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Title: *A Case for Forceful Eviction as an Intersection between Land Rights, Corruption, and Human Rights*

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1.0 Introduction

Land has always been a thorny issue in Kenya and in this regard, due to its high demand and appreciation attribute, it has always been prone to corruption which in the long run impacts on essential human rights. With the promulgation of the New Constitution 2010 and entrenchment within it a Chapter on land, it was viewed as a milestone towards curbing land problems including corruption, but the problems still persist as we continue to witness forced evictions which deny the affected persons the right to own property including land as envisaged under Article 40(1) of the Constitution of Kenya 2010. This conference paper therefore, covers the effects of forced evictions as instigated by corruption, the efforts that have been put in place to avert the situation, challenges faced in the attempts to address the issue, best practices on evictions and the best practices to be adopted as the way forward in addressing the problem of forced evictions.

According to Transparency international, corruption is defined as the abuse of entrusted public power for self gain and in this regard, the East African Bribery Index 2017 by Transparency International Kenya, ranked land services in Kenya as the third highest in average size of bribe paid. In terms of the likelihood of encountering bribery, land services came in second with respondents having a 55.1% chance of encountering corruption. In the aggregate index for Kenya, land was ranked third with a score of 41.7%. This demonstrating the extent of abuse of land rights as a result of corruption. This has led to derogation from fundamental human rights manifested by forced evictions. Forced eviction is defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”¹ The forceful nature coupled with corruption has placed eviction as being the cross-section between land rights, corruption, and human rights.

Human rights are "commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being." Human rights are thus conceived as universal and egalitarian which means that they are the same for everyone. These rights may exist as natural rights or as legal rights, in local, regional, national, and international law. The Universal Declaration of Human rights is one of the major proclamations that provide key guidelines on Human rights. Article 2 of the Declaration provides that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status².

The provision set out above is therefore of the essence that, Human rights are fundamental and there should be no given time that they are derogated from; however, corruption has led to derogation from these delineable human rights as we continue to witness forced evictions that displace people from their land, shelter and other entitlements. Some of the cases on eviction in Kenya include Dunga Unuse in Mombasa where some influential wealthy persons have constantly evicted people from their houses by bulldozing them at midnight. Within Kenya’s capital city, Nairobi, we have also witnessed forced evictions at the heart of Westlands Sub-

¹ Committee on Economic, Social and Cultural Rights, general comment No. 7.

² The Universal Declaration of Human rights (1948).

county where the original land owners were forcefully evicted and their houses pulled down while asleep.

Forced evictions are thus often linked to the absence of legally secure tenure which constitutes an essential element of the right to adequate housing. This is caused by many factors including corruption. Forced evictions share many consequences similar to those resulting from arbitrary displacement, including population transfer, mass expulsions and exodus, ethnic cleansing and other practices involving the coerced and involuntary displacement of people from their land.

As a result of forced evictions, people are often left homeless and destitute without means of earning a livelihood and in practice, with no effective access to legal redress or other remedies. Forced evictions intensify inequality, social conflict, segregation and invariably affect the most poorest, socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous people. Forced evictions in the broader sense constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, freedom from cruel, inhuman and degrading treatment and freedom of movement.

2.0 Efforts to Avert Forced Evictions

The obligation of states to refrain from and protect against forced evictions from home(s) and land arises from several international legal instruments including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (art. 11, para.1), the Convention on the Rights of the Child (art. 27, para.3), the non-discrimination provisions found in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination.

It is worth noting that as a country, Kenya has not enacted a law governing the issue of evictions and resettlement though there are attempts made from the year 2006 to put in place the law but the Evictions and Resettlement Procedure Bill, has faced many challenges and with this state of affairs, we are guided by international instruments and principles by virtue of Article 2(6) of the Constitution 2010, because Kenya as a country ratified the stipulated international instruments as early as 1972. The provisions are further supported by the express provision of the right to adequate housing under Article 43(1) of the Constitution and in that regard, as a country we are to abide by the international eviction guidelines.

3.0 Best practices on Forced Evictions

In its resolution 1993/77, the Commission on Human Rights stated that the "practice of forced eviction constitutes a gross violation of human rights in particular the right to adequate housing". In 1977, the Committee on Economic, Social and Cultural Rights issued its General Comment number 7 on forced evictions which set out the following practices on procedural protection to be followed:

- ❖ An opportunity for genuine consultation with those affected;
- ❖ Adequate and reasonable notice for affected people prior to the eviction;

- ❖ Information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- ❖ Government official or their representative to be present during evictions
- ❖ Any one carrying out evictions to be properly identified
- ❖ Evictions are not to take place in particularly bad weather or at night unless the affected people consent;
- ❖ Provision of legal remedies;
- ❖ Provision, where possible, of legal aid to people who are in need of it to seek redress from the courts;
- ❖ Governments must also ensure that no one is rendered homeless or vulnerable to the violation of other human rights as a consequence of eviction.
- ❖ Adequate alternative housing and compensation for all losses must be made available to those affected prior to eviction, regardless of whether they rent, own, occupy or lease the land or housing in question.

4.0 The Challenges

Attempts have been made to enact a law in relation to evictions and resettlement in Kenya but the law is still not in place. This therefore means that for any evictions to be effected if necessary, the guidelines set out in international instruments must be adhered to because Kenya is party to them through ratification.

However, due to corrupt deals and practices that are rampant within the land sector, we have continued to witness forced evictions which touch on the core of the rights relating to land ownership and human rights as a whole. This is because the eviction process can be brutal and very devastating to the human life and therefore undermines the efforts made to bring changes within the land sector and in the long run, corruption continues to thrive at the expense of the vulnerable in the country that remain landless or displaced.

5.0 Conclusion

The Universal Declaration of Human rights provides that no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 30 further provides that nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein. But Due to corrupt deals and practices that are rampant within the land sector, we have continued to witness forced evictions which touch on the core of the rights relating to land ownership and human rights as a whole. This therefore calls for radical steps and action to be taken in order to avert the rampant violation of human rights as instigated by forced evictions which are seen to be fuelled by corrupt practices. The following recommendations are hence set out in the quest of addressing the problem of forced evictions in Kenya.

6.0 Recommendations

- The Government and the relevant stakeholders to adhere to the provisions of the Kenyan Constitution on the protection of human rights and freedoms
- The Government to implement the International Eviction Guidelines as set out in International Instruments which Kenya as a country is a party
- Enactment and implementation of the Eviction and Resettlement Guidelines Law in Kenya
- Empowering the Citizens on their rights and freedoms as relates to evictions and land ownership
- Prosecuting those that contravene guidelines on evictions to serve as a deterrent to such future actions
- Scaling up efforts in fighting and preventing corruption that instigates forced evictions including empowering the public on identifying and reporting corruption instances to the relevant mandated institutions.

Reference

Eviction and Resettlement Guidelines Bill, 2011

The Constitution of Kenya 2012

The Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Rights of the Child

Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights

The International Convention on the Elimination of All Forms of Racial Discrimination