



FEDERAL GOVERNMENT OF SOMALIA

NATIONAL EVICTION GUIDELINES

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The Council of Ministers of the Federal Government of Somalia adopts the following Guidelines to be known as “National Eviction Guidelines, 2019”

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PREAMBLE

Whereas it is the responsibility of the State as required by Article 12(2) of the Provisional Constitution of the Federal Republic of Somalia not only to ensure that it does not violate rights through its actions, but also to take reasonable steps to protect the rights of the people from abuse by others;

Whereas Article 33 of the Provisional Constitution guarantees the right of every person to administrative decisions that are lawful, reasonable and conducted in a procedurally fair manner;

Whereas Article 39 of the Provisional Constitution (1) mandates the State to ensure that the law provides for adequate procedures for redress of violations of human rights; (2) mandates the State to guarantee Redress of violations of human rights in courts that are readily accessible by the people on an equal basis; and (3) provides that a person or organization may go to court to protect the rights of others who are unable to do so for themselves;

Considering the compelling need to protect vulnerable communities from forcible evictions;

Recognising that the practice of forced evictions constitutes a gross violation of human rights, and directly or indirectly contravenes the following international instruments ratified by the Federal Republic of Somalia:

- (a) the right of everyone to adequate housing as guaranteed by Article 25 of the Universal Declaration of Human Rights;
- (b) the right to life and the right to security of the person as guaranteed by Articles 6(1) and 9(1) of the International Covenant on Civil and Political Rights;
- (c) the right to an adequate standard of living, including the right to adequate housing, food, water and sanitation as guaranteed by Article 11 of the International Covenant on Economic, Social and Cultural Rights, and the related resolutions of the Human Rights Council;
- (d) the right to an effective remedy as guaranteed by Articles 2, 3 and 26 of the International Covenant on Civil and Political Rights;
- (e) Principle 6 of the Guiding Principles on Internal Displacement, which prohibits arbitrary displacement of internally displaced persons from their homes or places of habitual residence;
- (f) Article 11(4) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), regarding the obligation

of state parties to establish appropriate mechanisms providing for simplified procedures where necessary for resolving disputes relating to the property of internally displaced persons;

- (g) Article 27(3) of the Convention on the Rights of the Child, which mandates State Parties, in accordance with national conditions and within their means, to (i) take appropriate measures to assist parents and other persons responsible for the child; (ii) implement this right; and (ii) in situations of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing;

Whereas the UN Committee on Economic, Social and Cultural Right has interpreted the content of the right to adequate housing (Article 11.1) in its general comments 4 and 7; and

Whereas Article 99 of the Provisional Constitution empowers the Council of Ministers to, among other things, (a) formulate the overall Government policy and implement it; and (b) approve and implement administrative regulations in accordance with the law –

Now, the Council of Ministers adopts the following Guidelines:

PART I – PRELIMINARY PROVISIONS

1. Definitions

In these Guidelines, unless the context otherwise requires –

“competent authority” means a state or non-state agency, administrative or other executive body having authority over or in connection with the property or land to which an eviction order relates.

“eviction decision” means the decision of the Eviction Committee to implement an eviction order;

“eviction notice” refers to the notice given in writing by or on behalf of a landlord or competent authority requiring the occupiers or tenants of the premises to which the notice relates to vacate and surrender vacant possession of the premises to which the notice relates within such time as specified in the notice;

“eviction order” means an order of a court of competent jurisdiction given in favour of a landlord or competent authority authorising the landlord or competent authority to recover vacant possession of the land or premises to which the order relates by physical removal and eviction of the individuals, groups of persons or communities in occupation thereof in contravention of an eviction notice duly given to them in accordance with the Guidelines;

“forced eviction” means “... the permanent or temporary removal against their will of individuals, families 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,” but does not include “... evictions carried out by force in accordance with the law and in conformity with the provisions of the International covenants on Human Rights;”¹

“internally displaced persons” means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised border of the Federal Republic of Somalia;

¹ The International Convention on Economic, Social and Cultural Rights, 1967: Committee on Economic, Social and Cultural Rights, General Comment No. 7 on “Forced Evictions, the Right to Adequate Housing”, 1997.

2. Scope and Nature

2.1 These Guidelines make provision for the responsibility of the Federal Government of the Republic of Somalia to refrain from, and protect against, arbitrary and forced eviction of occupiers of public and private properties, from homes, encampments and lands, to protect the human right to adequate housing and other related human rights.

2.2 The Guidelines address the human rights implications of evictions in urban and rural areas.

2.3 The Guidelines provide guidance on measures and procedures to be adopted and observed to ensure that forced evictions are not undertaken in contravention of existing international human rights standards, the Provisional Constitution of the Federal Republic of Somalia and other written laws.

2.4 These Guidelines provide a practical tool for the development of policies, legislation, administrative procedures and preventive measures to ensure that forced evictions do not take place, and to provide effective remedies to those whose human rights are violated in consequence of failure on the part of the State to provide protection.

PART II – CONDITIONS AND PROCEDURE FOR LAWFUL EVICTION

3. Conditions for Lawful Eviction

3.1 Evictions may be carried out only in exceptional and unavoidable circumstances, and resorted to only where no other alternative or practical measures of intervention exist.

3.2 Such exceptional circumstances exist where –

- (a) there is legitimate and compelling need to reclaim public land or buildings occupied by IDPs;
- (b) it is necessary to uphold and restore proprietary rights, or lawful claims over land, to the legitimate owners; or
- (c) any overriding public interest.

3.3 In such exceptional circumstances, evictions may be lawful if they are –

- (a) carried out in accordance with the Constitution, other applicable national laws and the international human rights standards and principles cited in these Guidelines;
- (b) undertaken for legitimate purposes justified by compelling and overriding public interests in the particular case;
- (c) undertaken on application by, and in favour of, a legitimate private landowner or State agency in accordance with the eviction procedures prescribed in Part III; and
- (d) conducted as a measure of last resort.

4. Safeguards in Undertaking Eviction

All evictions shall be subject to the following safeguards:

- (a) evictions shall not render individuals, groups of persons or communities homeless or vulner-

able to violation of their human rights guaranteed under the Constitution, other applicable national laws and international human rights instruments; and

(b) appropriate measures shall be taken to ensure that adequate alternative shelter is made available to those unable to provide for themselves and, in particular, women, children, persons with disabilities or chronic illness, and the elderly;

PART III – PROCEDURE FOR EVICTION

5. Duty to Inform and Notify Persons Affected

5.1. Prior to an eviction, individuals, groups of persons and communities affected by the imminent eviction shall be kept informed and consulted throughout the process.

5.2 In planning or undertaking any eviction, the special needs and interests of vulnerable and marginalised groups, including women, children, persons with disabilities or chronic illness, and the elderly, shall be taken into account.

6. Duty to Notify and Form of Notice

6.1 Before any eviction is carried out, the landlord or public authority concerned shall give reasonable notice of eviction of not less than sixty (60) days to all persons directly or indirectly affected by the proposed eviction and, in particular, to all vulnerable and marginalised groups specified in clause 5.2.

6.2 The eviction notice shall be in writing in the prescribed form clearly setting out, in a language the affected persons can understand –

- (a) the particulars of the property or land in respect of which the occupiers are required to vacate prior to the date fixed for eviction;
- (b) the specific reasons for eviction; and
- (c) the date by which they are required to surrender vacant possession of the property or land.

6.3 In addition to the matters specified in clause 6.2, the notice shall inform the affected persons of all legal remedies available to them either in objection to, or on appeal against, the decision to evict.

6.4 The eviction notice shall be communicated to the tenants or occupiers in daytime, and shall be conspicuously displayed in such public places as are freely accessible to the public and, in particular, to the persons likely to be directly or indirectly affected by the eviction.

6.5 In the case of IDPs, the landlord or his or her agent, or the relevant public authorities (as the case may be), shall ensure that the eviction notice is given to the persons at the risk of eviction, and any information relating to the impending eviction communicated by camp managers or any person in charge of the camp or settlement shall not constitute notice within the meaning of these Guidelines.

7. Right to Fair Administrative Action, Judicial Review or Appeal

7.1 Every person directly or indirectly affected by a proposed eviction has –

- (a) the right to expeditious, efficient, lawful, reasonable and procedurally fair administrative action;
- (b) the right to be given written reasons for the proposed eviction; and
- (c) the right to have the lawfulness of the eviction reviewed by a competent court of first instance.

7.2 Where a person or group of persons assert their right pursuant to clause 7.1 (c), an eviction notice issued under these Guidelines shall stand suspended until the legality of the decision is determined by the relevant judicial authority.

7.3 No person, group of persons or community may be evicted from any private or public property without a court order sanctioning the eviction, and any person or authority who undertakes an eviction without a valid court order is guilty of an offence punishable at law.

7.4 An eviction order shall contain a detailed instruction on the right to appeal, clearly indicating the federal government level or federal member states/ Benadir Regional Administration level courts to which appeals may lie, and which shall hereafter be specified by law in accordance with Article 105(2) of the Provisional Constitution.

7.5 A court decision upholding the decision to evict shall specify the date the tenants or occupiers are required to vacate the premises, such date not being less than sixty (60) days from the date the court order is given, or the outcome of the appeal is communicated to them.

8. Right to Legal Aid and Information

8.1 Persons or groups of persons who are likely to be affected either directly or indirectly by a proposed eviction have the right to legal aid and information to facilitate –

- (a) the realisation of their right to judicial review and administrative action; and
- (b) appeal to the judicial authorities with a view to challenge the reasons and procedure for such eviction.

8.2 It is the duty of the administrative or other competent authorities to provide to all affected persons timely and accurate information confirming the date of eviction and the applicable procedure, and the decision as to time and procedure shall be made in close consultation with the affected persons, groups of persons or community and, in the case of IDPs, the NCRI or the Federal Member State and BRA, Commission for Refugees and IDPs or other relevant institutions shall be consulted.

9. Establishment of the Eviction Committee

9.1 There is established a committee to be known as “the Eviction Committee,” at the federal level which shall be responsible for the implementation of eviction orders given under these Guidelines, and which shall be chaired by a representative of the Ministry of Interior, Federal Affairs and Reconciliation.

9.2 The Committee shall be comprised of one representative each of the following institutions, nominated by the respective institutions and appointed by the Prime Minister:

- (a) the Ministry of Interior, Federal Affairs and Reconciliation;
- (b) the Ministry of Public Works, Reconstruction and Housing;

- (c) the Ministry of Women and Human Rights Development;
- (d) the Ministry of Health;
- (e) the Ministry of Labour and Social Affairs;
- (f) the Ministry of Education;
- (g) the Police Service;
- (h) one representative of civil society organisations; and

In so far as is reasonably practicable in making the appointments, two or more of the members of the Committee shall be women and persons with disabilities.

9.3 Where evictions concern IDP camps or other community settlements, the eviction decision to implement the eviction order will be issued by the Committee constituted in accordance with clause 9.2.

9.4 Where the eviction concerns a Federal Member State (FMS) or the Benadir Regional Administration (BRA), the eviction decision shall be made by the eviction committee led and chaired by the ministry of interior of that Federal Member State (FMS) or any other ministry or institution of that FMS, or the BRA designated department to issue eviction decisions. The FMS eviction committee will comprise of the same ministries at FMS level as the institutions mentioned in clause 9.2.

9.5 Where the eviction affects IDPs, the authorities mentioned in clauses 9.2, and 9.4 shall consult the National Commission for Refugees and IDPs (NCRI) and the Ministry of Humanitarian and Disaster Management, or FMS Commissions for Refugees and IDPs, or other institutions responsible for IDPs before making an eviction decision.

9.6 Federal Member States and the Benadir Regional Administration may establish eviction committees within their jurisdiction and at lower levels of administration.

9.7 The authorities mentioned in clauses 9.2, and 9.4 shall appoint an officer from their respective establishments who will be personally responsible and in charge of supervising the eviction procedures as prescribed in these Guidelines.

10. Procedure Before Eviction

10.1 Before taking any steps to enforce an eviction order, the eviction committee shall, in consultation with all persons affected by the order, explore all possible alternatives to secure vacant possession of the property or land without the use of force.

10.2 In addition to the obligation prescribed in clause 10.1, the committee shall adopt appropriate measures required to be taken by various government institutions to protect the rights of the persons, groups of persons or communities affected by the eviction, and in accordance with Parts II and III. Where the eviction affects IDPs, the Committee shall, prior to eviction and in consultation with IDPs and local communities, identify alternative adequate shelter, having regard to the special needs of women, children, persons with disabilities and the elderly.

10.3 The enforcement of an eviction order without an eviction decision of the eviction committee made in accordance with these guidelines is unlawful.

11. Procedure During Eviction

11.1 During an eviction, the authorities specified in clauses 9.2, and 9.4 of Part III shall be present during the eviction, and all persons carrying out the eviction shall be properly and clearly identified prior to and during the event.

11.2 Evictions shall not be carried out in a manner that violates the personal dignity, the fundamental right to life and the basic right to security, of the persons thereby affected.

11.3 Evictions shall not be carried out in bad weather, during night time, festivals or religious holidays, or during or immediately prior to school examinations.

11.4 Police officers and other law enforcement officers present during the evictions shall refrain

from using force, except such limited force as may be strictly necessary to carry out the eviction, and shall protect the affected persons from the use of force by others.

11.5 All police officers or other officers present during the eviction shall be identifiable by clearly readable name tags conspicuously displayed on their outer garments.

11.6 It is an offence punishable at law to destroy or demolish habitations as a means of forced eviction without giving the affected persons adequate time to retrieve, secure and relocate their movable property or personal effects.

11.7 The persons carrying out an eviction shall take into consideration that among the affected persons, groups of persons or communities might be persons with medical mobility restrictions or disabilities.

12. Procedure After Eviction

Individuals and other persons affected by eviction have the right to an effective remedy and legal aid to seek redress. In the case of IDPs, they shall be assisted and guided by the National Commission for Refugees and IDPs (NCRI) towards the realisation of the rights protected by these Guidelines consistent with Article 5(1) of the Establishment Law of the NCRI (Law No.2 of 2016).

PART IV – GENERAL AND MISCELLANEOUS PROVISIONS

13.1 These guidelines shall come into force upon the approval of the Council of Ministers of the Federal Government of Somalia.

13.2 These Guidelines may be reviewed, amended or modified from time to time by the Council of Ministers of the Federal Government of Somalia if and as need arises.

DATED this _____ day of _____ 2019

SIGNED: _____

The Prime Minister of the Federal Government of Somalia

