

## Guidance Note:

# Mitigation of risks of eviction for refugees and migrants from Venezuela

## BACKGROUND<sup>1</sup>

The implementation of quarantine measures in the context of COVID-19 has had an impact in the lives of Venezuelan refugees and migrants across the region. This has affected their access to livelihoods, basic services, food security and shelter/housing.

According to the joint needs assessment carried out by the Colombian Interagency Coordination Platform (GIFMM)<sup>2</sup>, **53% of the households interviewed needed support to pay their rent** and 45% manifested their need to access livelihoods or jobs. Also, 83% live in a house/single room and in relation to their income before COVID; 91% used to have a paid work, in the current context, only 20% still have a job (78% decrease). Moreover, 4% expressed they had no type of income before COVID; currently the figure goes up to 40%.

In line with the compliance of the isolation measures, 48% of the household said to have difficulties to do so, **10% pointed out the link with being evicted**. On the other side, a study conducted by the Danish Refugee Council (DRC)<sup>3</sup> in Colombia, showed high levels of overcrowding amongst Venezuelan refugees and migrants; an average of 5 to 9 people per household (these figures vary depending on the city).

In the case of Ecuador and in the rapid needs assessment conducted by the GTRM (Ecuador's National Coordination Platform) **43% of the Venezuelan refugees and migrants interviewed expressed that shelter was their main concern**.

The informality over land ownership (the type of agreement established by the tenant and the landlord), the lack of affordability, the overcrowding conditions, the poor infrastructure, the increase in xenophobic and discriminatory expressions, the lack of information regarding the due process and the fear to seek orientation from the institutions due to irregular migratory status, have resulted in conditions that affect the right to housing in the Region despite the efforts of some States to address this matter through legal initiatives, given the sanitary measures and the current context, to suspend any kind of eviction.

The control Agencies that oversee, promote and safeguard human rights (*Personería*, The Ombudsman Office, The Prosecutors Office) have undertaken, in several countries of the region, actions to mitigate the risk of eviction by asking people to report incidents and urging the States to guarantee the protection of this right particularly for cases at high risk: refugees and migrants living in the streets and those in transit that have higher chances of being exposed to COVID-19.

The impossibility to carry out regular economic activities in host countries (in most of the cases informal economic activities) has had an impact in the capacity of the population to meet their basic needs, including paying their rent; this has triggered and accelerated return processes of Venezuelans to their country despite the sanitary measures to avoid the propagation of the virus in accordance to WHO/PAHO guidelines<sup>4</sup>.

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<sup>1</sup> Guidance note developed by the Regional Protection Sector with inputs from the Regional Shelter Sector.

<sup>2</sup> <https://r4v.info/es/documents/download/76031>

<sup>3</sup> <https://r4v.info/es/documents/details/76051>

<sup>4</sup> PAHO, WHO, [Considerations on the adjustments of social distancing and travel related measures](#).

Despite efforts made by different countries in the region to mitigate, through normative developments, the effects of evictions, *de-facto* actions led by tenants, lack of compliance/knowledge of imposed regulations adding to the absence of adequate information and follow up/monitoring, represent protection challenges regarding adequate housing of refugees and migrants from Venezuela. In the case of evictions from private property, humanitarian/protection organizations did not have previous contacts with competent authorities (e.j. Police Inspections) in order to guarantee prevention actions to avoid evictions and its impacts.

## CHARACTERISTICS OF THE HOUSING SITUATION

Although there is not yet a detailed regional analysis of the conditions of tenure of the refugee and migrant population of Venezuela, some typologies have been identified from the national protection sectors:

- i) Leasing contracts
- ii) Verbal agreements in temporary accommodation processes
- iii) Housing scheme through accommodation systems daily payment (“*paga-diario*”)<sup>5</sup>
- iv) Accommodation in hotels or guesthouses
- v) Family or friends' homes/rooms
- vi) Shelters/Temporary accommodation, including public goods
- vii) Occupation of plots of land in squatter settlements<sup>6</sup>
- viii) In Street situation/homeless that have improvised accommodation in public places (bridges, bus terminals, parks)

## INTERNATIONAL STANDARDS<sup>7</sup>

1. The obligation of States to **refrain from forced evictions and to protect against evictions from homes** and land derives from several international legal instruments that protect the human right to adequate housing and other related human rights.
2. The obligation of States to refrain from removing, temporarily or permanently, against the will of individuals, families or communities from the homes or land they occupy, **without the provision of, and access to, legal or other alternatives for protection**. (Committee on Economic, Social and Cultural Rights, General Comment No.7 (1997) on the right to adequate housing.
3. Forced evictions are a distinct phenomenon under international law and are often linked to **the lack of legally secure tenure**, which is an essential element of the right to adequate housing as reflected in the constitutions of States in the region.

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<sup>5</sup> In some countries it has been reported that this rental scheme is administered by armed/criminal groups, a situation that raises the level of risk of the population and further limits their ability to turn to institutional bodies for protection/justice.

<sup>6</sup> In some countries in the region, illegal settlements are under the control of armed/delinquent groups and/or lot resale cartels (*lotadores*), a situation that increases the level of risk for the tenant.

<sup>7</sup> Elements drawn from the Basic Principles and Guidelines on Development-Generated Evictions and Displacement, A/HRC/4/18 disponible en: [https://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_sp.pdf](https://www.ohchr.org/Documents/Issues/Housing/Guidelines_sp.pdf)

4. Forced **evictions intensify inequality, social conflict, segregation and ghettoization**, which invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous peoples.
5. Displacements resulting (...) from public emergencies **often occur without regard for human rights and existing humanitarian standards**, the right to adequate housing.
6. Under international human rights law, **everyone has the right to adequate housing as a component of the right to an adequate standard of living**. The right to adequate housing includes, inter alia, the right to protection against arbitrary or unlawful interference with privacy, family, home and the right to legal security of tenure.
7. Under international law, States must ensure such protection against forced evictions and the human right to adequate housing and security of holding, which are guaranteed **without discrimination on the basis of race, colour, sex, language, religion, political opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth and other conditions**.
8. States must ensure that any person claiming that their right to protection from forced eviction has been violated or is under threat **is provided with effective legal or other appropriate resources** to exercise the right to due process and access to alternative housing.
9. States **must refrain from introducing any deliberately retrogressive measures regarding protection against forced evictions**. And they must adopt legislative and policy measures that prohibit the carrying out of evictions that are not in accordance with their international human rights obligations.
10. States **must ensure that adequate and effective legal and other resources** are available to persons who are subject to or remain vulnerable to forced evictions or defend them against evictions.

#### ASPECTS RELATED TO THE PROHIBITION OF EVICTIONS IN THE CONTEXT OF COVID-19

*Guidance note by the Special Rapporteur on the right to adequate housing on the prohibition of evictions in the context of COVID-19<sup>8</sup>*

11. Not only are evictions **inconsistent with the "stay at home" policy under COVID-19**; forced evictions are violations of international human rights law, including the right to housing, as well as any eviction that results in homelessness.
12. The right to adequate housing is **non-derogable in times of emergency**.
13. States should undertake a **comprehensive review of relevant strategies, policies and programmes in order to ensure their compatibility with international human rights standards**. (...) Such a review should seek to eliminate provisions that contribute to

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<sup>8</sup>[https://www.ohchr.org/Documents/Issues/Housing/SR\\_housing\\_COVID-19\\_guidance\\_evictions.pdf](https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_evictions.pdf)

- maintaining or exacerbating existing inequalities that negatively affect women and marginalized and vulnerable groups.
14. Governments should take special measures to ensure that policies and programs are not formulated and implemented in a discriminatory manner, and **do not further marginalize people living in poverty**.
  15. States should give priority to the study of strategies that reduce displacement. **Comprehensive and holistic impact assessments** should be carried out (...) These should include the exploration of alternatives and strategies to mitigate harm.
  16. Evictions have a **multidimensional impact** and must be addressed from different humanitarian and development sectors. It is necessary not only to address shelter-related needs, or affordability through cash transfer support. Complementary approaches through protection, security of tenure (housing, land and property), social integration and livelihoods are some of the necessary complementary sectors.
  17. Impact assessment **should consider the different effects of forced evictions on women, children, older persons** and marginalized sectors of society or those with high levels of vulnerability (pregnant women, nursing mothers, persons with chronic/critical illnesses).
  18. States should ensure **the dissemination of adequate information** on human rights and laws and policies related to the protection against forced evictions. Special attention should be paid to the dissemination of timely and appropriate information to groups particularly vulnerable to evictions, through culturally appropriate channels and methods.

## REGIONAL GOOD PRACTICES

### *In regulatory and public policy development<sup>9</sup>*

Within the framework of the declaration of states of emergency, the countries of the region have made efforts to design normative or public policy instruments to protect the population from forced evictions. These developments include, in most cases, the following provisions:

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<sup>9</sup> Available in the mapping of good public policy practices developed by the Regional Protection Sector:

<https://app.powerbi.com/view?r=eyJrIjoiMWI3OWQ4NmQtM2M3MS00NjM1LWWEwYjQtOWU3MDExMGFhZWJlIiwidCI6IjE1ODgyNjJkLTZmIiwidm91dCI6IjZDZILWJjZTQ5YzhINjE4NiIsImMiOiJh9>

References by country:

Panama. Decree 145 May 1th, 2020

[https://www.gacetaoficial.gob.pa/pdfTemp/29015/GacetaNo\\_29015\\_20200501.pdf](https://www.gacetaoficial.gob.pa/pdfTemp/29015/GacetaNo_29015_20200501.pdf)

Colombia. Decree 579 April 15, 2020

<https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20579%20DEL%2015%20DE%20ABRIL%20DE%202020.pdf>

Bogota. Decree 093 March 25, 2020

<https://bogota.gov.co/sites/default/files/inline-files/decreto-093-bogota-colombia.pdf>

Argentina. Decree 320 March 29, 2020

<https://www.boletinoficial.gob.ar/detalleAviso/primera/227247/20200329>

Chile and Peru: have bills in process.

<https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=13915&prmBOLETIN=13373-03>

[Ecuador. Ley Humanitaria. 15 de mayo de 2020](#)

[https://www.aquaintel.com.ec/public/reports/Ley\\_Organica\\_de\\_Apoyo\\_Humanitario\\_anti\\_Covid\\_19.pdf](https://www.aquaintel.com.ec/public/reports/Ley_Organica_de_Apoyo_Humanitario_anti_Covid_19.pdf)

1. **Suspension of eviction actions:** arranged by judicial or administrative authority. In some cases (ex. Colombia) leasing contracts with a daily, weekly or less than a month term are included, a figure that allows the direct impact of protection to refugees and migrants from Venezuela. Other developments (ex. Panama), in addition to housing, including commercial
2. **Extension of leasing contracts:** those contracts that expire during the time of declaration of the emergency or the Decree of suspension of launching and eviction measures will be extended maintaining the contractual conditions for the term of the Decree issued (Panama). Notwithstanding those agreed between the parties (Colombia)
3. **Freezing of rental prices:** during the term of the measurements of the agreed between the parties (Argentina) or under the existence laws on the matter (Colombia). In some countries these measures include the freezing of the clauses of increase, penalty for unilateral termination of the contract and those related to interest for late payment (Panama).
4. **Special stipulations regarding the payment of rental fees:** the parties must reach an agreement on the special conditions for payment corresponding to the term of the decrees issued. Those agreement cannot include default interest, penalties, compensation or sanctions (Colombia). Further, the agreements, will have a duration of up to two years and will remain as long as the lessee does not break the agreement (Panama).
5. **Bail subsistence:** will be applicable until September 30 of the current year, as well as the grounds for extinction provided for in the Civil and Commercial Code of the Nation (Argentina).
6. **Reached contracts:** the established provisions apply to the following types of contract: i) properties intended for single, rural or urban, housing. ii) rooms for family or personal housing in pensions, hotels or other similar accommodation.
7. **Mandatory mediation:** establishment of previous and mandatory mediation for free or at a very low cost, for de disputes related to the application of the Decree (Argentina).
8. **Sanctions to lessors:** for those who through methods or actions suspend the supply of gas, water, electricity and other services, as pressure measurements to the lessee to vacate the property or who violate the provisions contained in the Decree (Panama).
9. **Leasing subsidies:** up to six months, with the presentation of the lessor's identity document and the contract (Trinidad and Tobago).
10. **Tax incentives:** under the leadership of the Office of the Ombudsman, an ordinance model is being developed to ser with the City Halls so that incentives are established for tenants (Ecuador).
11. **No increase in basic services:** during the six months following the effective date of this Law (Humanitarian Law, 05/15/20), the increase in values, rates or basic services rates is prohibited, including those telecommunications services, whether these are provided directly by public institutions, by delegates or private ones (Ecuador)

#### ***In training and formation***

- **In Ecuador** and in coordination with the Superior Council of judiciary, Judges of Peace are being trained in eviction regulatory processes in order to guarantee due process, compliance with national provisions and advice to the refugee and migrant population of Venezuela.

#### ***In legal actions***

- **In Colombia**, through the National Network of Legal Clinics in Colombia (21 universities), evicted people are being supported through a legal action that seeks to protect the rights to decent life, health, personal security and housing, within the framework of eviction processes contrary to due process and without the accompaniment of the administrative or judicial authority. Likewise, and from this same Network of universities, “Derechos de Petición” were presented requesting the competent institutions information on plans, programs and measures to prevent arbitrary evictions, to monitor compliance with the decrees that prohibit them and sanctions for violators. The information system of the University Network allows monitoring and enforcement of eviction cases that have been accompanied by the Legal Clinics and the institutional response to the legal actions presented for the protection of their rights.
- **In Ecuador**, the analysis of cases for the presentation of precautionary measures, arguing for the protection of the right to security, public health, and relatedly, life and health, in the context of the pandemic.
- **In Ecuador**, the Cantonal Boards for the Protection of Rights in various municipalities have issued measures (e.g.: Administrative Resolution Act) prohibiting evictions of families with children, pregnant women, and older adults during the health emergency; or exhorting landlords to avoid evictions. These actions are the first to occur within the framework of the rights protection system and support the interventions of the Ombudsman and the Police to prevent evictions.
- **In Ecuador**, the Ombudsman's Office officially ruled on the effects of rights caused by evictions and urged landlords to seek agreements with their tenants.

***In community processes:***

- **In Colombia**, some organizations are developing training in mediation and conflict resolution processes as the first instance (mentioned in the regulatory developments) in the search for agreements between lessor and lessee in the COVID-19 context.
- **In Ecuador**, the Ombudsman and the Public Defender carry out mediation processes between landlord and tenant to avoid evictions. The signing of transactional acts is foreseen to be executed through the courts, in the event of non-compliance, can be executed through the courts.
- **In Colombia**, indigenous authorities such as *Los Pastos* in the department of Nariño and within the framework of their special jurisdiction, are developing measures aimed at those who live within their reserves and cannot fulfill their contractual commitments.

***In temporary accommodation alternatives<sup>10</sup>:***

- **In Colombia, Perú, Ecuador, Brazil and Chile**, existing temporary accommodation programs have been reinforced while new solutions have been developed. Actions include:
  - Implementation of cash transfer programs to the beneficiaries so that they can cover their accommodation expenses, among others.
  - Implementation of a rental subsidy program in alliance with municipalities in the region.

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<sup>10</sup> Information provided by the Regional Housing Sector

- Subsidy in hotel rooms as an immediate response for person of concern in the street.
- Refurbishment and adaptation of existing shelters to Covid-19 regulations and mitigation measures in order to guarantee that they can continue to operate or even reopen their doors, closed at the beginning of the crisis.
- Creation of new emergency temporary accommodation solutions, these include the adaptation of existing buildings such as industrial warehouses and schools in collective centers, and as a last resort the creation of emergency camps, both in urban centers, and on the border.

## **FINAL CONSIDERATIONS:**

### ***In advocacy processes with States (national/local levels) and in coherence with the recommendations of the Special Rapporteur:***

- Guarantee enough resources to monitor compliance with the suspension of evictions, as well as the monitoring and prevention of illegal evictions.
- Prohibit “re-densification” actions that include the eviction of large numbers of people from temporary accommodation (e.g., schools, coliseums, or other public property).
- Implement actions to promote security of tenure (formalization of contracts).
- Promote oversight actions at the community level and monitoring by control agencies.
- Ensure access to justice for those individuals, families or communities that have experienced an eviction or have special protection needs and are seeking effective relief for their situation.
- Guarantee informed and consultation processes in cases where, due to a risk situation, in compliance with measures COVID-19 or due to a natural disaster, the imminent eviction of spaces for public use is stipulated by providing, in coordination with humanitarian organizations and protection, adequate conditions and alternative accommodation.
- Promote training processes for local authorities that can act in eviction processes, so that they know the minimum protection against forced evictions, as well as the regulations applicable during quarantine (including the Police and other authorities involved in eviction processes).

### ***In communication with communities:***

- Develop consultation processes with those affected in situations in which relocation is necessary for security reasons or related to the mandatory isolation measures of COVID-19.
- Identify situations where there could be an additional risk for the population, inasmuch as eviction processes could also be mediated by the presence and coercion of armed/criminal groups.
- Disseminate the content of existing legal tools, as well as the routes to which refugees and migrants can go if their right to housing is being violated (Access to due process).
- Mass dissemination (community radio stations) of information on existing accommodation alternatives, contact details, criteria and availability, as well as existing rights and the right to resort to institutional support in order to guarantee due process.

- Promote, in coordination with Venezuelan organizations, education and training processes<sup>11</sup> related to the right to housing, the content of legal provisions related to the suspension of evictions, the role of national and local authorities in protecting / monitoring compliance with these rights and tools for mediation and conflict resolution.

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<sup>11</sup> Virtually and in compliance with the measures COVID-19