



Pamoja Trust

Creating Voice and Space with the Urban Poor

7th October 2020.

RE: Memoranda on the Proposed Nairobi City County Evictions, Resettlement and Demolitions Control Bill.

The subject refers.

Kindly find attached enclosed Memoranda submitted on behalf of the Housing Coalition on the proposed Nairobi City County Evictions, Resettlement and Demolitions Control Bill.

We look forward to engaging with the assembly on the contents of the submitted Memoranda. We can be reached on solando@pamojarust.org, lavender.namdiero@amnesty.or.ke, and pkariuki@hakijamii.com.

Yours sincerely,

Olando Samuel Ouko

Executive Director-Pamoja Trust.

Housing Coalition

Memoranda on the Proposed Nairobi City Evictions, Resettlement and Demolitions Control Bill.

Submitted by:

Pamoja Trust

Economic and Social Rights Centre-Hakijamii

Muungano wa Wanavijiji

Amnesty International Kenya

Grassroots Trust

Just City Coalition

Umande Trust

Inuka Kenya ni Sisi

Muming

FES

Kenya Social Movement Network.

Marginal Notes	Bill Proposition	Comments on the proposition	How the section needs to read
Bill Heading	The Nairobi City County Evictions, Resettlement and Demolitions Control Bill,2020	The term 'control' in reference to evictions and demolitions legitimizes forced evictions.	The Nairobi City County Evictions, Resettlement and Demolitions Procedures Bill,2020
Interpretation	<p>Affected person; Person who has been permanently displaced from their land or premise.</p>	<p>What informs the permanency of a displacement? What is the threshold of permanency?</p> <p>The term 'from their land' excludes the people who live on land or premises that do not belong to them but access them these spaces through other means or forms.</p>	A person who has been displaced a land or premise.

	<p>Section 2 (b).....but a member of such family may be working and living in the affected area for at least 5 years.</p>	<p>The terms 'working and living' depicts that an affected person needs to be one who meets the two conditions, yet there are those who meet both or either of the conditions.</p>	<p>working or living</p>
	<p>Section 2(b) A member of such family may be working or living in the affected area for at least five years prior to the eviction.</p> <p>Section 2(c) Persons whose primary source of livelihood for at least 5 years prior to the eviction.</p>	<p>What parameters informed the proposed 5 year period? This depicts a form of exclusion.</p>	<p>A member of such family may be working or living in the affected area as per the cutoff date of enumeration.</p> <p>Persons who draw their livelihood from the affected area as per the cutoff date of enumeration.</p>

	<p>Section 2(c) Persons whose primary source of livelihood is dependent on forests or water bodies and includes gatherers of forest produce , hunters, fishermen and boatmen and such livelihood that may be affected due to an eviction</p>	<p>Livelihood aspects highlighted do not explicitly capture the urban context neither do the resources depended upon there in. Further, the jurisdiction of this legislation is within Nairobi City County.</p> <p>In addition, the term primary source is not enforceable.</p>	<p>Persons who draw their livelihoods from the affected area for business Is dependent on forests, water bodies, formal and informal markets and includes vendors, hawkers, artisans</p>
	<p>'Authorized officer 'means a Nairobi City County Officer responsible for matters relating to lands and resettlement.</p>	<p>In the current county structure there is no designation for an officer responsible for matters relating to lands and resettlement. There is need to anchor this officer to an existing office.</p>	<p>..... Officer responsible for matters relating to lands and planning.</p>

	<p>'Displaced person' means a person who has been forced to leave his habitual residence as a result of armed conflict , situations of generalized violence or natural or human made disaster;</p>	<p>The definition leaves out key forces of displacement in the urban context other than armed conflicts, violence and disaster. It is also silent on the aspect of violations of human rights .Additionally, the statement is not gender sensitive as it uses the term 'he'.</p>	<p>Means persons or group of persons who have been forced or obliged to flee or leave their homes or places of habitual residence in particular as a result of or in order of to avoid the effects of armed conflict ,situations of generalized violence, violations of human rights, natural or human made disaster or development projects.</p>
	<p>"Premises" means any land, building, hut or part of a hut or building.</p>	<p>The definition should include other forms of premises.</p>	<p>Means any land, building, hut, structure or part of a hut ,building or structure.</p> <p>Define terms; Forceful eviction,</p>

	Definition of terms	The legislation should add more terms used in the document to avoid misinterpretation of terms.	consent, consultations. court
	‘ Settlement ’ definition means conferment on a displaced person of any permanent right in or title to any land under this Act, whether such right of title be propriety ,occupancy ,tenancy or any other kind.	To ensure the legislation is consistent with other existing laws, refer to the definition In the Land Act 2012, Part 9, on settlement programs . It provides a more holistic definition.	Provision of access to land to squatters, persons displaced by natural causes, development projects, conservation, internal conflicts or other such causes that may lead to movement and displacement.

	<p>'Unauthorized occupant' means any person who continues to occupy private or public premises without the authority of the owner of the premises or land and it includes any person who continues to occupy such premises or land after the authority under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.</p>	<p>The definition exposes those living in the informal settlements or spaces as occupants in good faith to evictions because they are not authorized to access the mentioned spaces.</p>	<p>Delete this definition and replace it with the definition; occupant in good faith" means a person who has occupied land without the express or tacit consent of the owner or person in charge for a reasonable period of time without any right in law to occupy such land and that person does not have sufficient income to purchase or lease alternative land;</p>
Guiding principles	Section 5 (a) protection from arbitrary evictions	The term arbitrary is relative and could create a	5. (a) Protection from evictions. 5 (c)Public participation

		<p>loophole for evictions.</p> <p>The aspect on participation in the entire process should be a principle in the document.</p>	
General prohibition	Section 6 A person shall not enter or occupy any premises of land except as allowed by the law.	It discriminates the vulnerable groups that occupy spaces informally or illegitimately.	No person shall forcefully evict or resettle any individual in a manner whatsoever other than in accordance with this Act.
Conditions for evictions or demolitions.	Part II,7 Conditions for evictions or demolitions.	In line with adoption of a human rights based approach, this section should be preceded by a section on procedures for conducting evictions. Then the conditions for evictions shall follow thereafter. The Act should refer to the	In conducting evictions the county government shall follow the guidelines as stipulated in the Land amendment Act 2016.

		procedures for evictions as stipulated in the Land Laws Amendment Act 2016.	
Evictions from private land	Section 8 (1) The owner of private land shall not evict any authorized occupant without a court order.	This section contradicts procedures provided by the National Land Act i.e. The Land Act states that a private owner who seeks to evict a person on his/her private land will just give a notice of three months without obtaining a court order. The proposed bill suggests that the owner should get a court order.	Evictions on private land shall follow procedures as stipulated In the Land Amendment Act 2016.

		Hence the section 8 should be deleted and instead have it refer to the land laws.	
Application for temporary eviction	Section 9 (1) The owner of private premise or land may apply for temporary removal of the premises or land pending the hearing and determination of case.	This section creates room for legitimizing evictions and does not provide the opportunity for fair administrative action/justice; it legitimizes evictions before the court gives a determination.	The entire section should be deleted.
Eviction notice from Public land	Section 10(1) in the case of an eviction by the county , the County Executive Committee Member shall before sanctioning such an eviction ,ascertain whether the eviction meets the conditions set out under section 7.	The section gives un-over sighted role of ascertaining whether the eviction meets the set conditions of lawful evictions to the County Executive Committee member, yet the Land Amendment Act 2016 , section 152 C gives this	In the case of an eviction by the County ,The County Executive Committee member in charge of land shall in writing to the National Land Commission before sanctioning such an eviction , ascertain whether the eviction meets the condition set out under the Land Amendment Act.

		role to the National Land Commission . This then overlaps with the provisions in the National Law.	
Disposal of property left by unauthorized occupants	Section 11 An authorized officer or the owner of private premises or land shall remove or cause to be removed or disposed of by public auction ,any unclaimed property that is left behind after a person is evicted.	This section does not give first priority to the occupant whose property is disposed. It does not give the occupant a time frame to collect his/her property. This section denies an occupant their right to accessing property. The section needs to capture the aspect of equity of redemption.	The disposal procedure of unclaimed property shall follow the provisions on property rights in the Constitution of Kenya , 2010, and the protections of equity of redemption in the Land Act 2012. Delete Section 11(2), (3)
Power to remove unauthorized	Section 12(1) A person or entity shall not erect , place	The section is an incomplete statement that	A person shall not erect a dwelling structure in any place without a

<p>constructions , structure.</p>	<p>or raise any building or movable or immovable structure or fixture.</p>	<p>ought to highlight</p>	<p>development permission granted by the respective county executive committee member in accordance with part 4 of the physical and land use planning act of 2019.from the approval of the</p> <p>The county government shall adopt procedures provided in the Evictions and resettlement bill.</p>
<p>Part IV, Resettlement Application of part</p>	<p>Part IV. Section 16 (1) This part shall apply to resettlement of persons displaced a. Due to evictions from public land b. Due to an act of God or war</p>	<p>This section excludes other vulnerable groups that may require to be resettled as a result of certain prevailing conditions as envisaged by the Land Act 2012, Part IX Section 134(2).</p>	<p>This part shall apply to resettlement of persons displaced by natural causes, development projects, conservation, internal conflicts or other such causes that may lead to movement and displacement.</p>

<p>Conditions for Resettlement</p>	<p>Section 17 (1) The Executive Committee member shall cause to be undertaken resettlement planning to facilitate the resettlement of persons evicted from public land or persons who have been displaced as a result of internal strife or acts of wars.</p>	<p>The section has excluded the role of the National land commission as envisioned in the Land Act in implementing settlement programmes to provide access to land for shelter and Livelihood on behalf of the national and county governments,</p>	<p>The Executive Committee member in consultation with the National Land Commission shall cause to be undertaken resettlement planning to facilitate the resettlement of persons evicted from public land or persons who have been displaced by natural causes, development projects, conservation, internal conflicts or other such causes that may lead to movement and displacement.</p> <p>The county executive committee member shall ensure that adequate participation on the matter of settlement</p>
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	Section 17 (2) The county executive committee member shall ensure that adequate consultations on the matter of settlement	The term consultation limits the extent of participation.	
Environmental and social Impact Assessment	Section 20 (2) The resettlement plan shall include;	There is need to have data on the socio-economic status of the affected persons.	(f) Socio-economic analysis of what the affected may have.
Committee for resettlement	Section 22 The Executive Committee member may constitute a committee under the chairmanship of the County Land Board to oversee the development and implementation of resettlement plan in the	This committee has been established under the Land laws Amendment Act 2012, that is, the Board of trustees.	The Executive Committee member in consultation with the Board of trustees established under the Land laws Amendment Act ,Section 90 shall oversee the development and implementation of.....

	manner prescribed.		
Resettlement	Section 23 (1)to be resettled in the area at the appointed time.	Appointed term is relative.	... to be resettled in the area at the time as provided by the Land Act.
Public Participation	Section 28	These components should inform the objects and principles of the Act. At Section 5 of this proposed Bill. Delete the sections 28, 29 and 30	Section 5 f. Right to information g. Monitoring and reporting
Right to information	Section 29		
Monitoring and reporting	Section 30		
Offences and penalties	Section 32 (2) A person who obstructs in or otherwise interferes with the performance of functions under this Act or commits an offence shall be liable on conviction.....	This section needs to consider aspects of proportionality to offence.	

Existing laws and rights	Section 34..... Shall have effect subject to modification as may be necessary to give effect to this Act.	County legislations do not take precedence over national legislations	The section should be deleted.
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