

# **NIGERIA**

SUBMISSION TO THE  
NATIONAL HUMAN RIGHTS  
COMMISSION'S PUBLIC  
HEARING ON EVICTIONS  
AND DEMOLITIONS IN  
NIGERIA; LAGOS 2013

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# INTRODUCTION

More than 2 million people have been forcibly evicted from their homes in different parts of Nigeria since 2000. Most were already marginalised and had lived for years without access to clean water, sanitation, adequate health care or education.

Since 2005, Amnesty International has documented forced evictions in the three major cities of Port Harcourt, Abuja and Lagos. Large-scale evictions and demolition of the homes of thousands of people have taken place in the absence of legal and procedural safeguards, including opportunities for genuine consultation, adequate notice, access to legal remedies, and provision of adequate compensation and adequate alternative housing. Those forcibly evicted have been rendered homeless and vulnerable to other human rights violations. Many people in several informal settlements across Nigeria are at risk of forced evictions and with no legal security of tenure.

This submission is prepared for Nigeria's National Human Rights Commission's (NHRC) public hearing into cases of demolitions and evictions in Nigeria, Phase 1, South West Zone, Lagos, November 2013.

Amnesty International provides information on the demolitions and forced evictions in two informal settlements in Lagos state and on international legal and human rights standards and jurisprudence in relation to: Nigeria's obligations under international human rights law; the right to adequate housing; legal and procedural safeguards against forced eviction; and the right to effective remedy.

Amnesty International welcomes the setting up of a public hearing on evictions and demolitions in Nigeria by the NHRC. The organisation hopes that the information provided in this submission will assist the NHRC as it considers legal and human rights issues during the public hearing.

# DEMOLITIONS AND FORCED EVICTIONS IN MAKOKO AND BADIA EAST

Amnesty International along with the Social and Economic Rights Action Center (SERAC) have documented several cases of forced evictions in Makoko and Badia East in Lagos state. Amnesty International believes that these represent a broader pattern of forced evictions by the Lagos state authorities. Mass evictions and demolition of the homes of thousands of people have taken place in the absence of legal and procedural safeguards, including opportunities for genuine consultation, adequate notice, access to legal remedies, and provision of adequate alternative housing and compensation. Tens of thousands in several informal settlements in Lagos State remain at risk of forced evictions and with no legal security of tenure.

## MAKOKO

Makoko, an informal settlement in Lagos state and home to up to 250,000 people, has suffered repeatedly from demolitions and forced evictions.

- Over three days in April 2005, at least 3,000 people were forcibly evicted from their homes. Bulldozers demolished homes, churches, schools and a medical clinic. After demolishing the buildings, officials were reported to have set the remaining material on fire so that they could not be used for rebuilding. According to affected persons Lagos state authorities did not provide any notice of the demolition and to date, they have received no compensation or alternative accommodation.<sup>1</sup>
- Between 19 and 22 April 2010, officials of the Kick Against Indiscipline (KAI) Brigade assisted by heavily armed policemen entered a section of the Makoko community and forcibly evicted the residents by destroying their homes, properties and livelihoods. Over 1,000 people were made homeless. This eviction was carried out without adequate notice, consultation, compensation or provision of alternative accommodation.<sup>2</sup>
- On 23 December, 2010, the Lagos State Environmental and Special Offences Enforcement Unit (Task Force), accompanied by armed police officers entered an area of Makoko along Wright Street and carried out a violent demolition and forcibly evicted thousands of residents. During the course of the demolition, the police shot dead one Makoko resident, left some residents and bystanders wounded, and arrested over thirty individuals who were detained without charge for several days. The forced eviction followed a 48-hours 'abatement of nuisance' notice and there was no consultation, compensation or provision of alternative accommodation.<sup>3</sup>
- From 16 – 21 July 2012 over 4,000 people were forcibly evicted and made homeless by the Lagos state government on the Makoko/Iwaya waterfront. Numerous structures built on stilts over the Lagos Lagoon were demolished, affecting at least 770 households.<sup>4</sup> The KIA brigade used chainsaws and axes to cut the stilts of the structures while families, including children, were still in their homes. Some of the structures were also set on fire by the Brigade. There was no genuine consultation with the community and only three days' notice was given to a few residents before the forced eviction. For several days afterwards many affected people were forced to live in their canoes. Visits by Amnesty International in February and May 2013, confirmed that many affected people are still living in makeshift shelters. The July 2012 forced eviction in Makoko only appears to have stopped because of a protest march and public outcry after a community leader was shot dead by the police. The fear of further forced evictions continues to negatively affect the community who are concerned that the government may resume its plans to demolish the waterfront.

## BADIA EAST

Badia East, another informal settlement in Lagos state and home to over 100,000 people, has also suffered repeatedly from demolitions and forced evictions.

- In July 2003, following a 48-hour notice, the Task Force demolished a narrow strip of homes in the Oke Ilu-Eri area of Badia East.<sup>5</sup> There was no compensation or resettlement for those affected. In October 2003, the Task Force returned to Badia East without notice to demolish and forcibly evict at least 3,000 residents of Oke Ilu-Eri in Badia East.<sup>6</sup> Once again, Lagos state authorities did not provide any compensation or resettlement for those affected.

- On 6 March 2012, without notice, the KAI brigade demolished over 300 structures to make way for the construction of a canal running the length of Badia East, built under the Lagos Metropolitan Development and Governance Project.<sup>7</sup>
- On 23 February 2013 the Task Force carried out another forced eviction in Badia East. At least 266 structures that served as homes and businesses of affected people were razed to the ground with the support of heavily armed police personnel.<sup>8</sup> An estimated 2237 households and close to 9000 people were affected by the evictions. The Lagos state government failed to ensure that legal and procedural safeguards were in place before carrying out the evictions. The affected people were not provided with an opportunity for genuine consultation nor were they informed about the reasons for the eviction. The Lagos state government also failed to provide adequate notice, and affected persons were not offered any alternative housing or compensation. Amnesty International's visits to Badia East in May and August 2013 confirmed that many affected people are still homeless; several families have been separated, many children have stopped going to school, and many people currently live in precarious circumstances having to rely on friends and well wishers for food and clothing. The Lagos state government has indicated that the demolition in February was the first phase in a three phase plan to demolish the Badia East settlement. Thousands of people risk being forcibly evicted if the government goes ahead with its plans.

The KAI Brigade and the Lagos State Environmental and Special Offences Enforcement Unit (Task Force) are two agencies of the Lagos state government that have been involved with carrying out forced evictions and demolition of homes in Lagos State. Their operations are often supported by heavily armed security forces who, in the case of Makoko described above, use disproportionate force, including live ammunition against residents. During its demolition of homes in Badia East in March 2012, the KAI Brigade set fire to some of the structures endangering the lives of people living in those structures.

## **NIGERIA'S OBLIGATIONS UNDER INTERNATIONAL LAW**

Nigeria is obliged under a range of international human rights laws to respect, protect and fulfil the right to adequate housing. This obligation includes refraining from and preventing forced evictions. When a state becomes a party to any international treaty, it is legally bound to perform its obligations under that treaty, including by implementing treaty standards nationally. Nigeria's obligations under international human rights laws bind all states within the federation. Federalism does not absolve a state party to an international treaty of responsibility for the actions, of states within its federation, which violates international law.

In addition, a state party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty.<sup>9</sup> Therefore regardless of the legal system or the different tiers of government that exists in Nigeria; if any public official or agent of the state fails to comply with international human rights laws on the right to adequate housing, Nigeria is responsible and can be held to account for breach of international law.

Nigeria has the following human rights obligations on the right to adequate housing:

- The African Charter on Human and Peoples' Rights (ACHPR), which was ratified<sup>10</sup> by

Nigeria on 22 June 1983 and is part of its domestic laws<sup>11</sup>, guarantees the right to property. ACHPR emphasized that the right to property “may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”<sup>12</sup> 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 ACHPR, 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. In that case the African Commission emphasized that “although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the [African] Charter a right to shelter or housing.”<sup>13</sup>

- Article 11 (1) of the International Covenant on Economic Social and Cultural Rights, acceded<sup>14</sup> to by Nigeria on 29 July 1993, 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, ratified by Nigeria on 19 April 1991 and part of its domestic laws,<sup>15</sup> 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, acceded to by Nigeria on 16 October 1967 guarantees the right to housing.
- Under Article 17 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Nigeria on 29 July 1993, forced evictions violate the right to the protection of the law against arbitrary or unlawful interference with a person’s privacy, family or home.
- Article 20(2) of the African Charter on the Rights and Welfare of the Child, ratified by Nigeria on 23 July 2001, mandates state parties to “to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing.”
- Article 16 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, ratified by Nigeria on 16 December 2004, guarantees the right to adequate housing.

In order to fulfil its international obligations; Nigeria, including all states in the federation, must adopt all appropriate legislative, administrative, budgetary, judicial, promotional and other measures required to realize the right to adequate housing for all. Policies and programmes must be developed and implemented in a manner that increases access to adequate housing for all, and improves housing conditions within the country.

## INTERNATIONAL JURISPRUDENCE

In addition to the above obligations international jurisprudence exists on the right to adequate housing, in particular, forced evictions.

In Europe in the case of *In Connors v United Kingdom*, the European Court of Human Rights made it clear that deprivation of home requires a fair and public hearing and other procedural safeguards, including “the requirement to establish proper justification for the serious interference with human rights”. The Court held that the eviction in this case could not be “justified by a “pressing social need” or proportionate to the legitimate aim being pursued.”<sup>16</sup>

Domestic courts have also condemned the practice of forced evictions. *In Olga Tellis & ors. v Bombay Municipal Corporation & ors*, the Indian Supreme Court held that the forced evictions of various slum and pavement dwellers violated their right to life and should be subject to appropriate safeguards. In so doing the Court emphasised that “Procedural safeguards have their historical origins in the notion that conditions of personal freedom can be preserved only when there is some instinctual check on arbitrary action on the part of the public authorities. The right to be heard has two facets, intrinsic and instrumental. The - intrinsic value of that right consists in the opportunity which it gives to individuals or groups, against whom decision taken by public authorities operate, to participate in the processes by which those decisions are made, an opportunity that expresses their dignity as persons. Even the law of Torts requires that though a trespasser may be evicted forcibly, the force-used must be no greater than what is reasonable and appropriate to the occasion and, what is even more important, the trespasser should be asked and given a reasonable opportunity to depart before force is used to expel him.”<sup>17</sup>

The South African Constitutional Court has held that prior to any eviction authorities must engage meaningfully with residents if it is likely to result in homelessness. Meaningful engagement should enable authorities to understand their economic situation and, within available resources, provide adequate alternative accommodation.<sup>18</sup>

# THE RIGHT TO ADEQUATE HOUSING

The right to adequate housing is a human right enshrined in international human rights law. The International Covenant on Economic Social and Cultural Rights (ICESCR) is the main treaty on the right to adequate housing. This right is also protected under various international and regional human rights treaties, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. Nigeria, being a party to the ICESCR, is under the obligation to respect, protect and fulfil the right to adequate housing.

The UN Committee on Economic, Social and Cultural Rights (the UN Committee), a body of independent experts, is mandated to interpret the ICESCR and monitor its implementation by state parties. The Committee provides authoritative interpretation of human rights in the

ICESCR through documents called General Comments. The UN Committee's explanation of the content of the right to adequate housing and the obligations of states is published in General Comment 4 (on the right to adequate housing) and General 7 (on forced evictions).

The UN Committee 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 views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity."<sup>19</sup>

UN 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."<sup>20</sup>

The African Commission on Human and Peoples' Rights (African Commission) Resolution<sup>21</sup> on the right to adequate housing and protection from forced evictions condemn forced evictions. The resolution urges all States Parties to the African Charter to take appropriate steps to ensure respect, protection and realisation of the right to adequate housing by:

1. Putting an end to all forms of forced evictions, in particular evictions carried out for development purposes;
2. Ensuring that evictions are only carried out as a last resort after all alternatives to eviction have been provided and that all evictions comply with international and regional standards;
3. Adopting legislative and other measures to ensure that legal procedures are complied with prior to any eviction and making available remedies that are likely to result in the right to reparation either in the form of restitution in integrum or monetary compensation;
4. Taking concrete measures to confer security of tenure to all people lacking such protection, with prior and informed consent of the affected people;
5. Ensuring that any alternative housing provided to people complies with international and regional standards on the right to adequate housing.

Also, the African Commission in its Guidelines and Principles on Economic, Social and Cultural Rights<sup>22</sup> has emphasized the obligations on State parties to the ACHPR to realise economic, social and cultural rights; which includes the right to adequate housing.

## PROHIBITION ON FORCED EVICTION

A forced eviction is the removal of people against their will from the homes, or land, they occupy, without due process and legal safeguards, including adequate notice, legal remedies and compensation for their losses. The UN Committee defines forced eviction 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.”<sup>23</sup>

The UN Committee has stated that instances of forced eviction are incompatible with the requirements of the ICESCR<sup>24</sup>, emphasizing that a state “must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.”<sup>25</sup> The UN Committee has also stated that irrespective of 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.” Therefore the practice of forced eviction constitutes a gross violation of human rights; in particular it violates the right to adequate housing.<sup>26</sup>

Not every eviction that is carried out by force constitutes a forced eviction; if all the legal safeguards and protection required under international human rights laws 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 UN Human Rights Committee<sup>27</sup> has affirmed that forced evictions contravene Article 17 of the International Covenant on Civil and Political Rights, which upholds the right to protection against arbitrary or unlawful interference with a person’s privacy, family or home.<sup>28</sup>

The UN Committee against Torture stated in the case of *Hajrizi Dzemajl v Yugoslavia*<sup>29</sup> that, in certain circumstances, forced evictions may amount to cruel, inhuman or degrading treatment or punishment, and contravene Article 16 of its Convention.

The UN Commission on Human Rights has also recognized that forced evictions constitute gross violations of a range of human rights, in particular the right to adequate housing.<sup>30</sup>

In the case of *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* the African Commission stated: “At a very minimum, the right to shelter obliges the Nigerian Government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes. The state’s obligation to respect housing rights requires it, and thereby all of its organs and agents, to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to them in a way they find most appropriate to satisfy individual, family, household or community housing needs. Its obligations to protect obliges it to prevent the violation of any individual’s right to housing by any other individual or non-state actors like landlords, property developers, and land owners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies. The right to shelter even goes further than a roof over one’s head. It extends to embody the individual’s right to be let alone and to live in peace, whether under a roof or not.”<sup>31</sup>

## LEGAL AND PROCEDURAL SAFEGUARDS

The UN Basic Principles and Guidelines on Development-based Evictions and Displacement

(UN 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 UN Basic Principles state that “States shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their adverse impact on a wide range of internationally recognised human rights.”<sup>32</sup>

In order to respect the right to adequate housing, the government must not interfere with people’s housing situations without following due process and putting legal safeguards in place; and it must not carry out forced evictions. Under international human rights law, evictions may be carried out only as a last resort, once all feasible alternatives have been explored in genuine consultation with the people affected. Evictions should not be carried out until appropriate procedural and legal safeguards are in place, such as providing those affected with<sup>33</sup>:

- Opportunities for genuine consultation.
- Adequate and reasonable notice prior to the eviction.
- Information about the proposed eviction and, where applicable, about the alternative purpose for which the land or housing is to be used; to be made available in reasonable time.
- Government officials or their representatives to be present during an eviction.
- Proper identification of anyone carrying out the eviction.
- Ensuring that evictions are not carried out in bad weather or at night.
- Legal remedies.
- Legal aid, where possible, to people who are in need of it to seek redress from the courts.

The government must also ensure that no one is made homeless or vulnerable to other human rights violations as a consequence of an eviction. People must be compensated for all losses and the government must provide adequate alternative housing to those who cannot provide for themselves.

Evictions carried out in accordance with the law and international human rights standards do not constitute a forced eviction. Although the use of force must be avoided, the prohibition on forced evictions does not apply to all evictions carried out by force as long as the force used is compliant with international law. This means that force must be used as a last resort, when absolutely necessary, and any force used must be proportionate and reasonable. Hence if a government has put in place all necessary legal safeguards, an eviction would not amount to a forced eviction.

## GENUINE CONSULTATION

Genuine consultation with those affected by eviction has been identified by the UN Committee as an essential procedural safeguard that should be applied before evictions occur. The UN Committee has highlighted that “States parties shall ensure, prior to carrying

out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force." Also, UN Basic Principles state 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".

Genuine consultation is very important for a number of reasons. It affords the affected people the opportunity of suggesting an alternative to evictions which is satisfactory to both parties involved thereby avoiding eviction or alleviating the effects of an eviction. Consultation can also help to reduce or even avoid the need to use force if an eviction goes ahead. It may also help to ensure that resettlement options meet the requirement of the affected community.

### PROVISION OF INFORMATION

Affected people are entitled to full, accurate and timely information on any proposed eviction. These are essential for an effective consultation process. The information provided must include:

- The proposed eviction and the reasons for it, and the intended use of the land or property following the eviction.
- The compensation and alternative housing options that will be provided and any exclusions.
- The alternatives to evictions that were considered by the authorities.
- How the eviction and resettlement will be carried out, including the private and public actors who will be involved and details of their roles and responsibilities.
- Opportunities to challenge decisions or any aspects of the eviction process before administrative bodies and the courts.
- The objectives, method and timeline of the consultation process (including opportunities to engage with different actors who may be involved) and an opportunity for affected people to make suggestions to increase its effectiveness.

For effective dissemination of the essential information the government must ensure that all affected people have the opportunity of receiving the information provided in writing in a language they understand. It should also ensure that the information reaches members of the affected community who cannot read; this could be done through announcement on the radio, television or during public meetings.

### ADEQUATE AND REASONABLE NOTICE

The UN Committee has stated that adequate and reasonable notice must be provided to all affected people prior to the scheduled date of eviction<sup>34</sup>. UN 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."<sup>35</sup>

Once the consultation process is satisfactorily completed, the government must provide all

affected people with adequate and reasonable notice of the eviction. Individual notices must be provided in writing and in languages understood by the affected people, or translations services must be made available where necessary. Written notices must be complemented by measures to provide information in an accessible format for anyone who is unable to read. This may require making announcements on television, radio in a public meeting. The time between the notice and the date of the proposed eviction must be sufficient to enable people to legally challenge the decision. It must also allow enough time for people to be able to assess any potential losses, for which they would require compensation. It should enable discussions on resettlement to be finalized and for resettlement to be available and fully functional prior to the eviction.

According to the UN Basic Principles, "If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least 90 days' notice prior to the date of the resettlement." For situations involving mass evictions, 90 days would therefore normally be a minimum requirement. The notice must provide a clear date and time for the eviction and describe the various steps involved in the process. It must also contain detailed information and a rationale for the compensation and resettlement measures to be adopted, and guidance on raising questions and challenging decisions about the eviction, compensation or resettlement, both before the courts and administrative bodies. The government must make sure that affected people have full access to their homes and to all public goods and services, including water, sanitation and electricity throughout the notice period until the actual day of the eviction.

## ALTERNATIVE HOUSING AND COMPENSATION

The government must provide adequate alternative housing to all those who cannot provide for themselves, and ensure that no one is left homeless or at risk of human rights violations as result of an eviction. Compensation must also be paid to affected people for all losses resulting from the eviction.

UN Basic Principles stipulate that "all those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for the loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process. Consideration of the circumstances of each case shall allow for the provision of compensation for losses related to informal property, such as slum dwellings."<sup>36</sup>

UN Basic Principles also state that "When eviction is unavoidable, and necessary for the promotion of the general welfare, the State must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better."<sup>37</sup>

The UN Committee has stated: "Evictions should not result in individuals being rendered

homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”<sup>38</sup>

The UN Committee has also highlighted that “States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.”<sup>39</sup>

## PROVISION OF LEGAL REMEDIES AND LEGAL AID

According to the UN Committee “legal remedies or procedures should be provided to those who are affected by eviction orders.”<sup>40</sup>

The provision of legal remedies and legal aid to people who are in need of it to seek redress from the courts is one of the core procedural safeguards against forced evictions identified by the UN Committee.<sup>41</sup> The UN Committee has also emphasized the obligation on states to have legal remedies within its domestic legal system to safeguard against violations of the right to adequate housing, including “legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; and legal procedures seeking compensation following an illegal eviction.”<sup>42</sup>

UN Basic Principles on evictions also emphasize the need for “All final decisions [on evictions to] be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary.”<sup>43</sup>

## CONDUCTING EVICTIONS

After legal and procedural safeguards have been put in place and due process has been followed, the government must ensure the conduct of the evictions the fundamental human rights of affected people and any use of force is strictly necessary, proportionate and complies with international human rights standards.

According to the UN Basic Principles “evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected.”<sup>44</sup>

UN Committee stipulates that “In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.”<sup>45</sup> The UN Committee has also stressed that government officials or their representatives must be present during an eviction; anyone carrying out the eviction should be properly identified; and evictions must not take place in particularly bad weather or at night.<sup>46</sup>

“Any legal use of force must respect the principles of necessity and proportionality, as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and any national or local code of conduct consistent with international law enforcement and human rights standards.

“Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations.

“States and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use.”<sup>47</sup>

Even after an eviction has been concluded the government is responsible for providing immediate relief for affected people.

The UN Basic Principles provide: “The Government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in cases of force majeure. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.”<sup>48</sup>

## THE RIGHT TO EFFECTIVE REMEDY

All victims of human rights violations have a right to an effective remedy under international human rights law. This right has been recognised in international and human rights treaties and instruments to which Nigeria is a state party; and also under international human rights standards.

The ICCPR, to which Nigeria is a state party, in Article 2(3) places an obligation on states to ensure that individuals have effective remedies for violations of human rights. Also the ICESCR and the African Charter recognise that state parties must take measures to give effect to the rights the treaties embody.<sup>49</sup>

Additionally, the UN Basic Principles provide that “All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.”<sup>50</sup>

Similarly, the UN 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, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005 states: “The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations; (b)

Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law; (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation; and (d) Provide effective remedies to victims, including reparation, as described below.”<sup>51</sup>

According to international human rights standards,<sup>52</sup> depending on the individual circumstances and the gravity of the human rights violation and the circumstances of each case the following have been stipulated as the forms of effective remedies that should be made available to victims of human rights violations:

- Restitution
- Compensation
- Rehabilitation
- Satisfaction
- Guarantees of non-repetition.

## CONCLUSION

All tiers of government in Nigeria and its various organs must respect protect and fulfil the right to adequate housing, which includes refraining from carrying out forced evictions, in line with Nigeria’s obligation under international law. The failures of the government in Nigeria to comply with its obligations to respect the right to adequate housing has pushed many Nigerians living in informal settlements deeper into poverty and made them vulnerable to other human rights violations.

As Nigeria’s statutory body responsible for dealing with all matters relating to the promotion and protection of human rights guaranteed by the international human rights treaties to which Nigeria is a party<sup>53</sup>, Amnesty International urges the NHRC to make maximum use of its statutory powers to promote and protect the right to adequate housing during its public hearing into demolitions and evictions in Nigeria.

## RECOMMENDATIONS

Amnesty International makes the following recommendations to the National Human Rights Commission:

- Award compensation as appropriate for loss of and damage to property to all victims of forced eviction in all the cases it hears during the public hearings pursuant to section 6 of the National Human Rights Commission (Amendment) Act 2010.
- Make recommendations on the provision of effective remedies as appropriate to all victims of forced eviction in all cases it hears during the public hearings in line with UN 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.

- Publish publicly, without delay, all awards and recommendations made following the public hearing.
- Develop, without delay at the end of the public hearing, guidelines setting out safeguards against forced evictions, based on international human rights standards, including the UN Basic Principles on Development- Based Evictions and Displacement in consultation with civil society and affected communities.
- Refer to the Attorney-General of the Federation or state all matters of human rights violations including excessive use of force by security forces that require investigation and prosecution and that come to light during the public hearing, pursuant to section 5 of the National Human Rights Commission (Amendment) Act 2010.
- Make recommendations to the Attorney-General of the federation for the development of an executive bill explicitly prohibiting forced evictions in Nigeria.



# ENDNOTES

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- 1 SERAC's ongoing monitoring of the situation and legal representation of affected persons.
- 2 Nigeria: If you love your life, move out! Forced eviction in Badia East, Lagos State, Nigeria (AFR 44/006/2013); p.51
- 3 Ibid
- 4 Nigeria: If you love your life, move out! Forced eviction in Badia East, Lagos State, Nigeria (AFR 44/006/2013); p.52
- 5 SERAC@Work (January-March 2004), p. 1-2
- 6 Ibid
- 7 Nigeria: If you love your life, move out! Forced eviction in Badia East, Lagos State, Nigeria (AFR 44/006/2013); p.17
- 8 Nigeria: If you love your life, move out! Forced eviction in Badia East, Lagos State, Nigeria (AFR 44/006/2013)
- 9 Vienna Convention on the Law of Treaties 1969, Article 27
- 10 Ratification' is an act by which a State signifies an agreement to be legally bound by the terms of a particular treaty
- 11 The African Charter on Human and Peoples' Rights (ACHPR) was domesticated by Nigeria in 1983 as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. The provisions of the ACHPR have the force of law in Nigeria and authorities and persons exercising legislative, executive or judicial powers in Nigeria are mandated to apply it and give it full recognition and effect.
- 12 The African Charter on Human and Peoples' Rights, Article 14
- 13 Communication No. 155/96 Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria, para 60.
- 14 "Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force.
- 15 The Convention on the Rights of a Child was domesticated by Nigeria in 2003 as the Child's Rights Act 2003. Although this law was passed at the Federal level, it is only effective if State Assemblies also enact it. To date, only 16 of the country's 36 States have passed the Act. Lagos State has passed the Act, the law came into force on 28 May 2007 as the Child Rights Law 2007.
- 16 Connors v. United Kingdom (Application no. 66746/01), judgment of the European Court of Human Rights 2004, para. 92
- 17 Olga Tellis & Ors v Bombay Municipal Council [1985] 2 Supp SCR 51
- 18 Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v. City of Johannesburg and others, CCT 24/07
- 19 UN Committee on Economic, Social and Cultural Rights, General Comment 4: The right to adequate housing, para 7, (Sixth session, 13 December 1991), E/1992/23.
- 20 UN Committee on Economic, Social and Cultural Rights, General Comment 4, para 8.
- 21 Adopted at the 52nd Ordinary Session of the African Commission on Human and Peoples' Rights held in Yamoussoukro, Côte d'Ivoire, from 9 to 22 October 2012
- 22 The resolution was adopted on 24 October 2011
- 23 UN Committee on Economic, Social and Cultural Rights, General Comment No. 7: The right to adequate housing (Article 11.1) of the ICESCR): forced evictions, para 3, (Sixteenth session, 20 May 1997), E/1998/22.

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24 UN Committee on Economic, Social and Cultural Rights, General Comment 4: The right to adequate housing (Article 11.1), para 18 (Sixth session, 13 December 1991), E/1992/23.

25 UN Committee on Economic, Social and Cultural Rights, General Comment 7, para 8.

26 UN Commission on Human Rights Resolution 1993/77, para 1

27 The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties.

28 See Concluding Observations of the Human Rights Committee: Kenya, UN Human Rights Committee, CCPR/CO/83/KEN 29 April 2005, para 22

29 Communication No. 161/2000, U.N. Doc. CAT/C/29/D/161/2000 (2002).

30 Commission on Human Rights Resolution 1993/77

31 Communication No. 155/96 Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria, para 61.

32 UN Basic Principles and Guidance on Development based Evictions and Displacement, Basic Principle 42

33 UN Committee on Economic, Social and Cultural Rights, General Comment 7, para 15.

34 Ibid.

35 UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Basic Principle 42.

36 UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Basic Principle 61.

37 UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Basic Principle 60.

38 UN Committee on Economic, Social and Cultural Rights, General Comment 7, para 16.

39 Ibid, para 13

40 Ibid, para 13

41 UN Committee on Economic, Social and Cultural Rights, General Comment 7, para 15.

42 UN Committee on Economic, Social and Cultural Rights, General Comment 4, para 17(a),(b)

43 UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Basic Principle 41.

44 UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Basic Principle 47.

45 UN Committee on Economic, Social and Cultural Rights, General Comment 7, para 14.

46 UN Committee on Economic, Social and Cultural Rights, General Comment 7, para 14.

47 UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Basic Principle 47-50.

48 UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Basic Principle 52.

49 Article 2, International Covenant on Economic, Social, and Cultural Rights; article 1, African Charter on Human and Peoples Rights.

50 UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Basic Principle 59.

51 UN Basic Principles Guidelines and 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, para 3.

52 Ibid, principles 19-23

53 National Human Rights Commission (Amendment) Act 2010, section 5(a)

# ANNEX

## AMNESTY INTERNATIONAL DOCUMENTS FOR REFERENCE<sup>1</sup>

*Nigeria: If you love your life, move out! Forced eviction in Badia East, Lagos State, Nigeria* (AFR 44/006/2013)

*Nigeria: Know your obligations: A guide to preventing forced evictions* (ACT 35/009/2012)

*Nigeria: Forced eviction of Abonnema Wharf waterfront: "Pack and go!"* (AFR 44/034/2012)

*Nigeria: 'Just move them': Forced evictions in Port Harcourt, Nigeria* (AFR 44/017/2010)

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<sup>1</sup> All of these documents are available on Amnesty International's website: <http://www.amnesty.org>

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