

AFGHANISTAN PROTECTION CLUSTER CONCEPT NOTE

GUIDELINES FOR MITIGATING HARM AND SUFFERING IN SITUATIONS OF FORCED EVICTION

Context

The issue of forced evictions¹ has in recent years reached the international human rights agenda because of the harmful impact it has on civil, political, economic, social and cultural rights of large numbers of people, both individual and communities.² Given the complex nature of the humanitarian emergency situation and the exponential growth of urban settlements in the country, the Afghanistan Protection Cluster (APC) specifically through the Housing, Land and Property Task Force (HLP TF), considers forced evictions of Afghans- whether IDPs, refugee returnees or more generally civilians affected by the conflict- who are illegally settled on State- or privately owned land, to be an urgent humanitarian issue in need of redress.

Rationale

Although in most cases, forced eviction violates international human rights law, evictions can, under certain circumstances and subject to specific conditions, be consistent with international human rights standards.³ Although some types of forced evictions may be unavoidable, the human costs involved are so extensive that any justification must be considered within a human rights framework.

Legal basis

The content of the Guidelines is to be found in various legal documents, such as international humanitarian and human rights Conventions, to which Afghanistan is a party to, as well as the UN Human Rights Council Resolutions, UN Sub-Commission on the Promotion and Protection of Human Rights Resolutions, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context.

Purpose

The Guidelines, a non-binding legal document, aim at orienting and influencing the Government of Afghanistan to develop a coherent eviction and relocation policy where undue harm and suffering are mitigated. The necessity of adopting the Guidelines and the consequent development of a legislation which spells out the safeguards which needs to be met before carry out evictions comes from the recognition of the negative human consequences of forced evictions.⁴

¹ In the context of international human rights standards, the practice of forced evictions apply to acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied

² E/CN.4/Sub.2/1993/8, para. 21

³ Such evictions can be classified as "legal evictions" where the evictions which are not consistent with legal norms are also known as "arbitrary evictions", "illegal evictions" and "unfair evictions" are often used. See Basic Principles and Guidelines on Development based evictions and displacement

⁴ Fact sheet nr 25, Forced Evictions and Human Rights

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GUIDELINES FOR MITIGATING HARM AND SUFFERING
IN SITUATION OF FORCED EVICTION**

Preamble

1. *Affirming*, that the House, Land and Property Task Force is a thematic working group under the Afghanistan Protection Cluster and carries out its activities in the context of humanitarian and emergency response to the needs of the TF members' target groups;
2. *Reaffirming* that every woman, man and child has the right to a secure place to live in peace and dignity, which includes the right not to be evicted unlawfully, arbitrarily or on a discriminatory basis from their home, land or community⁵
3. *Recognizing* that the often violent practice of forced eviction involves the coerced and involuntary removal of persons, families and groups from their homes, lands and communities, whether or not deemed legal under prevailing systems of law, resulting in greater homelessness and inadequate housing and living conditions⁶
4. *Reaffirming* 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 set forth in Article 11 of the International Covenant on Economic, Social and Cultural Rights to which Afghanistan is a party.
5. *Recalling* that the Committee on Economic, Social and Cultural Rights has considered in its General Comment No. 4 (1991) on the right to adequate housing, that "instances of forced eviction are prima facie incompatible with the requirements of the [International Covenant on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law"⁷.
6. *Considering* that the term "forced evictions" is defined 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. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights⁸.
7. *Emphasizing* that the ultimate legal and political responsibility for preventing forced evictions rests with the Government⁹

⁵ Commission on Human Rights Resolution: 2004/28

⁶ Commission on Human Rights Resolution: 2004/28

⁷ E/1992/23, annex III.

⁸ Office of the High Commissioner for Human Rights (OHCHR), The right to adequate housing (Art.11.1): forced evictions. CESCR General Comment 7, .20/05/1997), paragraph 3.

⁹ OHCHR Prohibition of forced evictions, Commission of Human Rights Resolution, 2004/28

8. *Affirming* that where evictions are justified, they must be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality¹⁰, and that safeguards and procedural protection safeguards need to be implemented in order for the eviction to be conducted in a humane and dignified manner,

The Government of Afghanistan, therefore, commits to adopt appropriate strategies, policies and programmes to ensure effective protection prior, during and after an eviction of individuals, groups and communities against forced evictions and its consequences. Including the following elements as safeguards, amongst others:

Prior to an eviction:

- a. The IDPs, refugee returnees and civilians affected by the conflict and/ or natural disasters and at risk of forced evictions are consulted throughout all the process;
- b. Feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Prior to any decision to initiate an eviction, authorities must demonstrate that the eviction is unavoidable and consistent with international human rights standards;¹¹
- c. Adequate and reasonable notice of eviction is given to all affected persons¹². Any decision relating to evictions should be announced in writing and should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions.
- d. All eviction decisions should be subject to administrative and judicial review. Legal remedies are provided or available to those who are affected by eviction orders, as well as legal aid to persons who are in need of it and willing to seek redress from the courts;

During an eviction:

- e. GoA officials or their representatives are present during eviction and all persons carrying out the eviction are properly identified prior to the event;
- f. 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.

¹⁰ A/HRC/13/20, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, p. 12

¹¹ Basic Principles and Guidelines on Development- Based Evictions and Displacement, A/HCR/4/18

¹² Article 20, Amendment to the Law on Acquisition of Land, Official Gazette # 849, 2005, Afghanistan

- g. Any legal use of force must respect the principles of necessity and proportionality.
- h. Evictions do not take place in particularly bad weather, during night time or during religious holidays, and preferably not during winter times;

After an eviction:

- i. Evictions do 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 Government must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, relocation or access to productive land, as the case may be, is available¹³, immediately upon the eviction.
- j. Identified relocation sites must fulfill the criteria for adequate housing according to international human rights law. The sites must not be situated on polluted land or in proximity to pollution sources.
- k. Sufficient information will be provided to the affected persons, groups and communities on all State projects and planning and implementation processes relating to the concerned resettlement. Particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women and children are represented and included in this process;¹⁴
- l. The Government should take into account all alternative plans proposed by the affected persons, groups and communities;
- m. 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,
- n. Individuals affected by eviction enjoy the right to claim adequate compensation for any property affected;

¹³ The right to adequate housing (Art.11.1): forced evictions. 20/05/1997. CESCR General comment 7. (General Comments) . Convention Abbreviation: CESCR GENERAL COMMENT 7 The right to adequate housing (art. 11.1 of the Covenant): forced evictions

¹⁴ Basic Principles and Guidelines on Development- Based evictions and Displacement, A/HRC/4/18