



## Key messages on addressing protection concerns and providing solutions to persons at risk of eviction in Libya

### Purpose

The objective of this document is to outline the concerns, principles, recommendations for and commitments of the humanitarian actors in Libya in relation to the increasing scale of evictions affecting both Libyans and non – Libyans, with consideration of the intersectionality of their vulnerabilities, interlinked with demographic and geographical factors across Libya.

These messages underpin the Eviction Prevention and Response Operational Guidance currently developed by the joint Protection and Shelter/SNFI sectors’ Eviction Task Force aimed at establishing a systematic approach to eviction prevention and mitigation in Libya.

### Background

*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” (Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing: forced evictions).<sup>1</sup>*

*Various elements, separately or combined, define a forced eviction:*

- A permanent or temporary removal from housing, land or both;*
- The removal is carried out against the will of the occupants, with or without the use of force;*
- It can be carried out without the provision of proper alternative housing and relocation, adequate compensation and/or access to productive land, when appropriate;*
- It is carried out without the possibility of challenging either the decision or the process of eviction, without due process and disregarding the State’s national and international obligations.<sup>2</sup>*

### International legal protection against evictions<sup>3</sup>

The right to adequate housing was recognized as part of the right to an adequate standard of living in the 1948 Universal Declaration of Human Rights, in the 1966 International Covenant on Economic, Social and Cultural Rights and with regard to the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development in the United Nations Convention on the Rights of the Child (UNCRC).<sup>4</sup>

<sup>1</sup> <https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>

<sup>2</sup> [UN HABITAT OHCHR Forced Evictions Fact Sheet No. 25/Rev.1, 2014](#)

<sup>3</sup> For additional information please see: [https://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf)

<sup>4</sup> Paragraph 3 of Article 27 which states thus, “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”



Libya is a signatory to the main human rights instruments, and also the African Charter on Human and Peoples' Rights. While it does not explicitly recognize the right to adequate housing it can be inferred from other rights. This right should be interpreted broadly as the right to live somewhere in security, peace and dignity. It has the dimension of a freedom and entitlement and includes protection against forced evictions and the arbitrary destruction and demolition of one's home. In case of justified evictions these must follow a due process to be deemed lawful and must not result in individuals becoming homeless or vulnerable to further human rights violations.

### **National legal framework**

Evictions and expropriation of property is prohibited under the Libyan Penal Code Article (436) Violation of the Inviolability of Residences and Article (287) Enforcement of Rights by Oneself. The same article however prohibits occupation of property without the landowners permission. The conflict added important challenges on the judicial system impacting on the enforcement of the legal framework. The rental market remains predominantly unregulated, with IDPs relying to a large extent on oral agreements. The lack of specific legislation regulating the right to asylum results in migration laws being applied to all non-Libyans whether or not they are asylum-seekers and refugees. Heavy penalties for those found guilty of irregular entry including detention, significantly limits the choices non-Libyan persons have when identifying housing options and entering into agreements with landlords, leaves them vulnerable to exploitation and prevents from seeking justice for violations suffered.

### **Current concerns in Libya**

While there is no systematic data on evictions trends in Libya, information obtained by Protection and SNFI sector indicates eviction as a growing concern. This affects both individual households whose coping capacities, including ability to cover rent, become overstretched and put them at risk of eviction as well as persons living in collective, informal sites, often unfinished or abandoned buildings. With a potential progress on the stabilization and peace processes, state affiliated agencies as well as private landowners show growing interest in reclaiming their properties and proceed with their redevelopment, while host communities put pressure (including cases of use of force) to reinstate provision of public services in schools or health facilities temporarily used as collective shelters.

This has been exemplified recently by different types of eviction threats such as eviction threat against 104 households living in half – constructed houses in Janzour by the private company owning the property, eviction threat resulting from inquiries of the Ministry of Sports in Benghazi about the confirmation of government ownership of the land on which the Sports City and LRC camps hosting 400 families are set up. Though not confirmed yet, is expected that the devaluation of the Libyan dinar will have adverse impact on the rental market.

Land expropriation affecting periurban or rural areas should also be seen as a critical concern, both in terms of HLP – conflict induced displacement and risk of intercommunal violence.

Aggravated protection risks including risk of secondary displacement with a particular gender dimension are a direct result of tenure insecurity. This includes exposure to violence and abuse, loss of assets, family separation particularly separation of children, impact on mental health and psychological well-being, disruption of existing community support networks and pressure to resort to hazardous coping strategies



to generate income. Children are particularly exposed to the risk of sexual and gender-based violence as families are destabilized and the attention of parents/caregivers is diverted from active parenting to worries about alternative housing for their families

Addressing eviction risks within the broader context of HLP rights protection is key to transitional justice in rebuilding social cohesion, preventing more violence and in ensuring access to durable solutions. Lack of preventative actions on evictions and protection of HLP rights has a quantifiable economic and social cost for duty bearers and affected groups. These deferred costs are related both to the need for provision of housing solutions at a later stage, the socio-economic recovery of affected groups as well as to the potential for socio-political destabilization of intercommunal conflicts sparking from unresolved HLP grievances.

### Key principles

**Lead role of authorities at national and municipal level:** Addressing eviction risks within broader HLP rights requires a long term engagement with the government and local authorities, who bear the primary responsibility to ensure protection of its citizens and persons under its jurisdiction, their access to adequate housing, transitional and durable solutions to displacement including ensuring physical, material and legal safety in line with the Guiding Principles on Internal Displacement and International Human Rights Law.

**Right to due process:** all HLP disputes should be solved in line with national legislations and international human rights law, providing all involved parties regardless of age, gender, ethnicity, nationality, religion, displacement situation or other diversity factors access to due process protecting their rights to housing, land and property and preventing forced and unlawful evictions.

**Duty bearers have the responsibility of ensuring that the family unit is preserved** and that evictions do not subject children to separation from their families. In effecting this, authorities in partnership with other concerned actors should put in place measures to prevent family separation that might be occasioned by evictions, including but not limited to identification and referral of separated children.

**Affected communities, both displaced (including IDPs, migrants, refugees and asylum seekers) and host communities need to be engaged in all aspects of the eviction prevention and mitigation efforts** considering the social cohesion dimension. Their specific needs, vulnerabilities and coping capacities should be considered when identifying alternative housing solutions to ensure that they are not exposed to additional harm or having their existing coping strategies disrupted. This applied also to relocation to alternative sites and/or collective shelters and should include the duty-bearers, traditional leaders, landowners and private sector.

**Access to unbiased information through transparent communication strategies** coordinated between duty-bearers, NGOs and other relevant stakeholders to ensure that persons at risk of eviction can make informed decisions and to mitigate the risk of rumors and conflicting messages used as push factors.

**Safe and dignified departures in case of lawful or unlawful evictions.** If an eviction cannot be prevented it must be carried out in accordance with relevant standards, also referred to as procedural protection and should apply to every person without discrimination. These must include but are not limited to:

- ✓ Opportunity for genuine consultation with those affected;
- ✓ Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- ✓ Information on the proposed eviction and, where applicable, on the alternative purpose for which the land or housing is to be used;



- ✓ Especially where groups of people are involved, government officials (or their representatives) to be present during an eviction;
- ✓ All persons carrying out the evictions to be properly identified;
- ✓ Not to take place in particularly bad weather, during periods of significant insecurity (shelling, armed clashes, riots) at night or during religious holidays;
- ✓ Provision of special assistance to individuals or groups with specific needs;
- ✓ Protection of property and possessions left behind involuntarily;<sup>5</sup>
- ✓ Provision of legal remedies and, where possible, provision of legal aid to persons who need to seek redress from the courts.

Evictions even when lawful and following due process must not result in risk of homelessness for affected persons.

### **Recommendations for actions needed to improve the protective environment for persons at risk of eviction**

The humanitarian actors must remain committed to supporting authorities- and not replacing them - in complying with their obligation to ensuring access to adequate housing and durable solutions, while respecting the principles of safety, dignity and voluntariness and advocating externally with the duty-bearers and internally with the humanitarian, development and peacebuilding actors for:

**Designating dedicated counterparts within the national government and municipal authorities as well as among the humanitarian-development-peacebuilding community for coordination on HLP** and specifically eviction issues affecting both Libyans and non – Libyans.

**Strengthened legal protection against evictions of all persons residing within Libya** through introduction and enforcement of relevant national legal provisions.

**Continued access to critical documents** authorities should ensure that persons affected by eviction maintain access to personal documents including renewal and changes to those, regardless of their new area of residence.

**Identification/mapping of low-cost/free of rent housing options for households at risk of evictions by the duty bearers, especially at municipality level should be prioritized** to ensure alternative options with strengthened tenure security (lease agreement) are available to persons at risk of evictions. Engagement with individual landlords/ladies should be pursued to identify incentives for the private sector to support low-cost housing and/or subsidized rental agreements.

**Clarity on availability of compensation for property damaged as a result of conflict in Libya provided by the duty-bearers** ensuring equal access to the set process for all conflict affected households, irrespective of gender age, religion, ethnicity, race, nationality or background.

**Context specific information counselling to children in the process of eviction should be provided** by duty bearers with required support of humanitarian actors. This should entail the provision of child-friendly information relating to the eviction process, anticipated relocation destination, access to school and other services in the new location, etcetera. As much as possible, such information counselling should be conducted by persons with knowledge in child interviewing.

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<sup>5</sup> On this point the CESCRC specifies that all individuals concerned have the right to adequate compensation for any property (personal and real) that is affected.



**Support community engagement and community-driven processes** to find alternative solutions for persons at risk of eviction with due consideration to social cohesion, conflict sensitivity and inclusion by stakeholders with well-established relations with the community.

**Addressing eviction risks sustainably through long term focus on supporting self-reliance of persons in need.** Supporting durable solutions needs multistakeholder engagement going beyond the scope of humanitarian response and inclusive of development and peacebuilding actors and address root causes of tenure insecurity including their legal and economic dimension. Emergency response capacity needs to be maintained to provide assistance mitigating protection risks stemming from tenure insecurity particularly for women, children, elderly people and persons with disabilities until transition to long term solutions can be ensured.

**Systematic and timely information on eviction risks and trends,** and residents' intentions collected in a coordinated manner and shared broadly with all stakeholders to trigger relevant preventive and responsive measures. Such information management system should capture both information about collective sites as well as individual households at risk.

**HLP focused legal assistance and counseling should be provided to individuals** to support their ability to negotiate favorable lease agreements and obtain relevant legal documentation, with particular focus on persons at risk of discrimination or marginalization i.e. women, persons without a recognized legal residency status, children, persons with disabilities, ethnic or religious minorities.

**Supporting inclusive conflict resolution mechanisms to address HLP issues** either through statutory or customary laws, leveraging existing community structures and approaches should be available to affected persons. Access to those should be irrespective of gender, age, religion, ethnicity, race, nationality, displacement situation or communal affiliation.

**Consideration to the impact of COVID-19:** The economic impact of COVID-19 puts additional strain on the ability of tenants to pay rent and the of landowners to accept flexible arrangements. At the same time access to adequate housing standards is critical to mitigate the exposure to COVID-19.