HOUSING AND LAND RIGHTS NETWORK
Habitat International Coalition

Counting the Cost of Forced Eviction: Kenya

A core component of Habitat International Coalition's (HIC) work is supporting Member advocacy at local, national and international levels. As an international coalition, HIC works to connect local struggles to international processes and advocacy entry points. Through the 38-year work experience, HIC has learned that international advocacy is best informed and supported by strong advocacy and monitoring of human rights norms on the local level. CSOs and local communities are well aware of their priorities and are the best and most-appropriate vehicle to promote change at all levels.

All politics and much human rights implementation are local. HIC's projects work to support local communities and CSOs through providing technical support and training on human rights processes, reporting, monitoring, research and data collection methodologies, among others.

As the specialized group of HIC Members promoting the norms, international jurisprudence and methodology of "the human right to adequate housing" and equitable access to land, HIC's Housing and Land Rights Network (HLRN), has developed housing rights monitoring and problem-solving tools and methods that are grounded in human rights norms and principles, and operationalize the corresponding obligations. Among others, those include methods for determining the full consequences that persons and households undergo in the process of forced eviction and displacement as introduced in the "HIC-HLRN Toolkit" (2005). Since developing the methods for monitoring the Habitat II Agenda since the late 1990s, HIC-HLRN has combined subsequent norms, including the UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007),[1] and organized a technical workshop in India in 2009 to refine its "Loss Matrix" to support local efforts to quantify the affected persons' related costs, losses and damages arising from housing and land rights violations.

This methodology enables housing and land rights defenders, legal practitioners, field researchers and/or actual victims to determine a wide range of losses and costs that typically are associated with forced evictions and land loss, but are rarely recognized, counted or documented. This method gives precision and a solid basis of argument to support claims of losses and damages from both small-scale and large-scale eviction cases. By "counting the costs," we are able to determine how, and the degree to which forced-eviction and displacement processes actually deepen poverty.

Counting the Costs Project:

The subsequent HIC-HLRN eviction impact assessment tool (EvIA) and other applications of this quantification method, along with its on-line global monitoring system, the Violation Database,[2] are firmly and explicitly rooted in the normative, human rights framework, with primary emphasis on the human right to adequate housing and related human rights, as well as the right to remedy and reparations as the UN General Assembly has affirmed.[3] A principal purpose of HLRN's EvIA and its subsequent "Counting the Costs" project is to apply this rights-based framework so as to "return the legal achievement to the people." A cornerstone of the framework is the status of the right to adequate housing as a fundamental human right (indispensable to the enjoyment of other rights), as well as the recognition of the practice of forced evictions as a gross violation of human rights, in

particular the right to adequate housing.[4] HIC-HLRN presentations, therefore, emphasize the corresponding reparations framework, which specifies seven dimensions of the right to remedy in the case of gross violations of human rights: (1) Restitution; (2) Return; (3) Resettlement; (4) Compensation for resulting costs and physically unrecoverable losses; (5) Rehabilitation (economic, social, psychological, medical and cultural, etc.); (6) Guarantees of nonrepetition; and (7) Satisfaction.[5]

The Counting the Costs project adapted the quantification method of the Loss Matrix (or EvIA), applying these norms to select cases, in order to develop the remedial practices of local communities and CSOs. Project partners identified the costs, losses and damages of an eviction or displacement process prior to, during and after the violation. Then affected persons, households and communities could expose the actual and full costs of administrative acts and development projects involving displacement by calculating the consequences to prove that forced evictions and displacements deepen poverty and deprivation at all stages. By invoking and seeking due reparations for these violations, the strategy seeks also to deter future evictions and displacements by recording the full facts, and making perpetrators responsible for the full costs, losses and damages they cause. This method also provides guidance toward remedies, including application of the reparations framework, and contributes to conflict resolution (in small-scale cases) and transitional justice (in grand-scale cases). Support local monitoring of housing and land rights violations in select and strategically important cases enables HIC-HLRN to share the quantification experiences among HIC Member organizations and other interested parties across regions.


Resident of Muthurwa Estates, Nairobi. Source: *Nairobi News*.

A large part of the project and the continued use of this methodology focus on utilizing data and information to lobby national governments, local authorities and other stakeholder to remedy rights violations. In order to accomplish these goals and to support greater local advocacy, HIC-HLRN provided support to local CSOs in India, Kenya, Egypt and Cameroon to pilot the methodology. In India, HIC-HLRN worked with several evicted communities and partnered also with the Centre for Sustainable Use of Natural and Social Resources to lead a collective process in the state of Odisha to advocate for their rights by assessing material and nonmaterial costs and losses arising from a brutal and targeted process of eviction, property destruction, and displacement. In Cameroon, HIC Members CIAH-Cameroon and CONGEH applied the costing methodology in the case of development-induced evictions in the principle cities of Yaoundé and Douala.

Partners in Kenya involved Mazingira Institute in cooperation with the Young Muslim Association (YMA), Kituo cha Sheria, Muthurwa Residents Association and the Kenya Human Rights Commission (KHRC). The near-term objective was to quantify the losses and reparation rights of resident forcibly evicted and facing further displacement as a result of commercial interests at Muthurwa Estates (Nairobi). A combination of field work and legal advocacy intended to support court-ordered reparations. Longer-term efforts now apply the EvIA to persons and households displaced in the postelection violence that took place in early 2008, which has become a subject of indictment and prosecution at the International Criminal Court.

Kenya: Muthurwa Estate

About the Community

The Muthurwa Estate[6] is an area that was originally developed to house the workers of the East African Railroad, later falling to the ownership of the Kenyan Railways Corporation (KRC). In order to raise funds for the Kenyan Railways Staff Retirement Benefits Scheme (the "Scheme"), in 2010 KRC announced that it would demolish the Muthurwa Estate and sell the land. The development plans of this scheme are to build modern high-rise apartments and shopping malls on the estate, and to generally re-structure the entire estate- displacing thousands of families.

The owners distributed eviction notices on 1 July 2010 to all residents, demanding that they must vacate the houses within 90 days. In October 2010, a violent forced eviction of the residents was conducted by employing bulldozers to demolish some of the housing blocks and their sanitary and cooking units. The evictors also disconnected water supply and street security lighting. The actions of the scheme violated prohibitions under the Covenant on Economic, Social and Cultural Rights, as well as the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.[7]

Many residents left the Estate, while others resisted the eviction. The community approached the organization Kituo Cha Sheria, for legal aid to stop further involuntary evictions and damages and, in February 2011, a national court imposed a temporary injunction preventing any further evictions.

In September 2011, HLRN South Asia coordinator and former UN Special Rapporteur on the Right to Adequate Housing Miloon Kothari enjoined the suit as an interested party. He had conducted an official mission to Kenya on the right to adequate housing as Special Rapporteur in 2004 and is a leading expert in the field.

Training and Capacity Building

For all cases/countries involved in this project, the first steps were local out-reach to the community, creating a local research team, and creating a locally appropriate questionnaire. For this project, and most HIC projects, the community members are agents of their own remedy, receive training in the norms and methods, and are engaged in the decision-making processes.

HLRN developed the Loss Matrix/EvIA tool for use in Microsoft Excel (or similar open-source/free spreadsheet software), in order to be simple, accessible and cost-effective, as it does not require complex and expensive statistics software; utilizing a spreadsheet format and common software also allows data to be shared among different parties. Additionally, this simple and easy-to-use format allows for greater community participation in the data-collection process.

In February 2012, toward the end of the project, HIC brought together the CSO partners from this larger global project (Kenya, India and Cameroon) to share experiences, challenges and lessons learned, as well as to gain insight into next steps and analysis from the other partners working on this project in other countries/contexts. Additional civil society activists from Egypt were invited to attend in order to learn the methodology and how to best advocate using the findings. As the meeting was in Nairobi, the participants had an opportunity to visit the Muthurwa Estate and meet with postelection IDPs on their "temporary" relocation site.

Research findings

A key issue for many low-income communities in the global South is a lack of data that adequately reflect the community, including age, income levels, quality of housing, etc. This lack of data disadvantages communities, as they have no recorded evidence when interacting with governments,

seeking redress, or asking for change or improvements to community infrastructure. With this in mind, the objectives of the study at the Muthurwa Estate included:

- To describe and record the basic characteristics of the community, as well as the quality of housing conditions
- To record the goods (movable assets) and their value owned by the households
- To assess one-time cost and duration for relocation of the households due to a potential eviction.
- To assess the increase in household expenditure for relocation due to a potential eviction.

In order to complete this study, a team of researchers from local organizations Kituo Cha Sheria and the Mazingira Institute, in consultation with the community, conducted the survey in February 2012. The team collected data from 117 diverse households, which represented cross section of the Estate as a whole. To record the assessments in cost and expenditure field researchers applied the HIC-HLRN tool was used in 40 households.

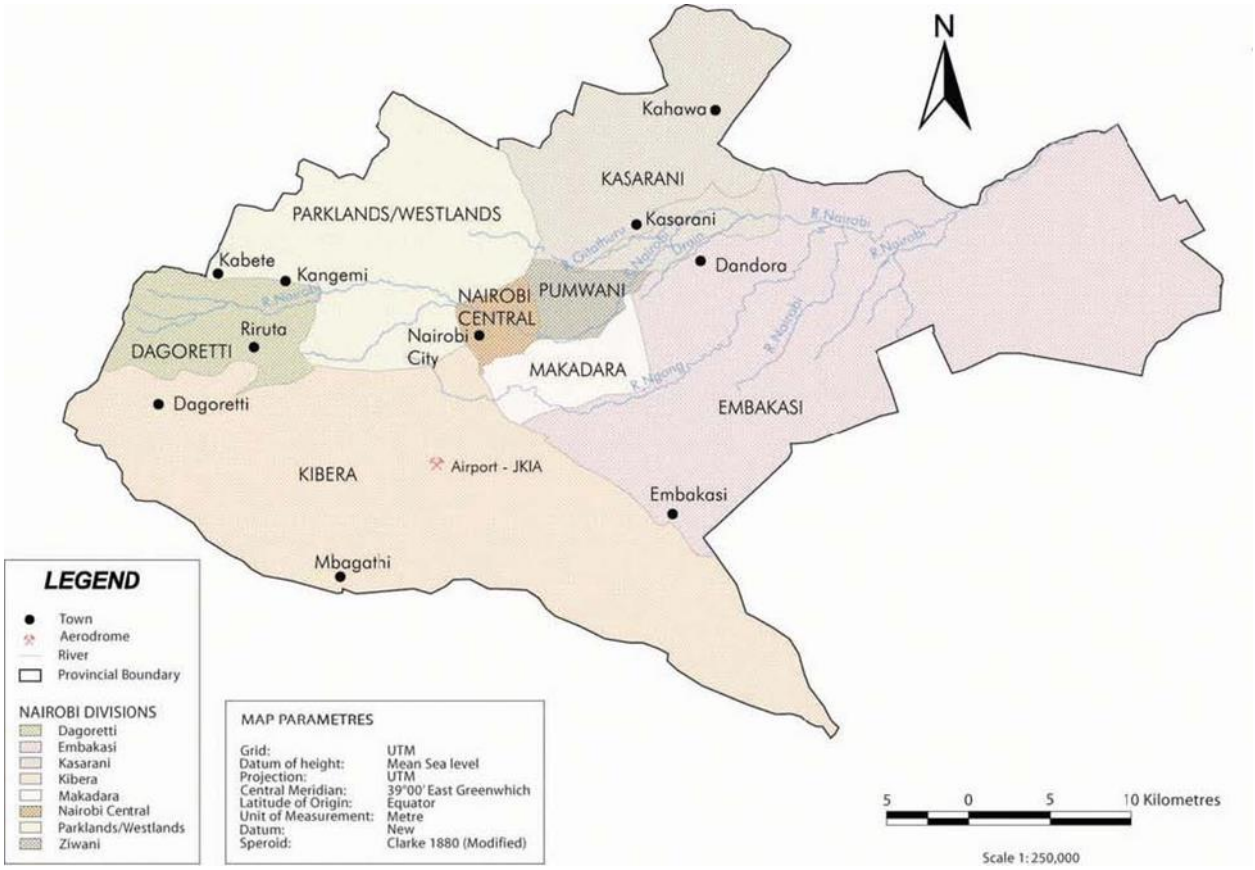
The study[8] found that Muthurwa's population is young, educated and mobile. The housing quality had decreased from being ranked as "good" (1999 Census) to "average" (HIC survey). Because of the October 2010 eviction, the landlord conducted no maintenance over the years and withdrew all services such as waste-management and sewer systems, and electricity in an attempt to force the residents out. Consequently, the rank could fall to "poor" on Kenya's National Housing Quality Index.

The survey revealed that the monetary impact from the loss of goods and assets in the case of a wrongful eviction would be considerable: around Ksh. 117,000 (1,377 USD) per household.[9] The one-time cost incurred if residents had to move to another location due to a potential eviction would amount to Ksh. 10,000 (118 USD) per household. In the short run (six months), as people adjust to their new places of residence, the additional recurrent monthly expenditure would be Ksh. 9,470 (111 USD). Later, as residents would have settled in their new locations after six months, the additional costs for transport only for work and education would be Ksh. 6,000 (71 USD). These combined financial impacts due to a potential eviction, thus, would be substantial.

Legal ruling and outreach

This case, along with all HIC projects, are connected to relevant processes and actors at the international level. As stated previously, this case received significant support from HIC-South Asia coordinator and former UN Special Rapporteur on the Right to Adequate Housing Miloon Kothari, and staff working on the HIC-HLRN global outreach.

Community advocates, along with HIC members and partners, used this study in the lobbying and advocacy efforts in the legal case to protect the rights of the inhabitants living in the Muthurwa Estate. This study generated pivotal data on the community that was previously unavailable, such as social data and real financial figures on the impact of eviction based on guidelines and legal instruments that the Kenyan government is signatory to.



In November 2013, the High Court ruled (based on the various submissions including this study) that the Scheme and the petitioners should meet to agree on a program for evictions of the petitioners, taking into account various human rights and logistical conditions. The program, once agreed upon, was to be filed in Court within 60 days after the judgment. The respondents (the Scheme) failed to show up to a Court-scheduled meeting. The residents continued as tenants of Muthurwa. Despite this hiatus, this remains a landmark ruling.

The case is still under legal proceedings, but the study generated through HIC Member organizations still remains important, and is a basis for the Court's policy for evictions. The study is seen as legitimate to all parties, from the courts to the community, as it was done with transparency and with the input and assistance of the Muthurwa residents.

Sustainability

The current case for the Muthurwa residents, utilizing the project study, is still ongoing, but the case has been a landmark ruling in Kenya and serves to further legitimate the EvIA tool and methodology. CSO partners in Kenya continue to use this methodology with carious communities, including ongoing support to post-election violence IDPs in the Rift Valley.

Since the initial project period, the EvIA methodology continues to be a cornerstone to HIC advocacy for displaced communities and has been successfully utilized in three areas in the Greater Cairo Area in Egypt (Pyramid City, Maspero Triangle, and Abu Ghalib village) to protect inhabitant rights in cases of unfair relocation/compensation, pending evictions for city beautification projects, and a farming community suffering from World Bank-funded energy project. In all cases, HIC-HLRN is assisting communities to seek legal redress from the appropriate government bodies and complaint mechanisms.

In Yemen, the EvIA tool is currently being reformulated with CSO representatives from three different provinces to be utilized in a land study, which will examine the consequences and reparations criteria for land rights violations by the previous government. The results will be shared with the current government as well as the Commission for Transitional Justice and Commission for Addressing Land Issues as a model for transitional justice processes, including restitution to displaced families and communities. HIC-HLRN is also currently working with CSO partners in Western Sahara/Tindouf refugee camp in Algeria to formulate a project to use this methodology to calculate the costs of occupation and the separation wall in Western Sahara, as HIC-HLRN already had done toward development of the methodology for the UN Register of Damage formed after the 2004 International Court of Justice advisory opinion on the construction of the wall in the occupied Palestinian territory.

HIC has a strong history and experience in local capacity building, successful government lobbying (including legal bodies and intergovernmental agencies), South-South civil society networking and exchanges, and connection global activism to international processes; the Counting Cost project is one example of success in these areas. Our roots in human rights advocacy and operationalizing human rights norms, as well as our experience in global and regional social processes is a critical and added value to our partners in this proposal, RUAF and ETC.

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[1] "Basic Principles and Guidelines on Development-based Evictions and Displacement," Annex I of the report of the Special Rapporteur, A/HRC/4/18 at: http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

[2] The Violation Database can be found here: http://hlrn.org/welcome_violation.php#.U_cS-kh0EXw

[3] "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," A/RES/60/147, 21 March 2006, at: http://www.un.org/Docs/asp/ws.asp?m=A/RES/60/147.

[4] UN Commission on Human Rights resolution "forced eviction," 1993/77.

[5] As defined in "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," General Assembly resolution A/RES/60/147, 21 March 2006.

[6] For ongoing updates on the Muthurwa case, see the case entry in HIC-HLRN's Violation Data Base: http://www.hlrn.org/violation.php?id=o2hlZg==#.U_cCTEh0EXw

[7] *Supra note* 1

[8] A full report of the findings, including data and financials, can be found here: http://hlrn.org/img/violation/Muthurwa%20Estate%20Study%20July%202012.pdf

[9] All data mentioned can be found in *Ibid.*; 1 USD = 85 Ksh. (May 2012).