

2. Eviction impact assessment

Description

An eviction impact assessment is a quantitative, human rights-based tool. It was developed by Habitat International Coalition (HIC)'s housing and land rights network, and is used to quantify the “losses, costs and damages incurred by those affected by violations of forced eviction, dispossession, destruction and privatization of habitat resources.”¹ It also helps as an advocacy tool to convert human rights violations into quantifiable economic language. Data alone cannot express the emotional toll of forced displacement nor the physical impoverishment it often causes, but it improves a community's bargaining position with state and private entities involved in responding to its needs.

The tool has been used mainly to quantify the impact of displacement caused by development projects, but given that many urban IDPs displaced by conflict or disasters also face the risk of forced eviction it can be applied to such cases too. Those who squat public or private land or live in informal settlements or areas prone to hazards are particularly at risk and exposed to the prospect of renewed displacement.

Eviction impact assessments can help to bolster housing rights and the achievement of durable solutions by preventing forced evictions and other displacement from taking place in the first place and facilitating compensation when they do. They can be used to persuade courts to put evictions on hold, and to inform those intent on carrying them out about the compensation they will have to pay and the issues to be addressed in minimising the social and economic cost of relocation. Communities and courts can also use the assessments to estimate and demand compensation after the event, as was the case in Kandhamal in India.²

Displaced communities, grassroots organisations, local researchers and advocates for housing and land rights advocates have used eviction impact assessments successfully in a number of countries as part of their broader efforts to support IDPs in their pursuit of durable housing solutions. They can also be used by IDPs themselves in public interest litigation and judicial activism more generally.

Methodology

The methodology for eviction impact assessments is based on the UN basic principles and guidelines on development-induced displacement, International Criminal Court standards of evidence and the UN reparations framework.³ They constitute a comprehensive tool that tries to capture both material and non-material losses and costs during all phases of displacement. They are not prescriptive, however, in that they can be adapted to specific contexts.

The matrix for eviction impact assessments contains the following components:

1. **Baseline study of pre-eviction assets and expenditure**

The baseline study is a key component, because the costs and losses IDPs incur as a result of their displacement are compared and calculated against it.

- a. **Economic assets (household level):** qualitative and quantitative assessments of personal belongings, investments, inheritance prospects, livestock, dwellings, trees and crops, livelihoods, wells and water sources
- b. **Expenditure (household level):** qualitative and quantitative assessments monthly outgoings on food, education, health care, mortgages and other debt payments, rent, utilities, transport and bureaucratic, legal and advocacy costs
- c. **Social assets (household level):** qualitative and quantitative assessments of the value of shared community spaces, community membership and investments, creches, cultural heritage sites, family, health and psychological wellbeing, identity and social and institutional capital
- d. **Civic assets (non-material):** qualitative and quantitative assessments of crime patterns, political legitimacy and participation, social cohesion and integration and public health
- e. **Public/state expenditure:** bureaucracy, administration, equipment, services, security and policing costs

2. **Assessment of losses as a result of eviction notice**

- a. Economic costs/losses (household level)
- b. Regular expenditure/costs/losses (household level)
- c. Social assets/costs/losses (household level)
- d. Civic assets/costs/losses (non-material)
- e. Public/state costs

3. **Assessment of losses at time of and during eviction**

- a. Economic costs/losses (household level)
- b. Regular expenditure/costs/losses (household level)

- c. Social assets/costs/losses (household level)
 - d. Civic assets/costs/losses (non-material)
 - e. Public/state costs
4. **Assessment of losses following eviction**, subdivided as applicable into the following categories: transit camps or temporary shelter, resettlement site, no resettlement and reparation
- a. Economic costs/losses (household level)
 - b. Regular expenditure/costs/losses (household level)
 - c. Social assets/costs/losses (household level)
 - d. Civic assets/costs/losses (non-material)
 - e. Public/state costs

The complete matrix can be downloaded here: <http://goo.gl/w1A31f>

Depending on the size of the target community and the resources available, either the entire affected population or a representative sample is surveyed by a team of expert enumerators who use their qualitative notes and estimates of assets and expenditure in combination with households' self-assessments to arrive at sample figures. These are then used to determine average household assets and expenditure, social assets, the impacts and duration of relocation and changes in monthly income and outgoings, to arrive at a final average cost of relocation per household that includes any new and recurring expenditure.

Case study: Muthurwa estate (Kenya)

The Mazingira Institute, a Kenyan NGO, carried out an eviction impact assessment (EvIA) in 2012 as part of an ongoing legal battle over the rights of residents of Nairobi's Muthurwa estate, who faced and still face forced eviction at the hands of the Kenya Railways Corporation. Starting in 2010, a series of petitions were presented to the High Court to procure temporary staying orders. The EvIA's inclusion in the process presented quantitative evidence of the financial costs and losses to the community and helped convince the court to make its final ruling in favour of Muthurwa residents in August 2013.

Overview

The East African Railways and Harbours Corporation (EARHC) built the 72-acre Muthurwa estate in the early twentieth century to house its workers in single-storey, terraced houses also referred to as *handies*. The estate is made up of 1,324 housing units in 56 blocks, though not all are fully occupied. The 2009 population and housing census put the number of resident households at 1,034.⁴

In 1978, EARHC was transferred to the Kenya Railways Corporation (KRC), and in 2006 Rift Valley Railways (RVR)

purchased KRC. Despite selling to Rift Valley, however, KRC was still liable for its employees' pensions, and in order to raise money for the scheme, it began to liquidate its assets in 2010. One such asset was the Muthurwa estate, which the company estimated was worth between three and five billion Kenyan shillings (\$33 million and \$54 million).

On 1 July 2010, all Muthurwa estate residents received an eviction notice. They were told to vacate their homes within 90 days, despite the fact that some families had lived there for generations, and with little regard for the specific needs of elderly, disabled, child and female residents.

The estate is a prime location in Nairobi's central business district but, given the changes in its ownership and management, residency was no longer linked to employment. Average rent is 2,500 shillings (\$27) a month, with the revenue helping to pay the money due to around 9,000 KRC pensioners.

To administer the arrangement, KRC transferred management of the estate to the Kenya Railways Staff Retirements Benefits Scheme (KRSRBS), but doing so positioned residents' interests against those of the KRC pensioners. After the evictions, the plan was for the estate to be sold and developed with shopping malls, petrol stations, luxury apartments and office buildings.

Petitioning the High Court

The demolition of homes and public toilets began within two weeks of the eviction notice, and the water supply and street lighting were disconnected. Some residents left, but others remained and protested. The standoff continued and escalated over several months, leading to large-scale demolitions using bulldozers in October 2010.

In an effort to stop the evictions, ten residents worked with the constitutional scholar Yash Ghai and the executive director of the legal advice centre Kituo Che Sheria, Priscilla Phelps, to file a petition with the High Court. Kituo Che Sheria was founded in 1970s. It uses both in-house lawyers and for some major cases it calls on outside experience. For the Muthurwa estate case, it brought in one of Kenya's leading lawyers Pheroze Nowrojee as lead counsel.

The overall aim was to build jurisprudence around the Kenyan bill of rights by working on number of court cases concerning evictions. To prepare the petition, Kituo Che Sheria also did extensive work in the community through training, mobilising, designing a legal strategy and selecting ten residents to be the main petitioners.

A community such as that living on the Muthurwa estate is a heterogeneous group made up of residents with

often competing interests. Some, for example, are also pensioners who left the estate and blame other residents who have stayed for holding up their retirement benefits. The case represented a unique opportunity, to draw a connection between anti-eviction movements and larger debates on public land and public policy. KRSRBS claimed that the estate should be considered private land because the state railway corporation had placed it in a private trust, but the petitioners argued successfully that it is public land. The definitions are, however, still fluid and being continuously revised, requiring constant vigilance and monitoring by civil society groups.

The 2010 petition invoked article 43 of the 2010 Kenyan constitution, which guarantees the right to adequate housing and reasonable standards of sanitation to get a stay order against. It also invoked a series of international human rights instruments, such as the right to adequate housing contained in the Universal Declaration of Human Rights and the UN Committee on Economic, Social and Cultural Rights' general comments four and seven, which expand on the definitions of adequate housing, tenure security and forced eviction. The court granted a temporary injunction on the evictions and an order to reconnect water and sewage services upon payment of rent in February 2012.

Using the eviction impact assessment tool

Kituo Che Sheria and the Mazingira Institute conducted an EvIA⁵ on the estate in February 2012. They selected 117 households as a representative sample to survey, and enumerators from both organisations carried out the assessment based on an adapted version of the EvIA matrix⁶. The Mazingira Institute trained the enumerators to use a short questionnaire similar to the one used for the national census to collect baseline demographic data. The enumerators were all graduates, though secondary education would have been sufficient for the purpose of the survey.

Based on the data collected - only 100 households provided complete information - they analysed demographic trends on the estate such as household composition, age, marital status, length of residence, education level and employment. They also analysed the general housing conditions and amenities, including the type of cooking fuel and energy source for lighting used.

In accordance with EvIA guidelines, they also assessed the value of household assets and found them to be an average of 36,173 shillings (\$392) per household member.⁷ The enumerators invited 40 heads of households to the Mazingira institute for a day-long session to gather the information, during which they worked one-on-one to collect in-depth economic data. Given that the respondents were at the institute, the team was able to input the data

directly into its software, reducing the amount of time usually required for fieldwork, transcription and input.

The next stage was to assess each household's one-off relocation costs, based on three assumptions: that average rent would continue to be 2,500 shillings a month, and that residents would not change their employment or the course of their education. Respondents said, however, that they would have to move to neighbourhoods as far as 20 kilometres away to find homes of equal quality and cost. To do so, the average time required to move would be 13 hours, which would result in a loss of income. The average one-off relocation cost was also exceptionally high, working out at 11,325 shillings or (\$123) per household.

At one point, KRSRBS offered some Muthurwa residents the option of relocating to another estate it owned in Makongeni, around seven kilometres to the east, on the basis that they could keep their corrugated iron sheets, timber and other building materials. A few whose homes were bulldozed took up the option. The offer, however, was never presented in a systematic way through consultation with the community. Rather, coercive methods and the threat of forced eviction caused increased resentment and resistance among residents who may initially have been open to considering a relocation package. It is unclear why KRSRBS did not make a proper proposal for relocation to Makongeni, but in retrospect it seems like a tremendous missed opportunity.

The next stage of the EvIA evaluated the anticipated increase in overall household expenditure as a result of relocation, based on a survey of 40 households. They estimated that transport costs per household would increase by 19,733 shillings (\$215) a month.⁸ If households were to change their employment or education arrangements, their additional monthly costs would be 12,766 shillings or (\$139).

Using the household data, the Mazingira Institute was able to quantify the potential impoverishment that would result in the event of forced eviction. Considering Muthurwa residents' vulnerable economic status, relocation would be extremely expensive and mean that "households will be driven to places with worse housing conditions and amenities that those of Muthurwa Estate, which will worsen their well-being", which would "aggravate the urban poverty situation" in Nairobi.⁹ The information was then added to the petition presented to the High Court.

The objective of the EvIA was not merely to present empirical data. Rather it painted a picture of how the violation of housing rights affect households' lives in economic terms. It strengthened the Muthurwa residents' bargaining position and helped win the High Court's ruling in their favour in August 2013.

The court was forced to abide by the fact that the constitutional right to adequate housing was not “aspirational and merely speculative,” but rather had to be realised through actions protecting against forced evictions on the ground.¹⁰ The judge, Isaac Lenaola, directed his judgment not only to KRSRBS but also the Kenyan parliament, urging it to develop “an appropriate legal framework for eviction based on internationally acceptable guidelines”.¹¹ Despite Lenaola’s ordering a more humane framework for the Muthurwa evictions, which he determined must also be guaranteed by the Kenyan government and Nairobi county and security officials, the fate of the estate’s residents remains uncertain.

The attorney general’s office has not yet provided a status update on the ratification of the 2012 evictions and resettlements bill, though there is hope this will take place in the next year.¹² In the meantime, KRSRBS has neither continued evictions nor made proposals that would compensate Muthurwa residents for their relocation costs and losses. The company still contends that because the residents are tenants, it is under no obligation either to renew their leases or to pay any compensation for their relocation. Its stance overlooks the question of whether the Muthurwa estate, as property of a public corporation, constitutes public or private land. It also fails to address the fact that many residents are second or third-generation and have deep-rooted ties in the community.

The Muthurwa residents are currently protected by the staying order on demolitions and evictions as long as they continue to pay their rent, and although their ultimate fate still hangs in the balance, the August 2013 judgment has set a precedent that forced evictions without a court order are illegal.

Conclusion

The costs of displacement and forced eviction and the losses they cause, both material and otherwise, can never be fully quantified or described. That said, however, eviction impact assessments use a quantitative methodology to strengthen the bargaining position of displaced communities to prevent eviction and procure a more equitable compensation package that includes better relocation terms.

Urban land such as Nairobi’s central business district is valued for its location and development potential, but those who have an economic interest in exploiting it, whether public or private sector, must also understand the direct and dire economic consequences for communities they displace in the process.

The Muthurwa estate case shows how the invocation of both international human rights law and the Kenyan constitution can ensure more positive outcomes for displaced

communities with the support of empowered courts and a strong civil society. Doing so requires a broad strategy involving neighbourhood organisations, grassroots groups, international activists and human rights groups, of which an EvIA can play an integral part.

Notes

1. HIC, Put a Number on It: Quantifying Costs, Losses and Damages from the Violation of Housing and Land Rights, World Habitat Day Report, 7 October 2013, p.2
2. HIC, Annual Report 2011: Housing and Land Rights Coalition - South Asia, p.5
3. UN General Assembly resolution A/RES/60/147, 16 December 2005
4. According to the 1999 census, there were 3,147 households on the Muthurwa estate, but demolitions to create the Muthurwa market resulted in the subsequent population drop. Reported by Zarina Ishani and Davinder Lamba in A Study of Impact Assessment of a Potential Involuntary Eviction of the Community of Inhabitants of Muthurwa Estate, Nairobi, Mazingira Institute, July 2012, p.1; For further reference on recent census figures, see Government of Kenya, Central Bureau of Statistics, 2009 Housing and Population Census Volume IA: Population Distribution by Administrative Units
5. Mazingira Institute, A Study of Impact Assessment of a Potential Involuntary Eviction of the Community of Inhabitants of Muthurwa Estate, Nairobi, July 2012
6. See IDMC, Housing practices and tools that support durable solutions for urban IDPs, March 2015
7. The average number of individuals in a household was reported as 4.2
8. This includes transport to places of employment and recreation, schools, university, places of worship and health facilities
9. Mazingira Institute, A Study of Impact Assessment of a Potential Involuntary Eviction of the Community of Inhabitants of Muthurwa Estate, Nairobi, July 2012, p.14
10. High Court of Kenya, Muthurwa estate judgment, p.71
11. *ibid*, p.70
12. Kituo Che Sheria, December 2014