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NIGERIA: MEMORANDUM ON THE EVICTION OF RESIDENTS OF THE RAILWAY QUARTER, PORT HARCOURT

On 20 January the Governor of Rivers State visited residents living along Port Harcourt's disused railway line, known as the Railway Quarter, and announced that they had seven days to leave before the buildings they live in were demolished. On 23 January, officials from the Rivers state Commission of Urban Development came to the community and told residents that bulldozers were coming and they should leave. On 27 January, a bulldozer arrived and demolished approximately 13 houses and two churches. The residents had not been consulted about the demolition; they did not receive any written notice, and were not offered any alternative housing or compensation. Scores of people were left homeless and were forced to sleep either on the street, or with friends and relatives in the remaining buildings. To date, none of those evicted have been re-housed or received any form of emergency relief or compensation for what was done to them, many still sleep in the ruins of their houses.

The exact number of people living along the railway line is not known, as no survey has ever been carried out, but it is estimated to be home to be several hundred people, some of whom have been living there since the 1990s, with small businesses and traders also within the community.

Many of the residents living along the railway had been making regular payments to the Nigeria Railway Corporation (NRC) to live on the land and possessed Certificates of Occupancy (the legal right to live in their structures) issued by the Corporation, suggesting the land along the railway falls under the jurisdiction of the NRC and not the state governor.

On 6 February, the Governor of Rivers State again visited the Railway Quarter, and announced that residents had seven days to leave before the buildings they live in were demolished. The demolition was expected to take place on 13 February however the demolition was temporarily halted following the presentation to the RSG of new information on tenancy agreements between the residents of the Railway Quarter and the Nigeria Railway Corporation (NRC), a federal authority.

Amnesty International has a number of concerns about the planned evictions of the residents of Railway Quarter, and the lack of adequate human rights safeguards, including that tenancy agreements between the residents of the Railway Quarter and the Nigeria Railway Corporation, suggest residents had legal title to their land. These reflect underlying concerns about the way demolitions and evictions are undertaken in Rivers state.

The Rivers state government is bound by the 2003 Rivers state Physical Planning and Development Law to provide safeguards for residents of buildings and structures when carrying out control, planning and development of land in the state. Nigeria, and each state within the federation, is obliged under a range of international human rights treaties to refrain from and prevent forced evictions..

If demolitions and evictions by the RSG continue as planned without adequate human rights safeguards, they will violate Rivers state law and continue to result in multiple human rights violations including to adequate housing; to private and family life; to access to justice; to work; to education and health.

Nigeria Railway Corporation

Nigeria's National Land Use Act 1978 places all urban land under the control and management of the state governor, who in turn allocates land to individuals and organizations. However, several of the residents of the Railway Compound have been issued Certificates of Occupancy from the Nigeria Railway Corporation. If the land on which the buildings are situated falls under the jurisdiction of the NRC and not the state governor, it would mean that the governor did not have the authority to order demolitions on this land. Federal authorities are also bound to comply with national and international human rights law, in particular the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights which have been ratified by Nigeria which guarantee the right to adequate housing and prohibit forced evictions

Unlawful demolition of structures on 27 January 2012

The demolition and eviction of residents of the Railway Quarter on 27 January amount to forced evictions and consequently a violation of their human rights, including the right to adequate housing. These evictions were carried out without prior and genuine consultation with residents and without the provision of adequate notice, compensation or alternative accommodation and legal remedies. Residents of the 13 buildings that were demolished, including children, women and the elderly are left homeless and vulnerable to other human rights violations.

The eviction of people from their homes without measures to ensure that those affected do not become homeless constitutes a violation of the right to adequate housing.

Adequate alternative housing and compensation for all losses must be made available to those affected, regardless of whether they rent, own, occupy or lease the land or housing in question. Evictions must not "render individuals homeless or vulnerable to the violation of other human rights".²⁰

Enumeration

The current enumeration of structures in the railway quarter seems to have been undertaken primarily for valuation of properties in relation to the proposed demolition rather than assess impacts of evictions on all affected residents. The way in which the RSG is conducting enumerations fails to identify all affected people. Tenants are excluded from the process.

Similar to previous enumeration exercises in Port Harcourt's waterfront communities, the enumeration of railway properties carried out by the Commission of Lands and Housing on Monday 20 February was characterized by a lack of transparency; house owners were required to sign over Power of Attorney to the valuers, who deducted 10 per cent of the total compensation awarded as professional fees. This fee was non-negotiable and was not fully explained to the house owners beforehand.

Lack of security of tenure for tenants under the buy out scheme

Amnesty International is particularly concerned at the situation of tenants and their lack of security of tenure. The lack of compensation, alternative accommodation and assistance with relocation for tenants means that most will struggle to find places to stay if their homes are demolished. To secure rental accommodation in other parts of the city, prospective tenants are often required to pay a deposit of one or even two years' rent in advance. Many tenants are too poor to go anywhere else. Tenants whose homes are marked for demolition and who are consequently at risk of eviction are living in considerable insecurity and uncertainty.

The RSG appears to be undertaking a buy-out scheme, purchasing properties in the waterfronts and paying owners a replacement value for them, however, under this scheme tenants have no entitlements and house owners who do not want to sell their properties are given no alternative.

However, the scheme makes the RSG the legal owner of those properties and, by default, the landlord to any tenants still living there. Consequently the RSG is under a legal duty under the Rivers State Rent Control and Recovery of Possession of Premises Edict No. 3 1984, to serve on any tenant a written notice

to quit and a court order for possession before they can be evicted. RSGs instruction to landlords to stop collecting rent does not negate RSGs legal obligations to the tenant once they become landlords.

In addition to the right to due process afforded under Nigerian law, tenants also enjoy protection under international human rights law

The compulsory purchase of land and revocation of the right of occupancy is only permissible under the Land Use Act (1978), where it serves the greater public interest. The Act provides for the payment of compensation and, in the case of residential buildings, for the option of relocation.

Lack of adequate notice and consultation

Not every eviction that is carried out by force constitutes a forced eviction – if all the legal safeguards and protections required under international law are complied with, and if the use of force is proportionate and reasonable, then the eviction would not violate the prohibition on forced evictions.

The notice period of 7 days issued to residents of the Railway Quarter does not meet the requirements for adequate notice of eviction under international human rights law and standards on the prohibition on forced evictions.

The UN Committee on Economic, Social and Cultural Rights has stated that adequate and reasonable notice must be provided to all affected people prior to the scheduled date of eviction.¹ The UN Basic principles and guidelines on development-based evictions and displacement (‘the UN Guidelines’) as developed by the UN Special Rapporteur on adequate housing, reflect existing standards and jurisprudence on the issue of forced eviction. They include detailed guidance on the steps that should be taken prior to, during and following evictions in order to ensure compliance with relevant principles of international human rights law. The Guidelines provide that “Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document nonmonetary losses to be compensated.”² All affected people must be served notice, irrespective of their tenure status.

If the danger to residents from living in a structure is so great that they need to be moved as a matter of urgency, they should immediately be provided with adequate alternative accommodation.

The current engagement with residents of the Railway Quarter does not constitute genuine consultation with all affected residents, including tenants.

The UN Committee on Economic, Social and Cultural Rights has stated that “States shall ensure prior to carrying out any evictions, particularly those involving large groups, that all feasible alternatives are explored in genuine consultation with the affected persons.”³ Similarly, the UN Guidelines provide that “States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider”.⁴

During previous demolitions, the lack of consultation and information has fuelled rumour and speculation among residents and heightened tension in the area.

1 UN Committee on Economic, Social and Cultural Rights, General Comment No. 7, The Right to Adequate Housing, para. 15.

2 Basic Principle 42, UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, 2007.

3 UN Committee on Economic, Social and Cultural Rights, General Comment No. 7, The Right to Adequate Housing, para. 13.

4 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, 2007, para 21.

Non implementation of the 2003 Rivers state Physical Planning and Development Law

The 2003 Physical Planning and Development Law No. 6 (Law No 6) provides safeguards for residents of buildings and structures in Rivers state and details what needs to be in place before a demolition can take place. However, the law has not been implemented. None of the bodies provided for in the law have been set up.

The failure to follow the safeguards and procedures in Law No. 6 means that development work undertaken by RSG is without legal backing, and consequently cannot be in compliance with national or international law, in particular the International Covenant on Economic, Social and Cultural Rights.⁵

The Law No. 6, which provides for the “control, planning and development of land in the state”, establishes specific bodies to oversee all matters affecting physical planning and development in the state, including planning approvals, the serving of enforcement notices, and the demolition of buildings and revocation of rights of occupancy. These bodies include: the Rivers State Urban and Regional Planning Board; the Local Planning Authority; a Development Control Department (which is “charged with the responsibility for matters relating to control of Physical Development Plans”, including the power to issue stop work orders, enforcement notices, and demolition notices to unauthorised developments); the Urban and Regional Planning Fund; and the Urban and Regional Planning Tribunal (which is empowered to investigate and adjudicate on the same matters). None of these bodies have been set up. In failing to put in place the necessary legal bodies to oversee the demolition and / or redevelopment of areas the RSG has failed to implement their own law and the demolitions and evictions undertaken by the RSG are not being carried out in accordance with law.

Under the 2003 Law, only when the structure is found to be “structurally defective, poses danger or constitutes a nuisance to the occupier and the public” is it specified that the Control department may issue a demolition notice.

In addition, the RSG has not explored all possible alternatives to demolition provided for under the 2003 law. The 2003 Law provides for several possible alternatives to demolition: structures lacking the required development permits may also be altered or varied. The Development Control Department, had it been established, would have had a range of options in dealing with the control of structures erected without development permits, including the option to regularise them and to grant development permits.

Sections 84-90 of the 2003 Law establish an Urban Renewal Board to oversee all urban planning and development in the state and with the power to declare an area an “improvement area”. The law makes provision for key safeguards for all occupants, owners, landlords *and* tenants, in the upgrading or development of “improvement areas”, including participation, information, consultation and a community driven approach. Furthermore, the law clearly outlines the due process requirements if a building within the improvement areas is to be demolished, repaired or renovated (section 98) and provides for the provision of alternative accommodation, land and/or financial assistance.

Had the law been implemented and the required bodies established, communities such as the railway quarters or the waterfronts would have had the opportunity to be declared an improvement area and enjoy the safeguards and protections that it permits.

Forced evictions and human rights

Nigeria, and each state within the federation, is obliged under a range of human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights, to refrain from and prevent forced evictions.

A forced eviction is the removal of people against their will from the homes or land they occupy without legal protections and other safeguards. Forced evictions are a gross violation of human rights.

⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No. 7, The Right to Adequate Housing, para. 14.

Under international human rights law, evictions may be carried out only as a last resort, once all other feasible alternatives have been explored and genuine consultation has taken place with communities, and only after appropriate procedural and legal safeguards are in place. These protections include:

- 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 officials or their representatives to be present during an eviction;
- anyone carrying out the eviction to be properly identified;
- evictions not to take place in particularly bad weather or at night;
- 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 other human rights violations as a consequence of an 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. These requirements apply to all evictions, regardless of the tenure status of residents, including those living in informal settlements.

Evictions may only be carried out in accordance with law, which must itself be compatible with the International Covenant on Economic, Social and Cultural Rights. If all the legal safeguards and protections required under international law are put in place and complied with, and if the use of force is proportionate and reasonable, then the eviction would not violate the prohibition on forced evictions.

Under international law, everyone is entitled to a minimum degree of security of tenure, including having legal protection from forced evictions, whether they rent or own their homes, and whether they live in informal settlements or slums without legally owning the homes or land.

The demolition of the waterfronts in Port Harcourt without the provision of adequate human rights safeguards also runs contrary to Nigeria's commitment to the UN Millennium Development Goals (MDGs), specifically to reduce the number of people living in slums by 2020 (Goal No. 7, Target 11). Demolition of the waterfronts, far from solving the problem of slums, will push Nigeria further away from achieving its MDG targets, by driving people further into poverty and into more insecure and overcrowded housing. It also contradicts the state government's own goals on poverty reduction as described in the Rivers State Economic Empowerment Development Strategy (RIVSEEDS).

Nigeria's national and international obligations

Forced evictions violate a range of human rights, in particular the right to adequate housing. Nigeria is obliged to guarantee adequate housing and to refrain from and prevent forced evictions:

- Section 16 (2) (d) of the Nigeria Constitution, directs the state to ensure that suitable, adequate shelter is provided for all citizens.
- The African Commission on Human and Peoples' Rights has also affirmed in the case of SERAC and the Centre for Economic and Social Rights, that forced evictions contravene the African Charter on Human and People's Rights to which Nigeria is a party, in particular, Articles 14 and 16 on the right to property and the right to health, and Article 18 (1) on the state's duty to protect the family.
- Article 11 (1) of the International Covenant on Economic Social and Cultural Rights (ICESCR) states: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."
- Article 27(3) of the Convention on the Rights of the Child obliges state parties to: "take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing." Article 4 of the Convention specifies that "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights

recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

- Article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination guarantees the right to housing.
- Under Article 17 of the International Covenant on Civil and Political Rights (ICCPR), forced evictions also violate the right to the protection of the law against arbitrary or unlawful interference with a person’s privacy, family or home.
- The UN Basic principles and guidelines on development-based evictions and displacement (Basic principles), as developed by the UN Special Rapporteur on adequate housing, reflect existing standards and jurisprudence on the issue of forced eviction. They include detailed guidance on the steps that should be taken prior to, during and following evictions in order to ensure compliance with relevant principles of international human rights law. The Basic principles provide that “States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider”.
- The Basic principles provide that “Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated.”
- The UN Committee on Economic, Social and Cultural Rights has emphasized that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head, or which views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.” The Committee has identified seven elements to determine the adequacy of housing: 1) legal security of tenure; 2) availability of services, materials, facilities and infrastructure; 3) location; 4) habitability; 5) affordability; 6) accessibility; and 7) cultural adequacy. It has also stated that “Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”

Recommendations

Amnesty International is urging the Rivers state government to cease all forced evictions immediately and to adopt a moratorium on all evictions and demolitions until all procedural protections required under international human rights law and standards are in place, in particular the requirements on consultation, adequate notice and adequate alternative housing.

In particular, Amnesty International urges RSG to:

- Fully implement the Rivers State 2003 Physical Planning and Development Law No. 6, by establishing all required legal bodies to oversee planning and development in the state.
- Undertake genuine consultation with all affected residents of the railway quarters, including tenants; and provide tenants with compensation, alternative accommodation and assistance with relocation. Or, if houses are to be purchased from house owners, evict tenants in accordance with statutory rental legislation.
- Provide adequate alternative housing to all those who were forcibly evicted from the Railway Quarter during the demolition that took place on 27 January and compensation for any loss of property and possessions that were damaged in the process.
- Do not compel people to sell their houses to RSG unless under the relevant provisions of the Land Use Act (1978), in which case provides for the payment of compensation and the option of relocation as stipulated in the Act.
- Develop a housing policy which protects and fulfils people’s right to adequate housing and ending forced evictions. Guidelines for eviction should be based on the UN Basic Principles and Guidelines on development-Based Evictions and Displacement, and must comply with international human rights law and standards.