



# Guidelines for dignified departure following an eviction

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## Context

Communities such as immigrants, migrant workers, internally displaced persons (IDPs), refugees, Indigenous Peoples, racialised communities, marginalised castes, and women-headed households have been historically excluded from access to adequate housing and face chronically insecure tenure. Many do not have formalised agreements with landowners or are occupying lands and buildings without the permission of landowners and governments.

However, even with precarious tenure, these occupants and tenants have rights, enshrined by international and some national laws. Because of these structural discriminations, vulnerable communities have less ability to claim and exercise their rights and are therefore more likely to face forced evictions. Governments and protection actors have a duty to ensure that people have access to due process and adequate representation when faced with an eviction, to ensure that eviction only occurs in justified circumstances, where “no feasible alternative” exists.

Humanitarian actors are often faced with situations where legal options have either been exhausted or the pursuit of legal options may expose vulnerable populations to protection risks that are graver than forced evictions (such as imprisonment, detention, and other forms of violence). When evictions are imminent and can no longer be prevented, humanitarian actors must turn to the standards outlined in international human rights law to guide advocacy and programmatic action to best protect those who are being evicted. (See Text Box)

### Relevant standards under international human rights law

The Committee on Economic, Social and Cultural Rights (CESCR) has provided guidance on the protection of the right to adequate housing, including protection against forced eviction, harassment and other threats (see General Comments No. 4 [1991] and No. 7 [1997]). Rights violations may occur when there is no legal justification for an eviction and/or when an eviction is not carried out in accordance with relevant standards. These standards, also referred to as procedural protections, are as follows:

- a) Opportunity for genuine consultation with those affected;
- b) Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- c) Information on the proposed eviction and, where applicable, on the alternative purpose for which the land or housing is to be used;
- d) Especially where groups of people are involved, government officials (or their representatives) to be present during an eviction;
- e) All persons carrying out the evictions to be properly identified;
- f) Not to take place in particularly bad weather, at night or during religious holidays;
- g) Provision of special assistance to individuals or groups with specific needs;
- h) Protection of property and possessions left behind involuntarily;<sup>1</sup>
- i) Provision of legal remedies and, where possible, provision of legal aid to persons who need to seek redress from the courts.

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<sup>1</sup> On this point the CESCR specifies that all individuals concerned have the right to adequate compensation for any property (personal and real) that is affected.

From an advocacy perspective, protection actors should call for the standards to be respected by all parties involved in the eviction. Protection actors should also assist parties to address needs that fall within that organization's mission and capacity, and should refer parties to other service providers for any actions that are outside of their mission and capacities.

The following guidelines and criteria are designed to operationalize these standards to mitigate the most negative impacts of an eviction. They are also designed to go beyond the standards with the aim to find durable solutions and to reduce the chance of recidivism since evictions often have cascading and multiplying effects which make future evictions more likely.

**Guideline 1: Evictions and departures should not render households homeless.**

Criterion 1.1 Tenants/occupants are clearly informed of their eviction and are given a “reasonable notice” for departure so that they have the time to find an alternative housing solution.

- According to the practice of formal courts systems, a “reasonable notice” is the period between the notification to the affected persons about the conclusion of the legal process (when a decision is made and can no longer be appealed) and the issuance of an enforcement order.<sup>2</sup> This may be immediately enforced, or take weeks, depending on the administrative procedures.
- For ‘informal’ evictions and departures, the protection actor may need to negotiate a period of reasonable notice with the landowners – this period of reasonable notice should be determined by the tenant/occupant.<sup>3</sup>

Criterion 1.2 Appropriate measures should be taken to ensure that adequate alternative housing<sup>4</sup> is made available to those unable to provide for themselves.

- Providing the evictees with unconditional cash assistance worth at least 150% of one month's average rent *before the eviction takes place* can be an essential tool to prevent homelessness.<sup>5</sup> The tenant can use these funds to re-house themselves and cover moving costs.
- Ideally, the tenants/occupants should find alternate housing for themselves so that their new lodgings suit their own preferences and needs – they can be provided with coaching on how to negotiate fair agreements and to find adequate housing.
- Once they have settled into their new location, these tenants/occupants might be eligible for some type of shelter assistance (including, but not limited to Cash for Rent) to help stabilize them.

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<sup>2</sup> The notice should be drafted and delivered in a language that is understandable to the affected persons.

<sup>3</sup> Practice in the field shows that 15 days to one month is often the most that can be reasonably negotiated without alienating the landowner and losing all reasonable notice.

<sup>4</sup> Adequate housing is further elaborated upon in [CESCR General Comment No. 4: The Right to Adequate Housing \(Art. 11 \(1\) of the Covenant\)](#) as “a) legal security of tenure ; b) availability of essential services, utilities, and materials essential for health, security, comfort and nutrition; c) affordability, d) habitability, e) accessible to those living with illness or disabilities f) location (proximity to services, social ties, and economic opportunities) and g) cultural adequacy.

<sup>5</sup> The quantity should be adapted to the context, but should never be less than one month's rent.

- If access to jobs and work permits is an obstacle for their secure tenure in the future, the protection actor should work with the tenants/occupants to find viable livelihood opportunities, where possible. The livelihood 'Graduation' approach can be particularly useful to stabilize those who are at chronic risk of eviction.

**Guideline 2: Evictions and departures should not render individuals vulnerable to the violation of their human rights.**

Criterion 2.1: The process of departure from the property maintains the dignity and safety of all parties.

- Departures should take place in the daytime, ideally in good weather, and never on religious holidays.
- The landowner and neighbours do not harass the former tenants/occupants. If there is a risk of harassment, send a qualified legal professional to monitor the situation – their presence may serve as a deterrent to harassment.
- The former tenants'/occupants' personal effects and identification documents are neither damaged nor confiscated – the confiscation of property is generally not a legitimate nor legal form of debt collection.
- If there are young children, elderly, persons with physical/mental disabilities among the evictees, transportation to their new home is provided.

Criterion 2.2: Leading up to and after the change in residence, tenants/occupants are assisted (based on their expressed needs) by protection actors to:

- Support tenants/occupants (through coaching/counselling) to negotiate a new and fair tenure agreement (and/or understand their rights and responsibilities under their new agreement).
- Change their civil documentation if this is tied to their place of residence / a specific address.
- Referral other essential services in their new area of residence (health, psychosocial services, education etc.)
- Defend against threats of forced relocation or detention related to the collection of outstanding debts.
- Change their children's school registration.
- If the eviction had no legal basis, and/or if the eviction process violated any of their rights, provide legal assistance to ensure access to redress from courts, when possible.

## **Chronology of guidelines and criteria**

In terms of the chronology of an eviction, different criteria should be prioritized at different phases.

### **Pre-eviction:**

- All reasonable alternatives for eviction or departure under duress must be first exhausted through legal means and/or direct interest-based negotiations with landowners.
- If a period of 'reasonable notice' for dignified eviction has not been agreed upon between the landowner and the occupant, qualified caseworkers may need to assist the tenant in negotiating for this extra time.
- Evictees are provided with emergency cash to cover the first month of rent in their new residence.
- Evictees are provided coaching by a qualified caseworker (working for a protection actor) on how to negotiate for rent and clear tenure agreements for their new residence. They can also be provided with a lease agreement template which they can use to negotiate.
- Qualified caseworkers may also need to advocate for the return of confiscated personal effects and identification documents, and/or provide the landlords with the information that such confiscations are illegal.
- Negotiate with the landowners to permit departures should take place in the daytime, ideally in good weather.

### **Day of the eviction:**

- If there is a risk of violence or harassment of the tenants on the day of the eviction, humanitarian actors should attempt to invite a respected third party from the community to monitor the situation. If this is not possible, humanitarian actors should send a qualified legal representative to monitor the situation – and act as a deterrent.
- If there are young children, elderly, persons with physical/mental disabilities among the evictees, transportation to their new home is provided.

### **Post-Eviction:**

- Shelter actors evaluate their eligibility for further shelter assistance.
- Livelihood actors evaluate their eligibility for relevant livelihood support, if lack of income was a driver of the eviction.
- If needed, legal protection actors assist to change their identity card registration.
- Provide information on access to other essential services in their new area of residence (health, psychosocial services, education etc.)
- If needed, education actors assist to change their children's school registration.

### **Ongoing:**

- Provide access to legal assistance to defend against threats of forced relocation, detention related to the collection of outstanding debts, and/or for legal remedy if the eviction was not legally justified.
- When relevant, tenants are assisted by protection and livelihood actors to find jobs/obtain legal work permits to ensure that they can pay for their future household needs Link to an actor who can assist with graduation approach.