

## **AFGHANISTAN PROTECTION CLUSTER HOUSING, LAND and PROPERTY TASK FORCE**

### **Forced Eviction Roundtable 12 October 2012 – Final Report**

The round table on forced eviction was held on 10 October 2012 at UNOCHA. Participants included members of non-governmental organizations (NGOs) and Afghan ministries such as the Ministry of Defense, Rural Rehabilitation and Development, Refugees and Repatriation, of Public Work, of Labor and Social Affairs, of Urban Development Land allocation Department of Afghanistan, Samuel Hall Consultant, OCHA and the members of the House, Land and Property Task Force (HLP TF). The round table discussion was moderated by Eng. Pashtun, Special Advisor to the President.

#### **Agenda:**

The program of the event encompassed case studies, the presentation of the content of the Guidelines on Forced Evictions and a roundtable discussion where the opinion and contribution of the Government was sought on the Guidelines drafted by the HLP TF. The event was opened by an introduction on the Housing, Land and Property Task Force, its mandate and its functioning under the umbrella of the Protection Cluster.

Special emphasis was put on the issue of the Kabul Informal Settlement (KIS) and the fact that, despite the inhabitants of the KIS are not legally occupying the land, they are, at the same time, living in dire conditions, which led to, last winter, to the death of children in the KIS. From the construction going on around the KIS, it is visible that the sites are located on valuable land. It goes without saying that these people are facing severe difficulties in obtaining security of tenure and are under threat of eviction. While their social-economic rights need to be respected, their security of tenure needs to be promoted with the settlements.

In relation to forced evictions, we need to look at the Guidelines and consider how we can tackle the issue of relocation in a planned manner. Considering there is a consensus that forced evictions are illegal, considering their impact on human rights, we need to talk about the alternatives to evictions. People are moving to cities in increasing numbers and some organizations, like for example UN-HABITAT, cannot support these settlements in terms of infrastructures and social services as long as there is no security of tenure. The site of Qasaba is an example of a possible relocation site, where the inhabitants could enjoy more security of tenure. However, the Government seems not favorable to the use of this site and relocation suggestions in general.

In Qasaba, we note that individuals are spontaneously going there and building their own houses – seeking durable solutions on their own. It is fundamental that only after we find tenure security, we can start searching for durable solutions. A solution, and probably the best approach to forced eviction, is the provision of land. In this regards, the Ministry of Refugee and Repatriation is carrying out the Land Allocation Scheme.

#### **1. Afghan Independent Human Rights Commission:**

The Afghan Independent Human Rights Commission (AIHRC) gave a presentation on the impact of forced eviction on human rights. The AIHRC started by saying that the Afghan Government had signed about six international conventions to ensure that the people enjoy their human rights. These international conventions identify three main duties for the Government. Firstly, the government authorities are bound by the human rights conventions and as such they need to respect the content. Secondly, if one individual's right is violated it is the government responsibility to redress it. Thirdly, the authorities need to ensure compliance to the human rights within the society. In this regard, the government must undertake effective programs, strategies and policies to ensure respect for human rights in their societies.

In relation to property and housing, the Universal Declaration of Human Rights states that every individual has the right to property. The Convention also states that all human being should have access to services like education, health care etc. etc. and if the citizen cannot afford this, then the governments are supposed to provide them with access to such facilities.

In addition, if their right is violated, the government must try to redress it. Article 11 of the Covenant on Social, Cultural and Economic right states that '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 make take steps to ensure that protection of discrimination, in terms of actions and policy, are adopted.

The Constitution of Afghanistan, based also on the Government obligation based on the international conventions, state in its article 40 that every house must be secure from invasion. In Afghanistan, there are several laws and policies to tackle land and property issues. Lands can be redistributed or reformed with compensation for the purpose of national benefit. What national benefit means needs to be defined and every land and property must not be used or confiscated by the governmental authorities based on reasons of national benefit without a proper specification. Land compensation tools must be specified prior to the redistribution of lands to the owners. It goes without saying that the compensation needs to be just and fair and the land given for compensation purposes needs to have the same value. There are also national laws covering invasion, destruction and other kind of misuse of property.

Forced eviction and forced displacement violate human rights. In both situations, there is an element of violence and if the displacement is caused by discriminated behaviors is a crime. In situation of forced displacement, other basic human needs such as food, water, and security affect many other human rights such as education, health, and employment. We can distinguish group and individual displacement. Reports indicate that people are displaced due to conflict, or implementation of some plans – urbanization or building townships by private companies.

Participants asked a number of questions including the plans of AIHRC to prevent forced evictions, the extent of influence and impact of the AIHRC on other organizations and the need to differentiate between property, legal and illegal occupation. The AIHRC stated that they have more of an oversight authority and that they can only refer cases to the relevant departments and carry out investigations. The organization has no enforcement authority. The organization fights against impunity and are pro-actively advocating for investigations and punishment of criminal acts.

### **Presentation of three case studies on forced eviction:**

#### Case study from Nangarhar province (NRC)

This case study concerns refugees returnees from Pakistan in 2010. They were settled on governmental land of Ministry of Agriculture and Irrigation and Livestock (MAIL). In 2012 the canal department of MAIL decided to evict these returnees to Chamtala settlement in Khogaine district. The returnee received a deadline of 24 hours to leave the settlement, while they were not consulted in advance about this plan. And all their houses were demolished and nine people were killed and some injured. All humanitarian NGOs called for a meeting with DoRR to pursue alternatives. This intervention by NGOs obliged the government to reconsider their position towards Chamtala, and now they thinking about relocation again. The NGOs decided to help these families base on their mandates such as providing transportation, health, education and shelters.

### Case study from Kabul province (UNHCR)

In late 2009, UNHCR conducted a mapping exercise of the Kabul informal settlements (KIS), followed by a protection profiling. Throughout the mapping exercise, it was identified that 5500 families were minority living in precarious conditions. Less than 10% were living under tents. It was also found out that the majority of inhabitants of the settlements are affected by landlessness and lack of services and security. A major concern expressed was employment, and threat of eviction. It was also mentioned as a second issue: general insecurity, existence of mines, and tensions with local and host community. The findings of the protection profiling and the mapping were shared with all clusters. UN-OCHA is coordinating the humanitarian assistance through the KIS TF, where NGOs participate according to their mandate.

### Case study from Balkh province (NRC)

This case study concerns about 25 families, displaced from Charbolak and Chemtal districts to Balkh city, approximately ten years ago. The security situation in the places of origin was not good, so they were displaced due to conflict. In Oct 2011, the Balkh municipality asked them to leave the area because the land belonged to the municipality. This case was referred to the Balkh provincial council. The IDPs were given 15 days' time to leave the area. On Nov 18<sup>th</sup> 2011 the Balkh municipality demolished the area where the IDPs were living and referred the IDPs to DoRR. After that, several meetings with Balkh DoRR and the municipality were held, and the municipality agreed to distribute land for these families in Heratan Township, located 27 km from the city. These families face challenges due to the distance of the township from the city. Basic services are lacking and the land previously occupied by the IDPs was of more value than the land distributed in this township.

## **Presentation of the Guidelines on Forced Eviction, introduced by a video presentation**

The video helped to show that the issue of forced evictions is a global phenomenon who is affecting millions of people. There is a lack of a comprehensive report on evictions and threat of evictions globally but it is estimated that 18 million of people were affected by evictions between 1998-2008 (COHRE). The majority of those affected by forced evictions are already marginalized individuals. In this regard, Oliver and Smith develop in 2009 the concept of 'Targets of least resistance'. It is important to understand that forced evictions constitute gross and systematic violations of human rights (CHR Res. 1993/77). In addition, most evictions are carried out in the name of development.

The need of this Guidelines of Forced Evictions is given by the situation in the Kabul Informal settlements, by the protracted IDPs settlements, by growing urbanization trends affecting Afghanistan and also by master plans and development programs. These Guidelines are a non-binding legal document, not exhaustive, and aim mainly at providing guidance and tools on how to ensure that evictions are carried out in conformity with human rights. Evictions are justified when authorized by law; carried out in accordance with international human rights law; undertaken solely for the purpose of promoting the general welfare; are reasonable and proportional and regulated so as to ensure full and fair compensation and rehabilitation.

It goes without saying that States bear the principal obligation for applying human rights however, other actors like, PM, transnational organizations, individuals- landlords and landowners, have all responsibility. The presentation focused on the need to focus on preventive measures, like strategies and policies to ensure effective protection of individuals and groups against forced eviction and its consequences; review of existing legal documents and programmes if compatible with human rights; eliminate the underlying causes of forced evictions. Measures were suggested prior, during and after evictions.

**Roundtable Moderator:**

I am thanking you all who organized and also who participated to this meeting. Currently, unplanned land is creating several issues such as increasing the number of inhabitants in main provinces like Herat, Kandahar, Mazar and Kabul. We have focused most of the time on these cities and in 2002, during a global conference on urbanization we suggested to consider equal development opportunity in cities.

There is an economic and social development plan in every ministry such as ANDS. Unfortunately it is not in use. Other countries have the same phenomenon of informal settlements as in Afghanistan. Informal settlements exist not only because of economic reasons but also because of the existence of low labor workers who come to the cities because companies need low paid workers. We cannot find them in the main cities so people move to the cities. The problem of sanitation of these informal settlements needs to be considered.

Another reason for the existence of the informal settlement is the lack of planning and enforcement of these policies. Planning is not done because of capacity but also because individuals have not been consulted. Therefore, we can say that planning has failed because of lack of consultation. If people are not consulted, they will not accept your plan. The Government has not been able to provide alternatives to forced evictions to people who have been displacement due to the events of the last 30 years. We also need to be careful that people who came to Kabul because of land occupation and collaboration with landlords.

We need to make a clear distinction between those who occupied land because of dire needs and those who occupied valuable land for other purposes. We should not evict and destroy property of those poor people. It is important to understand that one single Ministry or Department cannot address this issue and prevent evictions alone as such we need to adopt a collaborative approach to it.

**Ministry of Refugees and Repatriation:** The Ministry is currently working on drafting the national IDPs policy. Mayors, governors, IDPs and provincial councils were consulted at field and central level together with stakeholders who have a responsibility in IDPs issues. The government itself will lead this process and approach the international community for funding purposes. Forced eviction will also be considered in the National Policy. Currently, we cannot count every individual displaced in cities and occupying lands as an IDP. We need to consider forced evictions but also occupation of land. Individuals should also be explained where they can stay when in displacement. They should not settle in play grounds or public areas. We need the cooperation of line ministries and related organizations. Which governmental department can prevent forced evictions?

**Moderator:** a problem with the land allocated to returns and IDPs is that it is located far from cities where no basic services and employment opportunities. We Afghan people traditionally do not want to be displaced unless we are forced to it, because of lack of employment and access to basic services. There is an evident need for a social-economic plan to create jobs for people. As an example in Badghis province, a road is under construction and many people are working in it. Lack of coordination within departments is also a problem.

**Ministry of Defense:** It is important to create jobs for people and in Afghanistan; there is a high demand for agriculture. We must lead Afghanistan to agricultural development, as the best income product for the country. Instead of building new townships, we should improve the conditions of the older ones especially in terms of job opportunities and services availability. We must distinguish between lands occupied by land mafia and other local people in need of land.

We need to recognize forced evictions as a human rights violation. We are aware of the practice to use women to occupy lands and to tackle this, the women police was created and other departments are working to prevent this phenomenon. Our first plan was targeting 17000 families and distributing land to the IDPs but then the mafia occupied that land. We are looking for solutions to be balanced and fair within these concerns.

**Ministry of Rehabilitation and Rural Development:** MRRD has two responsibilities: drinking water needs to be supplied to the settlements and roads need to be built to allow people to access to basic services. ANDMA should have a lead role in some issues. We should use the human capital of the returnees. A profiling should be carried out and shared within line ministries. This profiling could help to creating job opportunities for them.

**Moderator:** the discussions that we started today are very important and they cannot be completed in one day. Therefore, I would suggest such roundtables to be have a more permanent character with permanent members, who do not change at every session.

**Ministry of Defense- Human Rights Department:** Considering that the government could not achieve this in the last 10 years, what indication do we have that this could be done in the future? The most valuable land of the Ministry of Defense is occupied. Some lands used are close to military camps, a danger to the civilians. Some aspects of these guidelines cannot be applicable from a military point of view. For example: we do carry out forced eviction in military situations while there is conflict. In such circumstances, we cannot afford to consider the consultative process or the prior notification requirement.

It was commented that some individuals in order to be able to occupy such valuable land may have some connections within the ministries. In addition, to the location of military centers there are some written guidance in this regard. MAIL will relocate these camps if they are too close to the cities.

#### **General comments from the participants:**

**AHIRC:** We need to bear in mind that if someone has occupied any land, he/she should not be forcibly evicted. One to two million people is living in unplanned areas, if we apply the master plan to these areas it could lead to forced eviction. Governmental authorities do not have the capacity and the resources to enforce the city master plan. It was asked from the Government whether there is a plan about unplanned areas.

**Ministry of Urban Development:** It could have been useful to invite the private sector as well.

**Ministry of Public Work:** Land management and land are challenging issues in every country and this is also the case in Afghanistan. The Ministry of Public Works, when constructing new roads, has a system in place to compensate land appropriated, including trees and orchards. The Ministry of Public Works is the leading construction development cluster and this already existing forum can be used as an (initial) platform for discussion, if the participants agree.

**Conclusion:** the following decisions were agreed upon by the roundtable participants:

- The Guidelines are in line and cite the afghan national legal frame work;
- Every Ministry and participants send their comments to the Housing, Land and Property Task force in relation to the Guidelines;
- Every Ministry and participants appoints one focal point to attend the follow up meetings;
- A section on forced evictions will be included in the IDP policy;
- To advocate for the adoption and implementation of the Guidelines' provisions.

## ANNEXES

### **Annex1: Forced Eviction case in Balkh Province**

On October 03, 2011, the provincial authority of Balkh province ordered 27 IDPs families to leave their houses built over the land belonging to Balkh municipality located near 40 family blocks, Ferdawsi Park, district 7, Mazar e Sharif, within 48 hours.

The families are originally from Chamtala and Charbolak districts of Balkh province which are insecure. Furthermore, the families are engaged in casual labour in Mazar city and eeking out a small livelihood and their children are studying in school. These were all contributory factors for the families intention to not to return to their place of origin which led the families to not accept the eviction order and on mentioned date the representatives of the families petitioned to Balkh Provincial Council regarding this order. After the meeting of the Provincial Council with the municipality authorities, the municipally authorities claimed that the families were squatting on governmental land. The families however claimed that they had bought this land from the local commanders about 20 years ago through customary deeds. However the governmental authorities did not recognize these customary deeds. However the municipality agreed to increase the deadline for a further duration of 15 days.

Finally on November 18, 2011, Balkh municipality destroyed the houses belonging to these families. The municipality wanted to evict these families from the area as it planned to construct a road in the same area. The eviction was peaceful and no civilian casualties or destruction of property took place.

The evicted families approached the Balkh DoRR and sought compensation and DoRR referred this case to NRC for follow up. NRC registered the case on February 03, 2012 and followed it up with Balkh municipality and DoRR. After several meetings it was finally agreed by Balkh municipality to give a plot of land to each family in the new township located in Du Raie Hairatan. This agreement was made on compassionate grounds and not to provide just compensation to the evicted families. Moreover the land is located outside the perimeters of the city, (approx 17 km away) and although the security situation is not bad but the families are concerned as the livelihood opportunities and other basic services like schools, medical facilities etc are nonexistent in the area. Additionally the families are also concerned that the value of the land is much lower than the ones where they were evicted from and it may take considerable amount of time before they receive this plot of land.

The administrative process for giving a plot of land to the evicted families was finalized by the Balkh municipality and it forwarded it to PAMA department of Ministry of Urban development Affairs for final approval.

Currently some of the evicted families are living in rental houses while others are living with their relatives in Balkh province and are engaged in casual labour and their economic situation is not good. Many families have young children who are also attending schools and this eviction has also impacted their education. The evicted families have not received any assistance from any humanitarian organizations except one NGO on October 20, 2011 in coordination with ANDMA who distributed two blankets and two jumpers for each family.

## **Annex 2: Forced Eviction Case - Nangarhar Province**

On 17<sup>th</sup> May 2012, Nangarhar provincial authorities ordered 190 refugee returnee families, (1,051 individuals), to leave their houses built on the land belonging to the Canal Department<sup>1</sup> within 48 hours. All families had returned to Afghanistan from Zakhil refugee camp, Peshawar, Pakistan after their houses were washed away during the flashfloods in 2010. 113 of the 190 families are originally from Kunar province and due to the conflict in Kunar province cannot return to their place of origin.

In light of their vulnerability, in October 2010 Nangarhar officials had allowed them to stay temporarily in Farm-i-ada area, Behsud district, Nangarhar Province in a portion of land belonging to the Canal Department. During the eviction proceedings, the Canal Department with the help of the police used unnecessary force against the families, demolished the surrounding walls of the houses and detained 9 individuals for over 24 hours who were subsequently released after the intervention of Afghanistan's Independent Human Rights Commission (AIHRC). Reportedly, a child who was wounded during the destruction of the houses succumbed to his injuries in the hospital.

With the intervention of the HLP TF East members (including NRC, UNHCR, AIHRC, OCHA, IOM, IRC and UNAMA) all families were relocated to Chamtala settlement and Department of Refugees and Repatriation (DoRR) Nangarhar agreed that families from Nangarhar province, including non Voluntary Repatriation Form (VRF) card holders, will be provided land in Chamtala settlement while the issue of families from Kunar was referred to the director of DoRR, Kunar. As majority of these families are from Kunar province, Nangarhar authorities had insisted that these families should return to their place of origin.

Based on the findings of an interagency assessment regarding the needs of these families, NRC provided tents to all families as they were living in makeshift accommodation made from curtains, used plastic sheets and clothing. Two months of food assistance was also recommended for each family as the relocation took place within a short timeframe contributing to the increased vulnerability of the families. Referral was made to WFP for food assistance. IRC agreed to install 53 emergency latrines for these families and conducted hygiene education awareness amongst the families.

Although, various humanitarian agencies provided temporary assistance to all needy families, a durable solution seems not yet attainable for them. None of these families have officially received any plot of land from DoRR. Furthermore, over 100,000 applications of IDPs and refugee returnees are also pending with DoRR for allocation of land under Land Allocation Scheme (LAS) in the province.

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<sup>1</sup> Canal department belongs to the Ministry of Agriculture and takes care of agricultural farms belonging to canal department and irrigation system