctions to stop the evictions³⁰. The tenants' properties were destroyed during the eviction process. The residents moved to court in 2016 to challenge the decision by the county government and the secret manner that the process was being undertaken, lack of sharing of public information, lack of comprehensive public participation, infringement of constitutional rights to housing and non-compliance with environment management laws³¹. The court held that the county government was obligated to provide all necessary information and documentation related to the project and directed that such information be availed to the petitioners. However, the court did not find violation of the constitutional rights to housing among others as averred and environment management laws since by the time the petitioner moved to court, the project had not reached the stage for conducting environment impact assessment. Another case was observed in the eviction of county houses in Pioneers Estate in Eldoret, where some of the evicted tenants had not received the Ksh. 10,000 that had been promised for relocation, which may imply that the funds may have been misappropriated³²

³⁰ Haki Yetu Organization (2022). Housing for Who?. Available at: <https://hakiyetu.ke/wp-content/uploads/2022/11/Housing-for-Who-Affordable-Housing-in-Mombasa.pdf>

³¹ Republic of Kenya (2016). Legal Advice & 3 others V Cnty Government of Mombasa & 4 others [2016] eKLR. Available at: <http://kenyalaw.org/caselaw/cases/view/134669>

³² Ndanyi M (2024). Tenants evicted to pave way for Ruto housing project in Eldoret. Available at: <https://www.the-star.co.ke/news/2024-01-03-tenants-evicted-to-pave-way-for-ruto-housing-project-in-eldoret/>

- Favoritism in allocation (resettlement) of houses to the tenants who have been evicted. The Buxton housing programme saw allocation of 90% of the houses to the developer and 10% to the county government³³. The project was shrouded with secrecy and irregularities on the manner the public land was allocated to private developer and contracts issued without due regard to the procurement laws. A similar situation was also observed in Nairobi City County on irregularities on evictions and process of allocation of houses to the tenants who would be evicted from the houses in the estates designated for upgrading
- (b) Unlawfully acquired public land/property by persons who subsequently occupy the property, seek to occupy the property or having sold to other persons. Corruption in this scenario is mainly manifested in the acquisition of public land. Irrespective of the manner of land acquisition, persons who have been in possession of such land or property have been forcefully evicted. The forced evictions in Mau Forest present were based on government plan to reclaim the Mau Forest which had been acquired through government settlement schemes or irregular allocation of land titles by government officials. The State cancelled land titles issued and proceeded to forcefully evict the inhabitants of the land³⁴. The State asserted that the titles were acquired through corruption and hence the inhabitants of Mau, although they had genuine titles had no claim to the forest land. Another case is the eviction of Mwamdudu Primary School in Kwale county by a private developer for purposes of constructing a dry port³⁵. The school has existed in its location since 1966 but the developer, Colfax Holdings Ltd claimed the right to the property. The process of evicting the school was not transparent would be deemed to be corrupt.
- (c) Irregular or unlawful occupation of public land that is not available for settlement, by individuals or communities such as road reserves, public forests, public utility land, riparian land and river basin. The demolitions in Nairobi County on riparian land along the rivers in

³³ Dolan G. (2024). Buxton protests shines the light on affordable housing projects. Available at: <https://www.standardmedia.co.ke/opinion/article/2001486945/buxton-protest-shines-the-light-on-affordable-housing-projects#>

³⁴ Mkawale S. (2020). State to prepare for the Second phase of Mau Forest evictions. available at: https://www.standardmedia.co.ke/article/2001338184/all-set-for-mau-forest-evictions#google_vignette

³⁵ Mwangi W (2020). Pupils face eviction as primary school in Kwale risks losing land to private company. Available at: <https://nation.africa/kenya/counties/kwale/pupils-face-eviction-as-primary-school-in-kwale-risks-losing-land-to-private-company-1226726>

Nairobi (Ngong, Mathare and Nairobi Rivers)³⁶ demonstrated a process mulled with favouritism on class basis. The evictions from riparian land took place in the informal settlements, mainly in the east of Nairobi by not in the wealth and rich areas such as Kileleshwa, Lavington and Westlands where there is also encroachment of the riparian land in the same rivers. There may be a presumption that the unequal eviction process that left out the areas where the rich inhabit may be due power and influence of people who own property in those areas. In addition to the unfair and unequal enforcement of the directive, the mechanism for identifying beneficiaries of the compensation scheme was clear and transparent³⁷.

- (d) Occupation of public land by communities due to homelessness resulting from forced displacement or migration incidences such as ethnic clashes, climate change, conflicts, natural or man-made calamities/disasters. Such displacement has resulted in Internally Displaced Persons (IDPs). Whereas some of the IDPs later go back to their places of origins, some may not be able to go back. Corruption incidences mainly occur during the resettlement programmes upon eviction process. The IDPs of Mchanganyiko Area in Olkalou, Nyandarua county were facing forced eviction by Kenya Forest Service in 2021³⁸. They were victims of 2007 post-election violence. Due to corruption in the resettlement programme, they were being forcefully being evicted from public forest without any other alternatives. Consequently, the petitioned the Senate for intervention³⁹. Another case was observed in Nakuru county where IDPs were evicted without notice from the public land set for a

“The officers asked us to collect what was relevant from our makeshift houses and leave as they wanted to demolish the camp”
Simeon Cheruiyot
Internally Displaced
Person, Nakuru
county

³⁶ GoK (2024). Cabinet Orders on moving out of risk prone and riparian areas. Available at: <https://www.president.go.ke/MOVE-OUT-OF-RISK-PRO/>

³⁷ Amnesty International (2024). Solidarity Statement on the Recent Evictions in Nairobi Informal Settlements. Available at: <https://www.amnestykenya.org/solidarity-statement-on-the-recent-evictions-in-nairobi-informal-settlements/>

³⁸ Senate (2021). Report of the Senate Standing Committee on Land, Environment and Natural Resources. Available at: <http://parliament.go.ke/sites/default/files/2021-07/Petition%20Report%20concerning%20the%20Resettlement%20of%20IDPs%20in%20Nyandarua%20County.pdf>

³⁹ Ibid note 38.

stalled dam they were occupying on the reason that their makeshift homes were made using polythene bags⁴⁰

- (e) Land historically occupied by traditional or marginalized communities that has subsequently been declared to be public land e.g. public forests where the communities are required to vacate/relocate. The case of Sengwer community that has lived in Embotut forest since 19th century is an example of forced eviction from land traditionally held by communities and subsequently declared to be public forest. The forced eviction took place since 2014. Whereas the government set up compensation programme after the evictions, the programme was marred with corruption as many residents were not compensated⁴¹.

4.3. Corruption manifestation in forced evictions and resettlements related to communal land/property

- Communal land lawfully occupied as settlement but without security of tenure e.g. informal settlements or slums where government plans to redevelop or upgrade the land through gentrification, especially urban renewal processes. Corruption in this scenario mainly related to –
 - Abuse of power by state agencies through disregarding court orders in relation to injunctions to forced evictions⁴²
 - Allocation of houses during the resettlement process
- Land historically occupied by communities but subject to disputed ownership partly due to historical injustices and unaddressed land administration issues or due to unprocedural or irregular excision of the land by some of the community members without consensus among the community landowners. This is a major challenge in coastal region. Some of the cases involving corruption and forced eviction in Kwale include–
 - Forced evictions in Kazamoyo area in regard to Nyari Sisal Estate, Samburu–Chengoni, Kwale County. The thousands of residents have faced

“The Kaya is no more, numerous people have invaded the land and developed it, leaving only a small portion of the forest which is about to disappear”.
Matano Abdulrahman
Kwale National
Museum of Kenya
Coordinator

⁴⁰ Chepkwony J (2020). IDPs evicted from site of stalled dam. Available at: https://www.standardmedia.co.ke/article/2001342314/idps-evicted-from-site-of-stalled-dam#google_vignette

⁴¹ Amnesty International (2018). Kenya: Evicting the Forest Guardians. Available at: <https://www.amnesty.org/en/latest/campaigns/2018/05/kenya-evicting-the-forest-guardians/>

⁴² Rahedi I (2021). State has trampled on human rights in city slum evictions. available at: <https://www.standardmedia.co.ke/commentary/article/2001382148/state-has-trampled-on-human-rights-in-city-slum-evictions>

forced eviction from the land in Nyari Sisal Estate which they claim to be their historically⁴³. They have faced harassment from police whenever they seek redress from the land. Some of the residents have died while others have experienced grievous bodily injuries in the hands of GSU police who guard the private estate

- Forced evictions of local community from the land designated as Kaya forests in Ukunda, Kwale County where the land has been grabbed by locals, non-locals and private developers. The locals have faced harassment by police protecting the land grabbers, when they fight against land grabbing and forced eviction⁴⁴.
- Use of police and administration to evict locals some of whom live as squatters from their ancestral land because of unfair land administration. A case in point is the forced eviction and related threats in Wasini Island⁴⁵

4.4. Corruption manifestation in forced evictions related to private land/property

- Mortgage foreclosures, default on rent arrears or breach of lease conditions in tenancy agreements. Since relationships in this scenario are commercial in nature, corruption may be manifested through corruptly accessing court orders where material facts are not disclosed to court, forging eviction court orders or use of police force in execution of eviction without an eviction court order
- Land/property privately owned but with parallel titles acquired by unscrupulous land grabbers. This has emerged as a common form of corruption in forced evictions from private properties. Land grabbers have been observed to forge title deeds of legitimately owned property and proceed to obtain eviction orders on the landowners. In Eldoret, such case was reported where three fraudsters were arrested for forging land titles and obtaining eviction orders on landowner in the region⁴⁶.

“Land grabbers from this region [Machakos] have gone high-tech, they even forge court rulings and judgements”
Muhammad Swazuri
Former Chairman of National Land Commission

⁴³ Katana C (2024). The untold story of Nyari sisal estate in Samburu–Chengoni, Kwale County

⁴⁴ Musyoka A (2024). Where is Kaya in Ukunda?. Available at: <https://coasttimesdigital.com/8244-2/>

⁴⁵ Benest G (2018). Paradise Corrupted: Island Community Threatened with Eviction. Available at: <https://voices.transparency.org/paradise-corrupted-island-community-threatened-with-eviction-cdc4b7cfeab1>

⁴⁶ Njeri C. (2024). How Fraudsters use Forged Title Deed to Obtain Eviction Court Order. Available at: <https://thekenyatimes.com/latest-kenya-times-news/how-fraudsters-used-forged-title-deed-to-obtain-eviction-court-order/>

Cases of use of fake eviction orders were reported in Machakos, which necessitated the public statements from the National Land Commission⁴⁷. There have also been similar cases in Nairobi where auctioneers, using fake court orders have sought to evict homeowners⁴⁸, or forging land titles so as to evict lawful landowners⁴⁹.

- Land/property privately owned but subsequently compulsorily acquired by government to undertake public infrastructure development projects such construction of dams, learning institutions, road reserves or undertaking public investment in development projects such as public schools, dams, public hospitals, roads and other amenities such as airports and industrial parks
- Unlawfully acquired private land/property and occupied by persons who grabbed the land or sold to other persons. Corruption in this scenario emanates in the manner of the land acquisition. The buyers of the irregularly acquired land/property often face force eviction from the owners of the land. For some of the properties, the buyers do not have land titles but only allotment letters from the sellers who grabbed the land while for others they have land titles that would not be genuine. A good case in this scenario is the illegal acquisition of East Africa Portland Cement land by land grabbers who subsequently sold to buyers who settled on the land despite the company erecting public notices warning the public against buying the land⁵⁰

*"They have finished
my house, my
family, throwing us
out of our house of
46 years under no
ground"*
Avan Shah
**Owner of
demolished home,
Westlands**

⁴⁷ Owiti G (2017). Swazuri warns police against executing 'fake' eviction orders. Available at: <https://www.the-star.co.ke/news/2017-12-22-swazuri-warns-police-against-executing-fake-eviction-orders/>

⁴⁸ Kweyu C (2024). Family evicted from Westlands house moves to court. Available at: <https://www.standardmedia.co.ke/nairobi/article/2001495922/family-evicted-from-westlands-house-moves-to-court#>

⁴⁹ Green J (2022). Westlands Family in Agony after Being Thrown out of Their Home of 46 years. Available at: <https://www.tuko.co.ke/people/family/481663-westlands-family-agony-thrown-home-46-years/>

⁵⁰ Saya M. (2023). Buyer beware! Portland Cement issued warning on Athi River land in 2016. Available at: <https://www.the-star.co.ke/news/realtime/2023-10-16-buyer-beware-portland-cement-issued-warning-on-athi-river-land-in-2016/>

Chapter 5

Analysis of Legal and Policy Framework Governing Housing Rights, Land and Resettlement and Identification of Corruption Risks

5.1.Introduction

Corruption related to forced evictions, housing rights and resettlement may be due to legal and policy gaps in the relevant laws and policies, weaknesses in the implementation of the laws and policies or non-compliance with the policy or legal requirements by government officers and individuals with interest in contravening land laws.

Art. 43 (1) (b) guarantees the right to accessible and adequate housing. In addition, Art. 60 provides for the principles of land policy such as equitable access to land, security of land rights and engagement of communities to settle land disputes through local mechanisms.

5.2. Legal gaps analysis and corruption risks and vulnerabilities affecting right to housing, land and settlement

The right to evict a person unlawfully occupying a private, communal or public land is anchored on Section 152B of the Land Act, Cap 280, while the eviction process is governed under section 152C, 152D, 152E, 152F, 152G and 152H of the Land Act, Cap 280. The Act envisages a process that is lawful fair and carried out within the set procedures. The study observed several legal and policy gaps that create or perpetuate risks and vulnerabilities in forced evictions.

- (a) Failure to adhere to the eviction procedures set out under section 152G of the Land Act, Cap 280 and the Eviction and Resettlement Guidelines, 2009. The procedure requires that:
- The process be preceded by proper identification of those taking part in the eviction and demolition
 - Formal authorizations for the action be presented before eviction
 - Government officials be involved where groups of people are involved
 - Eviction be carried out in a manner that respects the dignity, right to life and security of those affected
 - Eviction process include special measures to ensure effective protection of people who are vulnerable such as women, children, the elderly and persons with disability
 - No arbitrary deprivation of property or possession should take place
 - Property left behind during eviction is protected
 - Respect for principles of necessity and proportionality during use of force is applied
 - Affected persons be given priority to demolish and salvage their property
- (b) Weak security of tenure since most parts of the country are outside the land titling system, which predisposes land occupants to being evicted if another person acquires the security of tenure through land titles⁵¹
- (c) Corruption during the registration of community land in accordance with the Community Lands Act, Cap 287, especially failure to register community interests in the respective land. The forced eviction from community land in Kwale such as the case of Kaya land and Wasini Island land. Whereas a community may lay claim to a parcel of land, failure to register the community interests in the land has resulted in the land being grabbed, adjudicated and allocated to private individuals. Consequently, community members have been forcefully evicted from their own land

⁵¹ GoK (2009). Eviction and Resettlement Guidelines, 2009

- (d) Corruption during the conversion of the community land to private land, where some of the community members collude with land officials to irregularly and unlawfully transfer part of community land to private individuals within the community or external parties. This exposes the community to forced eviction but the registered owners
- (e) Forgery of court eviction orders that have often been used to forcefully evict property owners, especially private property owners. This is a situation where persons have sought to evict land or property owners
- (f) Fraudulently producing parallel land titles or fake land titles with intention to unlawfully take away land from the legitimate owners. This has been done by land fraudsters in cohort with land officials mainly through duplicating land records or interfering with land records. Corruption vulnerabilities may be attributed to weak oversight over land registration system under the Land Registration Act, Cap 300. This has seen property owners being forcefully evicted from their properties
- (g) Poor mapping and identification of beneficiaries of resettlement or allocation of houses upon eviction to pave way for public housing upgrading schemes or programmes or other public investment programmes. Corruption has seen genuine tenants being denied opportunity to be allocated the houses as a priority and instead other external persons become the beneficiaries. This may be attributed to lack of development of the necessary relocation action plans before the respective evictions
- (h) Obtaining court orders through fraud by misleading the courts as to the material facts as to land and property ownership. Corruption in this aspect has been related to fraudulent production of parallel land titles which are then used to obtain court eviction orders, especially *ex parte* orders that are subsequently used to forcefully evict landowners
- (i) Abuse of office by using police powers to evict landowners without any eviction orders
- (j) Abuse of power by enforcing law through unequal forced evictions from public land that target informal settlements or poor communities while not applying the same to the wealthy or high-income areas. This has been the case in the forced evictions in Nairobi applied in the riparian areas after the flooding experience

5.3. Corruption risks and vulnerabilities in the Affordable Housing Act

The Affordable Housing Act, No. 2 of 2024 was enacted despite public opposition and reservation as to its purpose, the anticipated over taxation of taxpayers, policy gaps and duplication of roles envisaged under the Housing Act and potential risks and

vulnerabilities to corruption⁵². The Act contains several gaps and corruption risks and vulnerabilities that should be addressed such as:

- Section 11 allowed the Affordable Housing Fund Board to allocate funds for the social and physical infrastructure. However, the purpose of the Act is to fund development of affordable housing and institutional housing. Social and physical infrastructure is a very wide and undefined scope of target that is outside the housing policy. This may lead to misuse of funds in the guise of affordable housing.
- Section 44 provides for the power of the Board to enter into agreement with private institutions or persons for the development of houses or supply of materials. However, the Act does not obligate the Board to comply with Public Procurement and Disposal Act, Cap 412C when engaging in such agreements. This may open the process into abuse, especially in relation to procurement of goods and services.
- Section 47 provides for resettlement of slum residents and priority in allocation of houses to the residents. However, the Act does not connect the settlement schemes with the legal framework under the Land Act, Cap 280 on settlement schemes. In addition, the Act does not provide for fundamental principles to be followed in resettlement and allocation of houses to the residents
- Section 48 provides that eligibility criteria shall be determined in the Regulations. However, the contributors of the funds are all taxpayers who are natural persons. This opens room for abuse while making determination of who qualifies and who does not qualify for allocation of houses. Any person making contribution to the Fund should be eligible for allocation of an affordable house under the Act.
- Section 48 provides that a person is qualified for allocation of one affordable house. However, the Act does not provide for prohibition of households or spouses being allocated more than one house. This create room for corruption where spouses are allocated more than one house when they are considered as individuals, which would disadvantage other potential house buyers
- Section 49 (2) (c) provides for that one of the documents to be presented during an application for allocation of a house is certificate of incorporation in case of a body corporate. However, section 48 (2) provides that a person qualified for allocation for a house must be a natural person. Consequently, section 49 (2) (c) opens loophole for allocation of houses to body corporates, which may result in corrupt practices.
- The Act is not clear on how the funds collected from the taxpayers are to be utilized vis-à-vis the funds collected from the sale of the houses. This creates a loophole on

⁵² Gakenyis & 4 others V Cabinet Secretary Lands & 4 others (Constitutional Petition E154, E173, E176, E181, E191, & 11 OF 2024 (Consolidated) [2024 kehc 4573 (KLR) (Constitutional and Human Rights).

funds management since taxation will be a continuous process and sale of houses too. In addition, since the land is provided by the government and most of the funds used to develop the houses are derived from taxpayers' funds, it is not clear what financial role would be played by the private developers that are deemed to be entering into contracts with the government in the assumption that they would be mobilizing funds for property development

- The Act does not provide for clear mechanism of privatization of public land. Affordable houses are to be built mainly on public land but there is no clear procedure to be followed on privatization of the public land through sale of properties.

5.4. Institutional analysis of actors and vulnerabilities for corruption related to forced evictions, right to housing and resettlement

Whereas there are diverse drivers of corruption related to forced eviction, right to housing and resettlement, the key institutions responsible for different roles in the value chain contribute to the corruption vulnerabilities and risks as outlined below.

	Institution	Roles in corruption vulnerabilities
1.	Ministry of Lands, Public Works, Housing and Urban Development	<ul style="list-style-type: none"> • Issuance of parallel land titles • Failure to register community land interests in regard to community land • Failure to undertake nationwide comprehensive land adjudication • Weak oversight over land registration system • Failure to develop relocation action plans in cases where eviction is necessary for purposes of housing upgrading and redevelopment • Lack of proper identification of beneficiaries of housing projects subject to upgrading programmes where tenants are evicted

2.	National Land Commission	<ul style="list-style-type: none"> • Lack of proper identification of beneficiaries of compensation where there is compulsory land acquisition • Failure to safeguard public land from land grabbing
3.	County Governments	<ul style="list-style-type: none"> • Failure to register community land interests in regard to community land • Lack of proper identification of beneficiaries of housing projects subject to upgrading programmes where tenants are evicted
4.	Judiciary	<ul style="list-style-type: none"> • Protection of persons who are involved in production and issuance of parallel land titles • Granting <i>ex parte</i> eviction orders based on fraudulent documents • Inadequate measures to enforce injunctions related to forced eviction cases
5.	National Police Service	<ul style="list-style-type: none"> • Failure to comprehensively investigate and deal with production and issuance of parallel land titles • Assisting land grabbers enforce fake court orders or legitimate court orders obtained through using fraudulent land documents • Failure to protect legitimate landowners against forced evictions that are fraudulently based
6.	Ministry of Interior and National Administration	<ul style="list-style-type: none"> • Failure to undertake nationwide comprehensive land adjudication • Failure to protect community land interests • Assisting land grabbers enforce fake court orders or legitimate court orders obtained through using fraudulent land documents

5.5. Best practice case studies

5.5.1. Digitization of land governance in Kenya

Digitization of land governance in Kenya through the National Land Information Management System commonly known as *Ardhisasa* system was launched in 2021. The

system seeks to digitize data related to land delineation, surveying, registration and administration. The system integrates all data into one portal in a way that ensures there is integrity of land registration records. The system will largely resolve the corruption problems in land governance such as production of parallel land titles and parallel registration of land ownership to other parties other than the legitimate owner.

5.5.2. Role of government or political leadership in curbing forced evictions

Governments play some role in forced evictions related to housing and settlements. It is therefore critical to involve high level government leaders and agencies to tackle the problem of forced evictions. In France, when residents many cities faced forced evictions from social housing due to economic challenges, some of the mayors declared their cities eviction free zones to enable their residents manage and cope with economic challenges⁵³. Similarly, in Uganda President Yoweri Museveni intervened in 2005 when the about 1,500 residents of Kampala were being forcefully evicted from their houses, while observed that there was collusion between judiciary and entities seeking to evict the people⁵⁴.

5.5.3. Oversight over housing allocations in informal settlements

Corruption is often rife in allocation of housing to tenants/residents who relocated from houses to pave way for housing upgrading. However, through court mandated supervision of housing allocation, the Kenya National Commission effectively supervised allocation of housing units in Kibera Soweto East Zone 'A' redevelopment project under the Kenya Slum Upgrading Programme⁵⁵. The Commission adopted an extensive stakeholder engagement on housing allocation, conflict management and fair allocation of houses, which eliminated incidences of corruption during the resettlement process.

⁵³ UN-HABITAT (2007). Forced Evictions–Towards Solutions? Second Report of the Advisory Group on Forced Evictions to the Executive Director of UN-HABITAT. Available at: <https://unhabitat.org/sites/default/files/download-manager-files/Forced%20Evictions%20-%20Towards%20Solutions%20Second%20Report%20of%20the%20Advisory%20Group%20on%20Forced%20Evictions%20to%20the%20Executive%20Director%20of%20UN-HABITAT.pdf>.

⁵⁴ Ibid.

⁵⁵ KNHCR (2015). A Report Submitted to the High Court of Kenya (Nairobi) By the Kenya National Commission on Human Rights on the Implementation of Petition No. 304 of 2015: Allocation of Housing Units in Kibera Soweto East Zone 'A' Redevelopment Project Under the Kenya Slum Upgrading Programme. Available at: Kibera Soweto East Zone 'A' redevelopment project under the Kenya Slum Upgrading Programme.

5.5.4. Alternative local community solutions to forced evictions

The Pom Mahakan, a community of 300 residents in Bangkok faced forced eviction in 2003 by the Bangkok Metropolitan Administration (BMA) to redesign the locality to a manicured urban park. The residents were to be relocated to a location 45 kilometres in the outskirts of the city⁵⁶. The residents engaged in a proactive process where they proposed a mechanism where the community, which had lived in the locality for over 60 years could co-exist with the proposed park in a land sharing plan as an alternative to eviction and relocation. The proposal was to have the traditional community be integrated as a historical park within the modern urban park. Despite challenges in engagement with the government, through the negotiations the community was integrated into the park's concept and the residents were not relocated.

5.6. Select case law

5.6.1. Legal Advice Centre & 3 others V County Government of Mombasa & 4 others [2016] eKLR⁵⁷

The petition was lodged by the residents of Buxton Estate in Mombasa challenging the legality and constitutionality of the *Mombasa Urban Renewal & Redevelopment of Old Estates Project*. The Buxton estate had been earmarked for demolition and redevelopment under the project. The residents were due to lose their occupancy in the estate, where some had lived for more than 30 years. The county government sought to enter into joint venture with private developers in the project. The residents challenged the decision by the county government to undertake the project due to the impending relocation from their homes. The sought the court to declare the project a violation of the right to housing, the illegality of the project for failing to comply with environment management laws, public procurement and privatization laws and access to information laws since the county government had failed to provide the necessary information concerning the project to the residents. Whereas the court did not find the project to be unconstitutional or in contravention of the environment management laws, it found that the county had failed to provide the necessary information sought for by the residents. The court ordered the county government to supply the necessary information to the residents.

5.6.2. Justus Chai Mbaru & 12 others V County Government of Mombasa; National Land Commission & 19 others (Interested Parties) [2021] eKLR⁵⁸

⁵⁶ Ibid Note 25.

⁵⁷ RoK (2016). Legal Advice Centre & 3 others V County Government of Mombasa & 4 others [2016] eKLR. Available at: <http://kenyalaw.org/caselaw/cases/view/134669>

⁵⁸ RoK (2021). Justus Chai Mbaru & 12 others V County Government of Mombasa; National Land Commission & 19 others (Interested Parties) [2021] eKLR. Available at: <http://kenyalaw.org/caselaw/cases/view/209321>

The residents of Buxton Estate in Mombasa petitioned the Land and Environment Court in Mombasa (although the petition was first filed in the High Court Constitutional Division but was referred to the Land and Environment Court) seeking court's intervention to halt the Mombasa County's *Urban Renewal and Redevelopment of Old Estates Within Mombasa County Project*. This was a follow up petition to the 2016 petition they had lodged during the initial process of development of the project⁵⁹. The Petitioners averred and contended that –

- The Buxton estate was developed by the national government and municipal council of Mombasa as affordable and decent housing for occupation by low income earners, who stated that they were paying a subsidized monthly rent of Ksh. 3,662 for a 2-bedroom house and Ksh. 2,810 for one bedroom house
- The project was occupying public land but the county government had sought to transfer the land to private party in the guise of public -private partnership model
- The award for development of the project was irregularly awarded to the private sector
- The tenants would lose their secure accommodation when the houses would be demolished and that when the houses were complete, they would be sold on commercial basis which could not afford since they were low-income earners
- The county government had not conducted a Tenant Eviction Impact Assessment on the residents of Buxton Estate and that the intended eviction would create serious and adverse impacts on the petitioners.
- The county government had not developed a tenant relocation plan, compensation for the eviction, the come-back plan, the tenant purchase plan and the payment rates for the new apartments

The petitioners sought the court to declare that:

- The project was in contravention of the constitution to the extent that it vested public land to a private party (developer)
- The developer had no capacity to deal with the property
- The residents had the right to quietly and peacefully enjoy their occupation of Buxton Estate

The court dismissed the petition on the basis of that it was *res judicata* since the same issues were dealt with in the 2016 petition, there was no violation of their constitutional rights to housing, there was consultation and public participation during the relocation/eviction deliberation meetings, and that the residents had agreed to receive a payment of Ksh. 300,000 as compensation for relocation.

⁵⁹ Ibid Note 52.

5.6.3. Kiruwa & another V Weindaba & 7others (Environmental & Land Case 14 of 2021) [2024] KEELC 1663 (KLR) (26th March 2024) (Judgement)

The plaintiffs brought the suit on behalf of BLOCK 5041 COMMITTEE and the representatives of the residents of LR KWALE/SHIMONI/5041 measuring 1000 acres, which consists of Kichaka Mkwaju, Gunyu, Makonzoni Panama and Baundi villages. The residents averred that:

- They had been in occupation of the property for many years preceding the pre-colonial period
- In 2007 President (Hon. Mwai Kibaki) declared the suit property to be allocated to settle the squatters and the Ministry of Lands complied with the directive and established the RAMISI PHASE 1. The residents were allocated 5 acres each and issued with allotment letters pending issuance of the titles. They continued occupying the property pending formalization of their occupation.
- The 1st to 4th defendants acquired the lease to the said land in 2018 and were issued registered leases by the land registrar. They thereafter transferred the property to the 7th defendant for consideration of Ksh. 90,000,000

The plaintiffs sought a declaration that they were the legitimate owners of the property. The court dismissed the suit on basis that the plaintiffs:

- Did not produce any evidence of the presidential directive, payment for the letters of allotment, land adjudication and registration of the suit property and issuance of title to the land
- Did not give any evidence that they lawfully occupied the land in accordance with the land law
- Did not prove any evidence of fraud in acquisition of land by 1st to 4th defendant

Lessons drawn from case law

- Government has legitimate reasons for upgrading and redeveloping old estates and it is lawful for the government to undertake such projects.
- Tenant in projects designated for upgrading and redevelopment should work with government on adoption of favourable tenant-purchase schemes
- Government should develop affordable tenant purchase schemes for tenants relocated from houses occupied and designated for redevelopment and upgrading

- Landless communities, some commonly referred to as squatters should seek legal process for land acquisition and possession of title to land allocated

Chapter 5

Key Policy and Legislative Recommendations

5.1. Introduction

Protection against forced evictions is fundamental to realization of the right to housing and right to property. Forced evictions contribute to social disorder, erosion of rule of law, mistrust in governance institutions, poverty and conflicts. It is therefore important for government Ministries, Departments and Agencies (MDAs) to adopt measures aimed at safeguarding right to housing and protection from forced eviction.

5.2. Recommendations

The study proposes adoption of the recommendations below on adoption policy and legislative changes as well as change in practice by various MDAs.

	Policy Challenge	Key Recommendations	Responsible Actor
1.	Failure to adhere to the eviction procedures set out under section 152G of the Land Act,	<ul style="list-style-type: none"> • Review and update the Eviction and Resettlement Guidelines, 2009 to align with the Land Act, Cap 280 	<ul style="list-style-type: none"> • Ministry of Lands, Public Works, Housing and Urban Development

	Cap 280 and the Eviction and Resettlement Guidelines, 2009	<ul style="list-style-type: none"> • Build the capacity of the relevant government Ministries, Departments and Agencies involved in forced evictions • Adopt legislative measures to domesticate the UN Principles and Guidelines on Development-Based Evictions and Displacement 	<ul style="list-style-type: none"> • National Land Commission • County Governments • National Police Services
2.	Weak security of tenure since most parts of the country are outside the land titling system, which predisposes land occupants to being evicted if another person acquires the security of tenure through land titles	<ul style="list-style-type: none"> • Adopt and implement a nationwide comprehensive land adjudication programme for all areas where land is not adjudicated and registered • Adopt measure to protect security of tenure, especially in informal settlements • Build the capacity of local communities that lawfully occupy land which does not have security of tenure to enable them advocate to grant of security of tenure 	<ul style="list-style-type: none"> • Ministry of Lands, Public Works, Housing and Urban Development • National Land Commission • County Governments • National Treasury • Civil Society Organizations
3.	Corruption during the registration of community land in accordance with the Community Lands Act, Cap 287, especially failure to register community interests in the respective land	<ul style="list-style-type: none"> • Adopt a nationwide programme for registration of community land interests regarding all community land • Reclaim and restore community land that had been grabbed and irregularly allocated to private entities or persons • Build the capacity of local communities to protect community land through registration of community land interests 	<ul style="list-style-type: none"> • Ministry of Lands, Public Works, Housing and Urban Development • National Land Commission • National Treasury • County Governments • Civil Society Organizations
4.	Corruption during the conversion of the community land to private land	<ul style="list-style-type: none"> • Adopt a nationwide programme for registration of community land interests regarding all community land • Reclaim and restore community land that had been grabbed and 	<ul style="list-style-type: none"> • Ministry of Lands, Public Works, Housing and Urban Development • National Land Commission

		irregularly allocated to private entities or persons	<ul style="list-style-type: none"> • National Treasury • County Governments
5.	Forgery of court eviction orders that have often been used to forcefully evict property owners, especially private property owners. This is a situation where persons have sought to evict land or property owners	<ul style="list-style-type: none"> • Adopt measures to prevent and address the issue of production of fake court orders • Adopt legislative measures to ensure punitive measures against use of fake eviction court orders • Adopt measures to integrate court system with National Police System regarding authentication of eviction court orders 	<ul style="list-style-type: none"> • Ministry of Lands, Public Works, Housing and Urban Development • National Land Commission • County Governments • Judiciary • National Police Services
6.	Fraudulently producing parallel land titles or fake land titles with intention to unlawfully take away land from the legitimate owners	<ul style="list-style-type: none"> • Support comprehensive land registration nationwide and integration of the ongoing National Land Information Management System commonly known as i.e. <i>Ardhisasa</i> system • Adopt stringent measures in land registries and land registration system to curb fraudulent production of parallel land titles 	<ul style="list-style-type: none"> • Ministry of Lands, Public Works, Housing and Urban Development • County governments • National Treasury
7.	Poor mapping and identification of beneficiaries of resettlement or allocation of houses upon eviction to pave way for public housing upgrading schemes	<ul style="list-style-type: none"> • Adopt legislative measures to ensure mandatory development of Relocation Action Plans whenever there is need for relocation of persons from their houses or properties that they occupy • Ensure effective and comprehensive public participation during the relocation processes 	<ul style="list-style-type: none"> • Ministry of Lands, Public Works, Housing and Urban Development • County governments • National Treasury
8.	Obtaining court orders through fraud by misleading the courts as to the	<ul style="list-style-type: none"> • Amend court procedure rules to prevent issuance of <i>ex parte</i> court eviction orders related to disputes over land ownership 	<ul style="list-style-type: none"> • Judiciary • National Police Service

	material facts as to land and property ownership	involving legality of land titles, before initial verification of the documents	<ul style="list-style-type: none"> • Ministry of Lands, Public Works, Housing and Urban Development • Ministry of Interior and National Administration
9.	Abuse of office by using police powers to evict landowners without any eviction orders	<p>Adopt measure to prevent police powers from being abused in relation to enforcement of eviction orders such as–</p> <ul style="list-style-type: none"> ○ Mandatory authentication of court orders by police before enforcing the court orders ○ Prohibition of police participation in effecting forced eviction without a legitimate court order 	<ul style="list-style-type: none"> • Judiciary • National Police Service • Ministry of Lands, Public Works, Housing and Urban Development • Ministry of Interior and National Administration
10.	Abuse of power by enforcing law through unequal forced evictions from public land that target informal settlements or poor communities while not applying the same to the wealthy or high-income areas	Adopt a comprehensive process for eviction from riparian land and other public land that applies to all persons and areas irrespective of economic status	<ul style="list-style-type: none"> • National Police Service • Ministry of Lands, Public Works, Housing and Urban Development • County governments • National Police Services • Ministry of Interior and National Administration
11.	Lack of transparency and accountability mechanism in governance and management of affordable housing	<ul style="list-style-type: none"> • Adopting an objective and predictable qualification and application process for acquisition of houses • Differentiating categories of home ownership without discriminating based on age in certain instances 	<ul style="list-style-type: none"> • Ministry of Lands, Public Works, Housing and Urban Development • National Land Commission • National Treasury • County Governments

		<ul style="list-style-type: none"> • Affordable housing being integrated with wider spatial development and environment management • Prioritizing first time homeowners and vulnerable groups such as persons with disability, youth and women who are economically not able to afford housing at normal market process • Having strong and effective public sector housing development entities • Defining clearly the meaning of affordable houses and setting economic and price parameters • Differentiating and targeting affordable home ownership and rentals • Local authorities (counties) taking a leading role in housing development • Defining clearly the meaning of affordable houses and setting economic (monthly income) and price parameters • Differentiating and targeting affordable home ownership and rentals • Local authorities (counties) taking a leading role in housing development • Establishing viable public - private partnership in developing affordable housing • National government focusing on financing and policy planning for affordable housing and counties developing housing • Amend the Affordable Housing Act to: 	
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		<ul style="list-style-type: none"> ○ Remove allocation of funds for the social and physical infrastructure development ○ Obligate the Affordable Housing Board to comply with Public Procurement and Disposal Act, Cap 412C when engaging in agreements development of houses or supply of materials ○ Integrate resettlement of slum residents and priority in allocation of houses to the slum residents to legal framework under the Land Act, Cap 280 on settlement schemes ○ Prohibit households or spouses being allocated more than one house ○ Prohibit allocation of houses to body corporates ○ Provide for accountability and transparency in utilization of taxpayers' funds collected through housing levy ○ Provide for clear mechanism of privatization of public land in accordance with requirements under the Land Act Cap 280 	
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