

Forced Evictions in Mogadishu

Background note to the mass eviction of 29 and 30 December 2017

Forced evictions remain one of the most severe and prevalent protection threats in Mogadishu and Somalia, particularly for IDPs and poor households.¹ As exemplified by the mass eviction of 29 and 30 December 2017, forced evictions undermine humanitarian efforts and investments that would help marginalized and vulnerable populations to escape the poverty and displacement traps. Destruction of property and assets impinges on the resilience and coping mechanisms of populations that already have limited capacity and resources to deal with their situation. This further exposes evicted households to opportunistic brokers (including gatekeepers) and exploitation, additional protection violations and secondary displacement, while interrupting integration processes due to disruption of livelihood activities and destruction of related assets, as well as disrupting access to services.

Since 2015, when the Protection Cluster Eviction Tracker started to be operated by the NRC, on average each year more than 155,000 individuals have been evicted across Somalia. In 2015, according to the tracker, approximately 130,000 individuals were evicted; approximately 162,000 individuals in 2016; and, including the estimated total affected individuals of the 29th and 30th December eviction, 190,000 individuals in 2017. The vast majority of evictions affect IDPs, and the epicenter of forced evictions remains Mogadishu.² Mogadishu witnessed the largest eviction incidents with 123,421 individuals evicted in 2015, 143,510 individuals in 2016 and 153,682 individuals in 2017. The records reveal more than 11,000 IDPs are evicted on a monthly basis in Mogadishu. Before December 2017, a mass eviction was conducted in March 2015 where 3,500 households were evicted from KM11 of Mogadishu.³ Evictions are frequently more limited in scale.

Forced evictions are both a cause and a multiplier of the protection and displacement crises affecting Somalia. IDPs are unable to access and assert their basic rights, mainly due a power imbalance between IDPs and evicting parties. IDPs have settled in Mogadishu on private and government land, for which IDP households do not have clear, predictable or lasting tenure security agreements. In Mogadishu the growing demand for private and public land since the withdrawal of Al Shabaab has led to increasing difficulties for IDPs and urban poor populations to find locations to settle upon where no risk of eviction exists.

An underdeveloped regulatory framework, hampered access to justice, low awareness – a weak protective environment

The regulatory environment for forced evictions in Somalia remains underdeveloped. Forced evictions potentially violate a broad range of human rights defined in various international instruments.⁴ The Kampala Convention on the Protection and Assistance of Internally Displaced Persons (defining the rights of IDPs and the primary responsibility of national authorities in protecting those rights and ensuring the response to displacement) has been signed by Somalia, but has not yet ratified the outcome document, nor have the principles been laid out in the convention been translated into legislation or policy in Somalia beyond basic individual rights as enshrined in the Somalia Provisional Constitution.

Efforts to establish a policy at FGS level that would define the rights of internally displaced persons and establish roles and responsibilities have been interrupted due to changes of administrations and shifting priorities. Eviction Guidelines were part of the 2014 National Policy Framework on Displacement within Somalia by the Ministry of Interior and Federalism on behalf of the Federal Government of Somalia. This document has not been ratified by parliament. The Eviction Guidelines have also not been officially adopted, but despite their status have been effectively used by the Protection Cluster and NRC in supporting a lawful eviction in 2015 (the Ministry of Health and Ministry of Finance eviction).

Calls for the enactment and amendment of land laws and policies or principles related to Durable Solutions for IDPs have been included and mainstreamed throughout the National Development Plan 2017-2019. The plan notes the risk of forced evictions and specifically implores the government to 'Review and improve the legal framework for protection against forced

¹ NRC Eviction Report (January 2018). With reference to the eviction in Xaq-Dhawr centre, Deeqo umbrella and Talo-Wadaag umbrella, houses, schools, latrines and other sanitations and health facilities were bulldozed. According to the SHF the destruction of assets and facilities funded through the fund amounts to US\$ 200,000. It is possible humanitarian assets funded through other donors were also affected. Crucially, livelihood assets of households were also destroyed.

² Eviction Tracker – Protection Cluster (NRC)

³ Cf. Interagency Rapid Assessment Report: Dharkenley Evictions (March 2015). goo.gl/6NnoQf

⁴ See annex 1 to this document for a list of basic human rights that potentially are violated.

evictions from public and private property and improve access to land and land tenure security for IDPs and returnees.’ No law regulating land issues has been developed or passed by parliament.

Legislation on land and tenure security is outdated and the legal texts used by formal courts – primarily Law no. 10 (17 December 1980) and to a lesser extent the 1973 Urban Land Distribution Law – refer to constitutional frameworks that are no longer in use or repugnant. However, since there is currently no national land policy, Law no. 10 is still applied. Land registries have been looted and in some cases title deeds are unlawfully produced at a high cost leading to conflicts related to multiple claims to land. Xeer (traditional justice mechanism) and Shariah Law have proven to be relatively ineffective in assisting with property disputes (especially in urban settings) and in preventing forced evictions.⁵

For IDP households formal judicial remedies, relating to land ownership or to prevent eviction, frequently remain too costly – including due to irregular fees that are requested at multiple stages of legal procedures. Most agreements on the hosting of IDPs are short term and remain verbal, creating further complications for accountability when an agreement is reached. Further, affected communities frequently have low awareness of basic rights, hampering their access to justice.

In relation to perpetrators of forced evictions, it is important to distinguish between actors who request that an eviction be initiated and actors that execute the eviction. The latter frequently involves individuals wearing uniforms of Somali security agencies (police or armed forces) – however, it is unclear at what level actions are authorized or ordered within the security entities. With reference to the former group of actors, forced evictions appeared to be initiated by government entities (including local authorities) mostly from 2012 to 2015. From 2015 onwards with the exception of the mass eviction of March 2015, private individuals, business owners and gatekeepers seem to have played a much greater role in the initiation of forced evictions.

Going forward

Throughout 2017 authorities have issued statements addressed to squatters or residents of ‘public buildings’, including IDPs, requesting them to leave those premises. No law or decree that may have been issued was shared with the international partners or further advertised in official bulletin boards. While it is recognized that circumstances will exist in which evictions are the consequence of a legitimate need to reclaim public land and buildings occupied by IDPs, all measures should be taken to adhere to the national and international legal standards on forced evictions. This should include enforcement of principles reflected in the Eviction Guidelines as also expressed in the National Development Plan 2017-2019, as well as basic rights enumerated in the Somalia Provisional Constitution.

The Banadir Regional Administration, including by virtue of interpretation of the stipulations of Law no. 10 on land administration, remains a key institutional actor in the execution of evictions. It could play a significant role in ensuring and the enforcement of lawful evictions which follow the Eviction Guidelines. The Banadir Regional Administration should make concerted efforts through its district administrations to ensure that all unlawful evictions are prevented. A positive step would be the establishment of a localized monitoring and reporting system to help prevent forced evictions by identifying risks and mitigation strategies.

The HLP Sub-Cluster has periodically trained institutional partners on HLP rights and several initiatives to train the municipality on lawful evictions are supported and funded by different durable solutions projects (such as the EU REINTEG Programme in Mogadishu and the Government of Sweden funded Innovative Solutions for the Displaced Programme, while other activities were conducted through the support of the Somalia Humanitarian Fund). The Protection Cluster aims to further integrate HLP activities and considerations in joint programming with the Shelter/NFI Cluster and the CCCM Cluster.

⁵ Cf. Land Matters in Mogadishu – Rift Valley Institute, Heritage Institute for Social Policy (2017) http://riftvalley.net/publication/land-matters-mogadishu#.Wk9y_XZx3Z4; However, in Somaliland and Puntland quasi-judicial dispute resolution mechanisms are in place: in Somaliland Land Dispute Tribunals (LDT) and in Puntland Land Dispute Resolution Committees (LDRC). These involve local authorities and community leaders and to varying extents incorporate Xeer and Sharia practices as well as state administrative and legal procedures. Cf. UNHABITAT & JPLG, Harmonization of the Legal Systems Resolving Land Disputes in Somaliland and Puntland Report and Recommendations (2015).



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In relation to the above the Protection Cluster recommends the following:

- Authorities in Somalia should adhere to the international legal standards of substantive justification, due process, alternative accommodation, consultations on alternatives and non-discrimination during evictions to ensure they are lawful and at risk groups are afforded the relevant protections. Further to this, the authorities should work towards the inclusion in procedures and enforcement of the Eviction Guidelines, reflecting these standards, to prevent secondary displacement. Notably by taking concrete steps to respect and protect the inviolability of human dignity of IDPs and all Somali citizens, as guaranteed by Article 10 of the Provisional Constitution of the Federal Republic of Somalia, including by:
 - Upholding the rights of IDPs and others at risk of eviction to have the lawfulness of their eviction reviewed.
 - Ensuring that adequate and reasonable notice is issued by the authorities in publicly in writing at least 60 days prior to eviction directly to the affected population.
 - Ensuring that any evictions that take place do not violate the dignity and human rights of affected IDPs and urban poor.
 - Ensuring that any evictions conducted do not render individuals and households homeless or leave them vulnerable to human rights violations by guaranteeing that adequate alternative land, shelter, and facilities are made available for those unable to provide for themselves, including women, children, persons with disabilities, and older people - tenure security at new sites should be guaranteed by both landlords and municipal authorities.
- Any lawful evictions conducted must reflect due consideration of - and strive to work towards - durable solutions for IDPs, including through the inclusion of displacement sites and displaced populations in urban planning processes.
- The Federal Government of Somalia and its Federal Member States should formalize and officially adopt a policy defining the basic rights of displaced populations and regulating the response of authorities to displacement, including by establishing and strengthening procedures for evictions in line with international legal standards on forced evictions, as also reflected in the Eviction Guidelines, as well as by defining roles and responsibilities of authorities at all levels in relation to evictions.
- The Federal Government of Somalia should develop an updated Land Law, as called for in the National Development Plan 2017-2019, ensuring land governance is adequately regulated.
- Somalia's Federal Government and Federal Member States should include the provisions of the Eviction Guidelines in relevant and applicable bylaws.
- Somalia's Federal Government and Federal Member States should work with the humanitarian and international donor community to sensitize local administrations and security forces on the rights of IDPs, urban poor, and all Somali citizens as enshrined in the Somalia Constitution and other sources of law.
- The Banadir Regional Administration, through its district administrations, should ensure that all unlawful and unprincipled evictions are prevented, including through the establishment of a localized monitoring and reporting system to help prevent forced evictions, also by identifying risks and proceedings impacting on the tenure status of IDP sites.
- The humanitarian community should mainstream Housing, Land, and Property considerations throughout their interventions, when feasible ensuring that tenure security for a reasonable time period is formalized to protect the affected populations and humanitarian investments.
- Donors should be mindful of the need, especially in urban and peri-urban areas, to anchor long-term recovery initiatives and durable solutions within a broader programmatic framework that includes security of tenure.
- Donors should fund projects and activities that raise awareness on the need for tenure security and available remedies with affected populations.
- Donors should consider funding for access to justice programming, notable paralegal work that that can support poor, displaced, and marginalized households to attain remedies and redress.

Annex 1 – Potential violations of rights due to evictions

Evictions of IDPs, both lawful and unlawful, potentially violate the ‘full spectrum of civil, cultural, economic, political and social rights enshrined in international instruments’.⁶ This includes, as listed in OHCHR & UNHABITAT, Forced Evictions, Fact Sheet No. 25/Rev.1, from 2014, the following international instruments:

- *The right to life (International Covenant on Civil and Political Rights, art. 6.1)*
- *Freedom from cruel, inhuman and degrading treatment (ibid., art. 7)*
- *The right to security of the person (ibid., art. 9.1)*
- *The right to an adequate standard of living, including the right to adequate housing, food, water and sanitation (International Covenant on Economic, Social and Cultural Rights, art. 11, and related Human Rights Council resolutions)*
- *The right to non-interference with privacy, home and family (International Covenant on Civil and Political Rights, art. 17)*
- *Freedom of movement and to choose one’s residence (ibid., art. 12.1)*
- *The right to health (International Covenant on Economic, Social and Cultural Rights, art. 12)*
- *The right to education (ibid., art. 13)*
- *The right to work (ibid., art. 6.1)*
- *The right to an effective remedy (International Covenant on Civil and Political Rights, arts. 2.3 and 26)*
- *The right to property (Universal Declaration of Human Rights, art. 17)*
- *The rights to vote and take part in the conduct of public affairs (International Covenant on Civil and Political Rights, art. 25).*

These violations can be directly or indirectly attributed to:

- **The way evictions are decided** (for instance, no consultation or participation, no information, no recourse mechanisms)
- **The way evictions are planned** (for instance, no notification, no relocation available, compensation not provided, delayed or subject to unjustified conditions)
- **The way evictions are carried out** (for instance, at night or in bad weather, no protection for people or their belongings)
- **The use of harassment, threats, violence or force** (for instance, forcing people to sign agreements, using bulldozers when people are still salvaging their belongings, ...)
- **The results of the eviction** (for instance, disruption of children’s education, interruption of medical treatment, mental trauma, loss of jobs and livelihoods, inability to vote because of homelessness, no access to basic services or justice because identity and property papers were destroyed during the evictions, etc.)

⁶ OHCHR & UNHABITAT, Forced Evictions, Fact Sheet No. 25/Rev.1 (2014) <http://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>