



Housing, Land and Property Task Force
Afghanistan

Briefing note on international and domestic frameworks safeguarding against forced eviction in Afghanistan

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Defining evictions and forced evictions¹

An eviction is the removal of individuals, households and/or communities from their housing, land and/or property against their will. Evictions can have very serious negative impacts on people's lives. For this reason, the United Nations has developed rules to protect people's rights in cases of eviction. These rules recognise that in some cases evictions may be legal: if they are in the public interest, there is no alternative solution and the rights of these being evicted

have been respected during the process. If these conditions are not met, however, evictions become forced evictions. Forced eviction is 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.'²

International standards on evictions

The obligations of governments to protect people against forced evictions is detailed in a number of international legal instruments.³ In this regard, for an eviction to meet international standards and not become a forced eviction, authorities must comply with four principles:

1. Ensure that the eviction is absolutely necessary

While authorities are obligated to prevent illegal forced evictions, an eviction may be legal in some cases, providing two criteria are met:

First, there is a genuine public interest that justifies the eviction. In some cases, people are required to move from their place of residence because authorities need to use their land to serve the public interest. For example, if a village in Jalalabad needs a school, and some houses need to be moved to make space for the school, it is possible that authorities can legally evict the people living in those houses. This is an example of a project that serves the public interest, because the community will benefit from the school. Authorities may have the right to legally evict people in this situation, even if the people do not want to move. In contrast, if a company or the authorities want to build a private development for profit, they must make an acceptable offer to those people if they want to buy their land. They cannot force those people to move.

Second, even when there is a genuine public interest reason, there is another condition that must be respected for an eviction to be legal. Authorities must make sure there is no alternative option to eviction. For example, authorities need to build a new road from Injil to Karokh District in Herat and are presented with two options: First, to build the road through three villages, evicting 300 families in the process; second, build the road around the villages so that no families would have to move. The second option would be more expensive but is still affordable for the authorities. Under international treaties, authorities should choose the second option, even if it would cost more. If the

authorities have no choice but to evict some people, it should make sure that the number of people who will be evicted is as small as possible.

2. Authorities' obligations before an eviction

If the eviction is deemed necessary, authorities should ensure the following actions take place before an eviction:

Information is provided about the eviction and the reasons for the eviction.

- Authorities must make sure that people are informed about any planned eviction that may affect them. They must also be told why their land is being taken. They have a duty to show that there is a genuine public interest or other good reason for taking the land, which makes the eviction necessary.
- People must also be informed about their rights to be involved in decision-making about the eviction, including their right to go to court to challenge the eviction.
- The information must be shared in a language and form that the affected communities can understand. For example, if many members of the affected communities cannot read, then the information must be shared through presentations, illustrations, photographs, videos, or visits to a similar project.

There is proper consultation with people who will be affected.

- Authorities must make sure that affected people are properly consulted about any planned eviction before the decision to carry out the eviction has been made. They must make sure that people are told that they risk losing their land or homes, and listen to and consider the people's opinions, comments and concerns about the eviction. This consultation is very important because the affected

people may have ideas about ways to avoid evictions or to limit the number of people who will be evicted.

- If the eviction will be carried out, Authorities should also consult people about ways to make sure that they will have adequate housing after the eviction. This should include consultation about compensation, plans for relocation and livelihoods options after the eviction.
- A good way to ensure that there is adequate consultation is for authorities and affected people to prepare a resettlement plan together. A resettlement plan contains detailed information about the steps that will be taken to maintain or improve the lives and livelihoods of the affected people, including a timeline for when all of these activities will take place.

Adequate and reasonable notice of the eviction

- Authorities must make sure that all people affected by an eviction receive adequate and reasonable notice before the planned date of the eviction. The notice must be given well in advance of the eviction date to everyone affected so that the community has a chance to prepare for the move or plan what to do in response to the eviction notice. The notice must contain information about the reason for the eviction and when it will take place.

Adequate compensation is agreed upon, which can include money, housing, and access to farming land or other things to ensure that people who are evicted can maintain or improve their living conditions.

- Authorities have a responsibility to ensure that the people who are evicted have access to alternative adequate housing and are able to maintain, or even improve, their living conditions and livelihoods.
- One important part of this plan is compensation. Authorities must make sure that people are offered adequate compensation to replace any property that they own, which will be affected by the eviction. This includes people's land, house and any other possessions. It may also include property that is shared by the entire community, such as a community centre, a market, or a mosque. Compensation can take different forms, for example:
 - Money to pay for the house, land and property that will be affected (the money must be enough for people to access adequate replacements);
 - Directly providing people with replacements for what they lost—like building new houses, including under a land allocation scheme, and

providing replacement farmland or market stalls;

- Assistance to start new businesses, plant new crops or travel to work;
- Some combination of the above.

3. Authorities' obligations during an eviction

Authorities should ensure that the following occurs during an eviction:

There must be officials present during the eviction

- Authorities must make sure that officials or their representatives are present during the eviction.
- This is to make sure that the law and human rights are respected, that the eviction is legal, and that people are protected from violence.
- If officials are helping to carry out an illegal eviction or using violence to force people to leave, this is illegal and they should be punished according to the law.

The people carrying out the eviction must identify themselves

- Authorities must make sure that people carrying out the eviction identify themselves so that it is clear who they are and that they have legal authority to carry out the eviction.

The eviction must take place at a safe time

- Authorities must make sure that evictions do not happen at night or in bad weather, unless people have agreed to it. People's safety must be respected while the eviction takes place.

The use of force must be avoided as much as possible

- Authorities must make sure that there is no threat, or actual use, of unnecessary force or violence against people or destruction of their possessions during an eviction. Limited force can only be used when absolutely necessary, and should be proportionate to any resistance to the eviction.

4. Authorities' obligations after an eviction

Authorities also have important obligations after an eviction has occurred:

People must not be left homeless or living in inadequate housing after an eviction

- Authorities must make sure that evictions do not leave people homeless or living in inadequate housing. Also, people who have been evicted

should not be put in a situation in which their other human rights will be violated. For example, evicting people from their homes and farming land might mean that they do not have enough to eat, which would violate their right to adequate food.

- Authorities have a duty to make sure that people who are evicted can live in adequate housing and have access to essential things such as water, food and jobs. The most common ways for authorities to fulfil this duty are the following:
 - By giving people who are evicted enough money to buy replacements of the housing, land and property that will be affected, and to make sure they can find alternative adequate housing;
 - By providing people who are evicted with alternative adequate land and housing, and replacing anything else that they have lost;
 - By providing assistance to start new businesses, plant new crops or travel to work;
 - By sharing the benefits of the project with the affected people, such as on-site upgraded housing from an urban development project;
 - Some combination of the above.

- People being evicted should be consulted well before the eviction about which of these options would be best for them so that they can maintain or improve their lives and living conditions.

Housing at a relocation site must be adequate

- All people have a right to adequate housing in any place they live, even if they are moved to a relocation site. This means that if people are moved to a relocation site, Authorities has a duty to make sure that their new houses meet all seven elements that make housing adequate.
 - Security of tenure
 - Availability of services, facilities and infrastructure
 - Accessibility
 - Habitability
 - Affordability
 - Location
 - Cultural Adequacy

Laws in Afghanistan and evictions

There are Afghan domestic laws that have implications for those facing the threat of eviction. The status of these laws are unclear following the 2021 transfer of power. Bearing this in mind, the key legislation for land and property expropriation is the Land Acquisition Law of 2017. It is important to understand that only those who meet the criteria of ownership under the 2018 Land Management Law are compensated for land under the Land Acquisition Law (Box 1). Those who are occupying state land, or land that is legally owned by

another entity, are not compensated for their loss of land. However, Article 32 of the Land Acquisition Law provides that if any person has constructed shelter on state land, he/she is entitled to be compensated for his/her structure provided that they meet certain conditions: the person must have lived in their shelter for 10 or more years, must have constructed the shelter before the enactment of the most recent amendment of the law (10 May 2017) and must not own any other shelter or home in another location.

Box 1

Procedure for property expropriation in the Land Acquisition Law

- **Article 7** states that the State Expropriating Agency must provide a valid justification for property acquisition and use expropriation as a last resort after considering other options.
- **Article 8** states that the desired project must be in the public interest.
- **Article 9** states that official notification shall be given to the affected people prior to any work commencing at the site.
- **Article 27** provides procedures to calculate just and fair compensation for the land and structures of affected persons.
- **Article 44** provides details on authorities' obligations to resettle affected people.

The Civil Code of Afghanistan also provides some requirements to be followed if people are living on private land, not state land. Article 1346 of the Civil Code states that if a person is renting on private land and a lease ends, the landlord is required to provide a notice period which is half the length of the frequency

that rent is due (if there is no rental contract that states another condition). For example, if a person is paying rent for a shelter on private land in Badghis, the landlord is required to give them two weeks' notice to leave the shelter.

Conclusion

The status of laws in Afghanistan are uncertain following the takeover of de facto authorities in August 2021, as is the authorities' acceptance of international treaties that Afghanistan is signatory to. With this in mind, it is still important to be aware of

these protections and standards regarding evictions in international and national law in the context of Afghanistan in order to prevent and advocate against forced evictions.

Endnote

- 1 These guidelines are published in 2022 by the Afghanistan Housing Land and Property Task-Force (HLP-TF). They are an update of the HLP-TF (2012) [Guidelines for Mitigating Harm and Suffering in Situation of Forced Eviction](#). For more details please contact HLP coordination team: Ben Flower, ben.flower@unhabitat-afg.org; Rebecca Leabeater, rebecca.leabeater@nrc.no; Hamidullah Atae, ataee@unhcr.org.
- 2 Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997)
- 3 OHCHR's Special Rapporteur on the right to adequate housing [provides an overview](#) of the key international including the [Universal Declaration of Human Rights](#), the [International Covenant on Economic, Social and Cultural Rights](#) (art. 11, para. 1), the International Covenant on Civil and Political Rights (art. 17, 23 and 27) the [Convention on the Rights of the Child](#) (art. 27, para. 3), the non-discrimination provisions found in article 14, paragraph 2 (h), of the [Convention on the Elimination of All Forms of Discrimination against Women](#), and article 5 (e) of the [International Convention on the Elimination of All Forms of Racial Discrimination](#).