

COMMENT | Government routinely refuses to compensate litigants

# Evictions violate rights of the poor

These ejections have disproportionately affected poor, vulnerable and marginalised groups

BY PAULINE VATA

On February 22, 2009, *Slumdog Millionaire*, a movie based on slum life in India was brought to the sitting rooms of the super-rich when it won what has been described as a "staggering eight Oscars".

Whether the awards were truly merited or not is not relevant to us. What is relevant is that, for the first time, the issue of urban poverty and marginalisation, especially in developing countries, found an outlet into the glittering world of Hollywood or Bollywood.

It may well be that for some, this was the first time they were seeing, albeit through the screen, how the other urban half lives. The truth, however, is that to millions in Dharavi in Mumbai and our own Dunga Unuse, Bangladesh, Obunga in Kenya and many others, this is all too familiar.

On September 26, 2015, residents of Dunga Unuse informal settlement in Mombasa woke up to the sound of bulldozers flattening their houses.

This was the fourth time they had been evicted in a span of three years. There was no court order authorising the evictions and the police used excessive force, injuring a few people. No notice had been issued to the over 300 families who were left homeless.

Kenya has ratified a number of international treaties banning forced evictions, most notably the International Covenant on Economic, Social and Cultural Rights, which Kenya acceded to on May 1, 1972.

Notwithstanding the covenant, Kenya has witnessed arbitrary forced evictions. These evictions



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Residents of Dunga Unuse in Mombasa are being evicted after bulldozers flattened their homes over the weekend. The evictions were accompanied by police officers and soldiers. Such evictions affect the

have disproportionately affected poor, vulnerable and marginalised groups in both rural and urban areas.

Despite the rampant evictions, we do not have a well domesticated law in place. The court process is also a fallacy. Judges have tended to issue favourable judgments but the government refuses to pay successful litigants on the basis that there are no adequate resources.

The National Assembly gazetted a Land Laws (Amendment) Bill, 2015 that condensed the Eviction

and Resettlement Bill into seven clauses. What is saliently missing in these clauses is provision for a court order before any evictions are undertaken. In addition, private developers should not be allowed to carry out evictions. These must be left to the National Land Commission.

The haphazard manner in which economic and social rights are implemented in Kenya is due to lack of an enabling legislation.

The Dignity Bill, currently before the Senate, provides a framework for the promotion, monitoring and enforcement of economic and social rights by county governments. This is the first domesticated legislation that actually seeks to implement Article 43 of the Constitution.

Kenya needs to clarify the country's obligations under the covenant through ratification of the Optional Protocol. This would help give "context" and meaning to rights such as education, housing, and health, in a developing economy like Kenya's.

Secondly, the ratification of the Optional Protocol would strengthen

accountability in Kenya.

The Protocol offers an opportunity for governments to be thoroughly investigated on their obligation under the covenant. There is no doubt the existence of a complaint mechanism always acts as a device towards government

The Optional Protocol would enable Kenyans to raise concerns over government policies and practices that would otherwise not receive attention from Parliament or the media.

Lastly, to realise economic, social rights, participation and consultation are key factors.

The Constitution under Article 41 and 42 guarantees public participation and right to information. Active participation in decision-making in institutions of the State is a democratic right.

These issues are worth serious consideration as the country deliberates on land-related bills.

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