

Still at risk: forced evictions in urban Afghanistan

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The large number of displaced Afghans represents both a protection and an urban development challenge for the government and international community.

Some 630,000 Afghans are internally displaced due to conflict and the country still struggles with the reintegration of over 5.7 million former refugees. Up to 30% of Afghans currently live in urban settings, the majority in informal settlements in or around the major cities.¹ Rapid urban growth has been fuelled by the repatriation of refugees, the arrival of IDPs fleeing conflict and disasters, and economic migration from rural areas. As Afghanistan faces an unpredictable future, achieving durable solutions for IDPs and refugee returnees remains contingent upon the provision of adequate housing, including security of tenure. Lacking affordable housing options, vulnerable urban IDP and returnee families occupy private and public land without permission or without officially recognised land deeds. This exposes them to sub-standard living conditions and

constant risk of forced eviction as landowners or government authorities seek to remove them to build housing, roads or offices.

The Norwegian Refugee Council (NRC) with its Internal Displacement Monitoring Centre (IDMC) has reviewed 16 eviction cases from informal settlements in and around the cities where NRC has an established field presence: Kabul, Herat, Jalalabad, Mazar-e-Sharif, Maimana and Farah.² The cases (recorded between November 2010 and June 2013) involve IDP and returnee families occupying public or private land without permission or with unrecognised customary deeds.

Protection gaps and policy shortcomings

Approximately 9,600 families (57,400 individuals) in the sampled communities were estimated to have been affected in

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total, including 557 families subjected to forced evictions. Both recently arrived and longer-term residents are at risk.

There are numerous protection gaps at all stages of eviction, including: disregard for rights to consultation and participation; inadequate and widely varying notice periods and procedures; lack of effective legal remedies and compensation whether or not those evicted hold legal title to their homes or have other forms of tenure; and, above all, failure to put in place effective relocation options to prevent homelessness, and increased vulnerability after eviction.

Despite existing Constitutional guarantees against undue interference with home and property, the cases reveal serious gaps in national law. Afghanistan is party to binding international standards that require Afghanistan to refrain from, and to penalise, forced evictions. As a party to the International Covenant on Economic, Social and Cultural Rights,³ Afghanistan must ensure that all persons enjoy at least basic elements of the right to adequate housing, including “a degree of security of tenure which guarantees legal protection against forced eviction”. As a party to the International Covenant on Civil and Political Rights,⁴ the country is obliged to respect the right to privacy against unlawful or arbitrary interference with personal and family life, including home, irrespective of the (il)legality of the residence. The Convention on the Elimination of All Forms of Discrimination against Women⁵ and the Convention on the Rights of the Child⁶ (Afghanistan is a signatory to both) provide similar obligations with regard to women and children as the primary eviction-affected categories.

The pace of urbanisation necessitates new land governance systems – particularly the regulation of informal settlements which the authorities have been reluctant to acknowledge. This situation is compounded for the IDPs whose right to choose their place of settlement is seldom recognised by provincial and municipal

authorities. The displaced rarely wish to leave the towns and cities where they now live, and yet policymakers typically link long-term solutions to the return ‘home’. The primary relocation option presented to IDPs and returnees who face eviction is the government’s 2005 Land Allocation Scheme (LAS) but researchers found very limited evidence of sustainable relocation to LAS sites due to poor site selection, restrictive eligibility criteria and relatively high land fees.

Key government agencies as well as municipal authorities have seen solutions for the urban displaced as the responsibility of the Ministry of Refugees and Repatriation alone. Responses to the long-term needs of the urban displaced have therefore not been well coordinated across government. There are welcome signs, however, that official attitudes are shifting. In 2012, the Afghanistan Protection Cluster’s Housing, Land and Property Task Force drafted Guidelines for Mitigating Harm and Suffering in Situations of Forced Evictions,⁷ and a landmark National Policy on Internal Displacement (IDP Policy), adopted by the Afghan Cabinet in November 2013, has since incorporated these Guidelines.

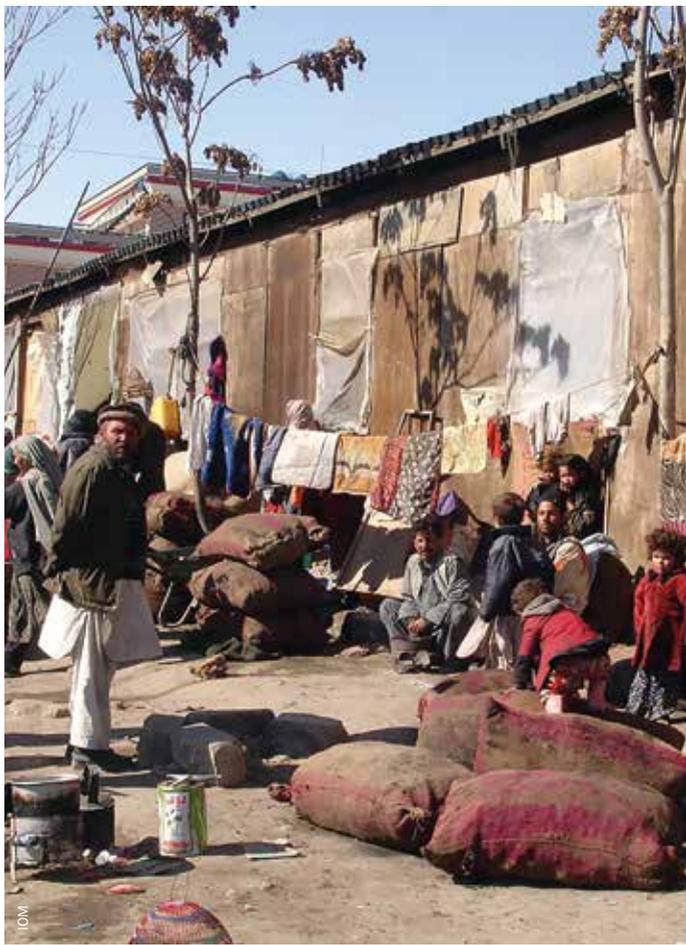
The IDP Policy recognises the right of IDPs and refugee returnees to adequate housing in urban areas; contains precise provisions related to forced evictions and security of tenure; recognises the growth of informal settlements; recognises IDPs’ right under the Afghan Constitution to settle in any part of the country; and acknowledges the responsibility of national, provincial, district and municipal authorities to ensure IDPs and refugee returnees in informal settlements and other areas are not subject to, or threatened with, forced evictions.

The government’s 2013 draft Policy on Upgrading of Informal Settlements also provides for protection from forced eviction, including the introduction of new legislation. However, submission of the policy to cabinet was still pending at the end of March 2014.

Recommendations

Where public or private land and property are occupied without permission, forced evictions are not inevitable. The Government of Afghanistan should, with international support:

- take immediate steps to implement the IDP Policy, through developing national and provincial action plans on durable solutions and improved profiling of IDPs' specific needs in relation to urban housing, land and property
- introduce comprehensive, effective and coherent laws, policies and plans to prevent and penalise forced evictions of urban IDPs, refugee returnees and the broader urban poor: These would need to clarify the conditions and procedures under which evictions of settlers occupying public and private land in urban areas can be carried out and ensure the legality, necessity and proportionality of such evictions; this should include prohibiting the use of excessive force during evictions, including the destruction of housing as a form of pressure. Adequate relocation/rehousing options and compensation mechanisms (plus the possibility for appeal) are essential.
- institutionalise genuine consultation and participation of affected communities, together with humanitarian and development agencies: All affected individuals, including women and the elderly, need to be kept informed throughout all eviction phases. Where people appeal against eviction notices, eviction should be suspended until the decision has been officially reviewed.



IDP camp in Kabul.

- introduce measures to provide legal security of tenure to vulnerable urban IDPs, returnees and others with no legal access to land and housing: Presidential Decree 104 needs to be revised to better address beneficiaries' needs, focusing on adequate site selection, reduction or exclusion of land fees, and broader eligibility criteria inclusive of IDPs and refugee returnees living outside their province of origin. In the meantime, there should be a moratorium on forced evictions and an expansion of programmes to upgrade and legalise informal settlements.

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- swiftly adopt the Policy on Upgrading of Informal Settlements and take immediate measures towards implementation.

International humanitarian and development actors and donors should:

- fund and otherwise support implementation of the IDP Policy, including IDP profiling activities to deepen understanding of displacement-specific needs and improve responses
- ensure the UN Development Assistance Framework 2015-2019 adequately focuses on durable solutions for IDPs and refugee returnees, including realisation of the right to adequate housing in urban areas through community-based programmes
- implement the 2011 UN Secretary General's Framework on Ending Displacement in the Aftermath of Conflict, equally addressing IDPs and refugee returnees
- encourage the joint participation of both international development and humanitarian actors in coordination mechanisms addressing internal displacement in order to ensure a comprehensive approach

- improve capacity of protection actors for preventative monitoring and reporting of evictions and relocations across the country
- ensure consistent funding for capacity-building and awareness-raising activities on forced evictions and applicable (international) legal standards for all stakeholders.

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2. See NRC/IDMC (Feb 2014) *Still at risk: Security of tenure and the forced eviction of IDPs and refugee returnees in urban Afghanistan* www.nrc.no/arch/_img/9689800.pdf
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