
Appendix E

Housing, land and property (HLP) at a glance

This appendix gives you a brief overview over:

- ▶ what the HLP stands for;
- ▶ key terms used;
- ▶ some key aspects of HLP;
- ▶ HLP in the framework of durable solution;
- ▶ tenure and the Pinheiro Principles; and
- ▶ the checklist of “Housing, Land and Property Rights & Broader Land Issues” prepared for the humanitarian coordinators and residence coordinators

What do the H, the L and the P stand for?

The concept “housing, land and property” is used to include all residential sectors (i.e. owners, tenants, cooperative dwellers, customary land tenure owners and users, informal sector dwellers, and squatters). HLP derives from international human rights law.

HLP is a useful overall heading because it draws attention to three complementary sets of rights: housing rights, land rights and property rights. A broad interpretation of these rights enables humanitarian actors to ensure that the rights of vulnerable groups such as informal settlement residents, women and children, tenants and pastoralists are protected. Housing and land rights also protect tenants and dwellers without secure tenure.

Table E1: HLP definitions

	Some references to the legal framework	Characteristics
<i>H: right to adequate housing</i>	<p>International Covenant on Economic, Social, and Cultural Rights Article 11</p> <p>(1) the right of everyone to an adequate standard of living for himself and his family, including:</p> <p>“adequate food; clothing and housing and to the continuous improvement of living conditions”</p> <p>The example is only one reference. A more comprehensive description is made in the OHCHR-UN-HABITAT publication “The Right to Adequate Housing”⁷⁴</p>	<p>Legal security of tenure;</p> <ul style="list-style-type: none"> ▶ affordability; ▶ habitability; ▶ accessibility; ▶ location; and ▶ cultural adequacy
<i>L: land as a human right</i>	<p>Very simply said: “There is no human right to own land in international law”. But...land is essential to fulfil many other human rights: right to redress; right to livelihood, food and well-being; right to work; right to hold property/ equal protection by the law; rights to home, security and freedom of movement; right to democratic governance; right to gender equality; right to racial equality; right to practise culture; right to land and agrarian reform; right to international support and cooperation (Wisborg 2006: 22) and van Banning 2002. For example, agrarian reform (which implies regulation of land rights) may be essential for a state to fulfil its obligations on the right to food (ICESCR 11.2) and equality of men and women in rural areas requires equal access to land (CEDAW, Article 14.2 See also Art 15 and 16)</p> <p>Further references:</p> <ul style="list-style-type: none"> ▶ Right of all peoples to pursue their economic, cultural and social goals, and manage and dispose of their resources as well as the right not to be deprived of its own means of subsistence, ICCPR art 1(2), ICESCR art. 1(2) ▶ Right to own property, Art 5(d)(v) ICERD; Art. 17 UDHR ▶ Rights of ownership and possession over the lands indigenous and tribal peoples traditionally occupy, article 14 ILO Convention No 169⁷⁵ ▶ Right to lands, territories and resources, art. 26 of UN Declaration on the Rights of Indigenous Peoples (2007)⁷⁶ ▶ Regional human rights instruments, such as the African Union (AU) Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the European Convention on Human Rights (ECHR)⁷⁷, the American Convention on Human Rights (ACHR)⁷⁸, African Charter on Human and Peoples’ Rights (Banjul Charter)⁷⁹ ▶ Pinheiro Principles 2.2; Principle 9 of the Guiding Principles on Internal Displacement ▶ In addition, there are regional agreements such as the International Conference on the Great Lakes Region (ICGLR)⁸⁰ providing a regional platform for dialogue on HLP issues 	

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<i>P:</i> <i>property as a human right</i>	Universal Declaration on Human Rights Article 17	Legal definitions of 'property' can vary e.g. Property is any physical or virtual entity that is owned by an individual.
	(1) Everyone has the right to own property alone as well as in association with others	An owner of property has the right to consume, sell, mortgage, transfer and exchange his or her property
	(2) No one shall be arbitrarily deprived of his property	Property rights govern who can do what with resources. They specify the claims and related obligations of different actors—individuals or groups—to the benefits of a resource

Key terms

Tenure: is the way in which rights to land and housing are organised. Land tenure determine who can use what resource of the land, for how long and under what conditions.

Land tenure may be determined by statute (formal), agreed precedent or by customary practice (informal). Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property (squatting).

Security of tenure: is the legal right of all individuals to protection by the state against forced evictions from one's home or land. Security of tenure is an element of housing, land and property rights; it can be formal or customary and is valid during time of peace, during conflict and disaster. The form of tenure one had before the conflict is relevant to determine restitution possibilities after displacement. Security of tenure is often challenged by the reality on the ground and this is where HLP expertise is often needed to offer "a reasonable degree of security" to the shelter programmes (however HLP expertise needs to provide more than just "rubber stamping land titles"). Ensuring security of tenure for all is the cornerstone of any programme dealing with emergency or transitional shelter and housing reconstruction.

Informal tenure and occupancy with no legal status

Not all rights are formally recognised. In informal land tenure contexts (such as Africa where formal tenure covers only between 2 and 10 percent of the land (Deininger, K., 2003, Land Policies for Growth and Poverty Reduction, Washington DC, World Bank)) and where overlapping national and traditional legal systems may be used at the same time (legal pluralism), the situation can be particularly challenging.

While land titling (formalisation) is often perceived as a solution and a step towards modernisation, programmes need to be aware that this can have adverse consequences especially for the most vulnerable (women and poor) and lead to overlapping claims and ensuing conflict.

Formal tenure

Different individuals or groups may have different separate rights to the same piece of land or property (e.g. ownership right, use right, etc.); therefore formal land and property rights are usually conceived as a “bundle of rights” which can include:

Use rights:

- ▶ the right to use property or land
 - ▶ Usually associated with non-owners, private tenants, social-occupancy tenants and leaseholders

Control rights:

- ▶ the right to make decisions on how property or land should be used, the right to profit from activities on the land.
 - ▶ Usually associated with owners and freeholders and sometimes also with public bodies like planning authorities, especially where urban zoning is in place.

Transfer rights:

- ▶ the right to sell or mortgage the land or property, to convey to heirs and to reallocate use and control rights.
 - ▶ Associated with owners and freeholders.

In an urban context, the formal holders of these rights can usually be categorised as:

Private

- ▶ Individuals, a married couple, a group of people or collective, a corporate body, a private company, a housing association or a cooperative.

State/public

- ▶ National or local public sector authority or planning body.

Communal, collective

- ▶ Rights held jointly by a group of people. Members of other communities can be excluded.

Open access

- ▶ Specific rights are not assigned to any individual or group and no one can be excluded. Forests may be under open-access tenure.

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Key aspects of HLP

HLP principles, practice and challenges in conflict situations: different types of HLP issues can arise during different phases of conflict. Common issues include: the destruction of housing, the denial of access to land or property (whether through force or through discriminatory legislation), non-recognition of HLP rights held under customary law (e.g. the peri-urban land or the mobility rights of pastoralists), forced evictions (including of informal settlement residents), secondary occupation, disinheritance of women or orphans etc. Restitution remains the preferred option for redressing violations of HLP rights within the full framework of durable solutions.

HLP policies in shelter programmes: there is a need to include HLP policies in shelter operations including checklists flagging potential HLP issues that shelter programmes need to take into consideration. Some of these include: clarifying land and property rights (particularly in countries with customary and statutory systems), protecting women and children from disinheritance, addressing secondary occupation and abandoned land, finding appropriate solutions for tenants, providing security of tenure for people without recognised land rights etc.

Land contributes to conflict: no durable solutions can be obtained without improving access to land and promoting security of tenure for all; securing HLP rights can foster economic development and strengthen livelihoods, preventing land grabbing and land disputes and ensuring access to land for women. Humanitarian organisations should consider themselves as actors for positive change in this.

Displacement, forced evictions and insecurity of tenure: in urban areas, insecurity of tenure will also affect those displaced to collective centres (owned by private or public bodies) and to host families (whose tenure may already be insecure). Vulnerable groups may be evicted from multiple locations, causing tremendous disruptions to lives and livelihoods.

Reconstruction and tenure: Tenure issues will furthermore affect those who have not been displaced but who are attempting to reconstruct their homes, especially if the original homes were located in rented houses or apartment buildings or on land owned by others. Tenant issues are rarely addressed early and effectively, with the result that tenants may have no option but to remain in camps or collective centres. It needs to be highlighted that all actors involved in reconstruction need to look at possible tenure issues (e.g. disputes) before starting to construct or repair (e.g. Haiti).

HLP and durable solutions

Both the right to adequate housing and the right to restitution form the legal basis for shelter interventions. These rights are enshrined in various international laws and in a growing

number of national laws. They are given practical expression in the Pinheiro Principles, which have been recognised as leading principles on housing and property restitution for refugees and displaced persons⁸⁴. It is important to recognise that these rights apply throughout an emergency but also as part of longer term durable solutions.

Table E2: HLP and durable solutions

Durable solutions	The right to housing	The right to restitution
Return	Everyone has the right to adequate housing that includes security of tenure and is affordable, habitable, accessible to all, located to allow access to services, materials, infrastructure, livelihood opportunities and culturally adequate	Re-assertion of control over one's original home, land or property
Resettlement	States are required to create conditions within society - through law, policy, budgetary allocations and so forth - to ensure this right	People continue to enjoy restitution rights even if they choose not to return
Local integration		

Tenure and the Pinheiro Principles

The Pinheiro Principles provide both an international standard for advocacy and a practical outline for ensuring security of tenure by recognising:

- ▶ the rights of tenants and other non-owners (Principle 16); and
- ▶ the need for housing, land and property records and documentation and requiring states to establish systems for the registration and recognition of housing, land and property necessary to ensure legal security of tenure (Principle 15).

Vulnerable groups: tenants and non-owners

The Pinheiro Principles identify the following categories because they are vulnerable to being overlooked and should be granted explicit rights under restitution programmes:

- ▶ tenants;
- ▶ social-occupancy tenants; and
- ▶ other legitimate occupants e.g. rights which protect them from forced eviction and displacement and assure them in practice a degree of security over their original homes and places of habitual residence (e.g. labour tenant rights, sharecropper rights).

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Other types of occupancy by non-owners include:

- ▶ squatters who may be entitled to the right of adverse possession⁸²;
- ▶ occupants with customary rights, condominium rights and co-operative rights; or
- ▶ occupants with no legal status.

Checklist of “Housing, Land and Property Rights & Broader Land Issues”

prepared for the humanitarian coordinators and residence coordinators.

Source

The checklist is a joint publication of the working groups of the Protection and the Early Recovery clusters published in 2009.

Description

Humanitarian coordinator & resident coordinator checklist of housing, land and property rights & broader land issues throughout the displacement timeline from emergency to recovery enabling improved identification and assessment and more effective response.

A person can acquire title to land through adverse possession from the actual owner by using the land, out in the open for all to see. National laws regulate the different requirements for adverse possession, such as the length of time required, the fact that the possession must be open for all to see, exclusive and hostile to the actual owner of the land etc.

Disputes involving housing, land and property (“HLP”) are both a fundamental cause of conflict as well as a result arising in the aftermath of conflict. In humanitarian operations, these disputes pose immediate protection and early recovery challenges. If left unaddressed, disputes surrounding HLP can undermine peace and re-ignite hostilities.

Displaced populations will invariably try to claim or reclaim access to HLP during and after a conflict. This process generates further tension within and across communities, whether in areas of origin, current displacement or upon return or settlement elsewhere.

- ▶ **During displacement**, site selection, water, pastoral and agricultural access for informal and formal camp settlements can be challenged by the difficulty of determining who has the rights to the land.
- ▶ When considering **return**, displaced individuals often base their decision largely on whether they will be able to reclaim their HLP and thus rebuild livelihoods; **after**

return, their attempts to reclaim assets may lead to renewed conflict.

- ▶ Alternatively, when the displaced choose to **settle** in new areas, the management of tenure relationships with local communities and institutions can determine the success or failure of a sustainable integration.

It is **not only the displaced** who have concerns about their HLP rights and broader land issues during and after conflicts. Conflicts inevitably impact a wide range of relationships—social, economic, environmental, and political—and these changes have consequences for all members of the community, including those not displaced.

Perhaps most crucially, **reconciliation** and the sustainability of the emerging peace in a **post-conflict period** can depend on how early and effectively protection of HLP rights and the broader land issues are recognised and addressed. The lessons learned from Afghanistan, Rwanda and Sudan, among others, show the consequences of inadequately addressing HLP concerns early, appropriately and sustainably, whether during the immediate aftermath of a conflict or the peace and rebuilding period that follows.

In 2005, the Humanitarian Response Review identified protection of HLP rights as one of the major gaps in the humanitarian response system. Humanitarian Coordinators and Resident Coordinators are therefore challenged (and accountable) to address these issues appropriately and early, beginning while a conflict may still be unresolved.

Checklist for action

- ✓ Include housing, land and property rights and land issues questions in registration, profiling and intention surveys

Registration, profiling and intentions surveys of displaced persons should gather as much information as possible at the earliest stage of displacement concerning the HLP situation in the area of origin. Even within rapid surveys or accelerated registration processes, **a few simple but strategic questions** can identify immediate protection issues today as well as constraints to achieving durable solutions tomorrow. Such information can include area of origin and living arrangements pre-flight, prior arrangements for access to land and property (individual or family, statutory or customary ownership, pastoral rights, social tenancy, rental, etc.); possession or absence of supporting documents, and any reports of property destruction or occupation.

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**Community consultation: consider the land issues where the displaced are now**

Wherever the displaced now shelter, it is **essential to understand land tenure arrangements**, including statutory and customary access rights, to land, water, grazing, and other natural resources. Apparently unused land may actually be subject to complex customary tenure arrangements and claims not readily known to displaced communities, international agencies or national government officials. Rapid assessment visits are unlikely to disclose the intricacies of land tenure arrangements, especially where customary law applies. Left unaddressed or pushed aside for later, tension over land can arise between host communities and the displaced, international agencies and national government. Access to land in areas surrounding camps must also be discussed with relevant actors.

**Identify and work with experts early**

International and national experts should be identified early and secured for assessment and intervention programming. The complexity of these issues means that existing staff within agencies, particularly during initial emergency response, are not likely to adequately assess these specialized issues. Ideally, if deployment of these experts is co-funded by different actors, the resultant assessments and guidance provides a single credible and coherent source to help shape quick, coordinated response by more than one agency, without agency duplication. The most comprehensive response will likely include both national as well as international expertise. Including national land experts from the start is crucial to understanding the legal, institutional, political and social contexts.

**Incorporate housing, land and property assessments and responses into appeals or other humanitarian budgets**

Because reasons for conflict differ, and the formal and customary basis for property ownership or tenure arrangements can be complex, resultant HLP issues are extraordinarily country- and context-specific. These issues deeply impact both the immediate accommodation of displaced persons as well as whether they return or settle elsewhere. Groups such as women, minorities, indigenous peoples or slum dwellers are particularly vulnerable to marginalisation. Most beneficial to a comprehensive understanding of these factors is an expert identification—as soon as possible in the crisis timeline—of relevant issues, local law context and recommendations for action. Such an expert assessment is, itself, a valuable response action, and can be proposed early within the appeal process.

✓ Advocate to secure existing official records regarding housing, land and property rights

In the midst of conflict, official records of rights and ownership in government offices (such as title registries or cadastres) may be at risk of destruction or tampering, whether due to general conflict and looting or by specific targeting. National and local authorities should be reminded of their obligations to secure these records, including if necessary evacuation to safer locations. Multinational forces, including UN peacekeeping presence, may also assist.

✓ Promote housing, land and property rights and broader land issues within peace negotiations and agreements

Peace agreements can explicitly include provisions regarding HLP rights. Humanitarian and Resident Coordinators and Country Teams can provide information of the land situation for the peace negotiations and in addition advocate for HLP issues to be thoroughly considered by peace negotiators and the parties of the conflict. Particularly important are clear consensus regarding non-discriminatory access to restitution mechanisms and land tenure, and the universal applicability of HLP rights protection to all persons, including the displaced regardless of when and if they decide to return. Humanitarian and Resident Coordinators can be significantly influential in high level advocacy to address these issues early and constructively as an essential component of the peace agreement. National responsibility for resolving property issues in accordance with both the terms of any peace agreement as well as international law should be emphasized consistently in all contacts with competent authorities.

Because questions of land can be **inflammatory** in post-conflict situations, some may advocate pushing such questions to a later date. Delays may be politically expedient, but the risk is that land and property issues remain unaddressed and compromise the peace in later months. Alternatively, those currently in power may be tempted to rush through ad hoc measures. This too may have serious implications for future harmony. Instead, an approach that documents the existence of overlapping and perhaps disputed rights and claims may be more conducive to reconciliation and nation-building than one rigidly applying either the principle of restitution or of adverse possession.

✓ Ensure housing land and property rights and broader land issues are considered in joint assessment and programming for durable solutions

Inter-agency assessment missions to support durable solutions should consider how HLP rights and broader land issues will be most effectively safeguarded or addressed within repatriation or return program planning as well as in strategies to support the local integration for IDPs and refugees who

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decide not to return. Beyond physical surveys of damaged housing in areas of conflict, assessments should also consider the other potential obstacles to durable solution, such as:

- ▶ extent of secondary occupation of homes;
- ▶ if unjust and arbitrary applications of law occurred after flight;
- ▶ if property registration records (or other locally acceptable evidence of land rights) were destroyed or lost;
- ▶ whether lack of tenure security might prevent some communities or individuals from returning to their original homes or land;
- ▶ whether the judicial system provides effective, accessible and impartial remedies; and
- ▶ the capacity of local or traditional institutions to address land disputes and issues.



Develop an inter-agency plan of action to restore housing land and property rights and address broader land issues

The UN Country Team and participating Cluster agencies should develop a plan of action to address HLP rights and broader land issues. This plan of action should be the first step in developing an effective response. The plan should be consistent with international law, national legal frameworks and customary practices. All actors need to ensure full participation of displaced persons and returnees—including groups vulnerable to marginalization such as women, indigenous peoples and minorities, and with reference to any customary traditions—in developing plans of action. An Inter-Agency plan of action, or other coordinated effort, can also help ensure that organised return or settlement elsewhere of the displaced occurs to the extent possible within a broader plan for tenure stabilisation, rehabilitation and reconstruction for all communities.



Legislative analysis: desk review of national laws, policies and institutions relevant to housing land and property rights and broader land issues

Collect, compile and analyse all national laws and policies that are relevant to HLP and broader land issues, including:

- ▶ land tenure and institutions;
- ▶ land and housing laws and policies;
- ▶ land markets;
- ▶ forced evictions, relocation or resettlement;
- ▶ right to housing, land and property restitution after unlawful or arbitrary deprivation;

- ▶ right to privacy and respect for the home; and
- ▶ right to freedom of movement and to choose a place of residence.

Any such analysis should specifically consider whether inheritance, family or other laws discriminate against women, indigenous peoples or other minorities, and whether housing abandonment laws were adopted after flight.

National legal staff will be particularly useful in this process of legal analysis, for their expertise in local law, administrative realities and language.

The resultant compilation will later also be a valuable resource for training and dissemination activities.

✓	Contextual analysis: analyse the administrative capacities, as well as local practices and formal or informal mechanisms regulating housing, land and property rights and broader land issues
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Contextual analysis of practices and formal or informal mechanisms regulating HLP rights and broader land issues is essential to design solutions that are adapted and acceptable to the populations concerned. Comprehensive and innovative legislation may, for example, fail to protect these rights in the absence of administrative arrangements and functioning government agencies to enforce. Customary dispute resolution practices may have significantly more credibility in areas geographically removed from administrative centers. Full understanding of the local context promotes effective responses.

✓	Assess and improve tenure security of the displaced—and the most vulnerable amongst them—in all advocacy and program activities
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High level political statements to confirm security of tenure for all persons can help stabilise the post-conflict environment while more durable solutions are identified. Many post-conflict situations where informal ownership prevails have undertaken land reform programs recognising customary and informal land rights, transforming them into statutory rights (including issuance of property title documents). Advocates should ensure that new mechanisms do not disadvantage displaced persons in formalising land rights they enjoyed before being displaced. For example, where formalisation of rights is linked to continuous presence on the land, exceptions should be expressly provided for those who have been displaced.

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In the rehabilitation and upgrading of camp settlement, collective centers or slums, agencies undertaking such activities should ensure that residents of the structures will be granted tenure security if they do not own these dwellings.

Programming ideas

Possible program interventions to support HLP rights and broader land issues.

- ▶ Sponsor an expert situation assessment to better understand the HLP and land tenure context and potential related issues.
- ▶ Establish land dispute and conflict monitoring to find baselines and to monitor trends and emerging issues over time.
- ▶ Promote public information campaigns to inform affected communities about their rights.
- ▶ Create legal aid and counselling centres to provide necessary help to the displaced and returnees.

The Pinheiro principles

The normative framework for addressing housing, land and property rights in the context of displacement is summarized in the 2005 Principles on Housing and Property Restitution for Refugees and Displaced Persons.

Known as the “Pinheiro Principles,” this document is not a new international treaty but rather a compilation and restatement of existing rights based in international human rights and humanitarian law.

The Pinheiro Principles reaffirm that all displaced persons—whether internally displaced or refugees, and whether or not they return—shall be protected from arbitrary and unlawful deprivation of any housing, land and/or property, and retain the right to have such property restored to them or be adequately compensated.

For support to your operations, contact:

the global working group of the Protection Cluster, as well as its housing, land and property Area of Responsibility (AoR) Group, can provide country-specific advice, assessment and program design missions for the protection of HLP rights, as well as identify HLP experts for in-country placements. The Group can also promote the short-term deployment of appropriate senior support staff under the ProCap program.

Participating agencies of the HLP AoR Group include: IDLO, IDMC, IOM, OHCHR, UN-HABITAT and UNHCR. For detailed information and agency focal points, see:

<http://www.humanitarianreform.org/Default.aspx?tabid=434>

The cluster working group on Early Recovery can provide advice and support on linking shelter, land and property issues into broader early recovery processes. Early Recovery advisors deployed on behalf of the CWGER can help to make links between land issues and other related programme areas and can support the integration of land issues in joint early recovery needs assessments, strategic planning exercises, resource mobilization strategies, etc. With support from CWGER, UN-HABITAT has also developed several important guidelines, including a Quick Guide on Post-Conflict Land Issues and more detailed Guidelines. For detailed information and agency focal points, see:

<http://www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=80>

The Humanitarian Policy Group (HPG) of the Overseas Development Initiative (ODI) currently maintains a roster of experts in housing, land and property issues.

For more detail and continuously updated information, see: <http://www.odi.org.uk/>

Additional resource documents.

- ▶ Access to rural land and land administration after violent conflicts, FAO Land Tenure Studies 2005.
- ▶ “Action Sheet 11: Land and Property,” in Handbook for the Protection of Internally Displaced Persons, (provisional release version, 2007), Global Protection Cluster Working Group.
- ▶ Handbook: Housing and Property Restitution for Refugees and Displaced Persons: Implementing the ‘Pinheiro Principles’, March 2007. FAO/IDMC/OCHA/OHCHR/UN-HABITAT/UNHCR.
- ▶ Post-Conflict Land Guidelines (in progress). Early Recovery Cluster/GLTN/UN-HABITAT.
- ▶ Post-Conflict Land Quick Guide (Draft, June 2009). Early Recovery Cluster/GLTN/UN-HABITAT.
- ▶ Post-Disaster Land Guidelines. Early Recovery Cluster/GLTN/UN-HABITAT.
- ▶ Principles on Housing and Property Restitution for

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Refugees and Displaced Persons. UN Sub-Commission on the Protection of Human Rights 2005 (also known as the “Pinheiro Principles”).

Appendix F – Shelter and HLP

Basic principles.

- ▶ Enhance beneficiary participation in HLP process and decision-making. It is important to consider ways of encouraging and soliciting communities’ participation in the HLP process. In a shelter project for example, participation does not simply mean being involved in the construction of the shelter but also contributing ideas regarding the location of the facilities, making decisions and taking responsibilities. Humanitarian actors should prioritise community-driven solutions to HLP issues (e.g. identification of the land and its boundaries and the land’s owner)⁸³.
- ▶ Treat owners, tenants and informal dwellers equally and promote security of tenure. Although housing, land or property owners, tenants and squatters are equally affected by conflicts, frequently the tenants and squatters face inequitable treatment within the HLP sector. Owners, tenants and squatters should all equally benefit from humanitarian assistance.
- ▶ Do no harm principle: humanitarian actors should only support local or national HLP laws and policies that are consistent with internationally protected HLP rights. This also means that humanitarian actors should not become complicit in any approach to HLP pursued by the state that is contrary to international legal frameworks.

Implementing urban shelter projects

There are several housing, land and property issues that a shelter project should take into consideration during the design and implementation of the activities. First of all, it is important to remember that the right to housing and the right to restitution form the legal basis for a shelter intervention. Shelter is a fundamental need of IDPs, without which their lives can be at risk.

The right to shelter should be understood as the right to live somewhere in security, peace and dignity. In humanitarian

response, the term “shelter” falls within the scope of the right to housing which is enshrined in human rights law. Everyone has the right to adequate housing. The criteria for adequacy are:

- ▶ accessibility;
- ▶ affordability;
- ▶ habitability;
- ▶ security of tenure;
- ▶ cultural adequacy;
- ▶ suitability of location; and
- ▶ access to essential services such as health-care, education and livelihood opportunities.

The respect for safety standards is also a criterion for adequacy⁸⁴.

Security of tenure is the right to protection from displacement (including arbitrary and forced eviction), harassment and other threats from one’s home or land. Inadequate or insecure HLP tenure can significantly worsen the prospects of the displaced populations, as well as creating considerable challenges for shelter providers.

The right to housing is inextricably related to other human rights and extends to goods and services such as access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, disposal, and site drainage. The displaced population should have adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and should have access to emergency services.

While the need for shelter is similar in most emergencies, considerations such as the kind of housing needed, type of materials, size and design, will differ significantly in each situation (e.g. differing weather conditions). In addition, individual household shelter solutions can be short or long-term depending on whether it is emergency relief or recovery phase. These criteria for adequacy, together with considerations for the different emergency phases and the local contexts, should be used as guiding principles in implementing shelter projects aimed at providing equitable and sustainable solutions.

It is clear that in the context of **emergencies**, where for example the displaced population is housed in transitional shelters, all the standards articulated in the definition of adequate housing often cannot be realised. Affordability and access to services such as child care and employment opportunities are issues of public policy and may not be in the control of the humanitarian actors. In these settings, however, the adequate housing standards offer guidance to those implementing the shelter project.

In general, public buildings such as schools or administrative buildings should be used only as short-term accommodation (e.g.

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“collective centre”), to gain time to provide more suitable shelter. Public buildings should never be used as permanent humanitarian shelters, unless the government has agreed to such use and has granted some security of tenure⁸⁵.

During **recovery**, finding permanent housing for those displaced by the conflict is a priority. Shelter assistance should focus on supporting durable solutions (return, resettlement and local integration⁸⁶), in a manner that provides sustainable and adequate housing solutions and prevents forced evictions.

In the context of **return**, shelter-related assistance may include the reconstruction of damaged or destroyed houses and local infrastructure such as schools, roads and hospitals. Ideally in such context, land and property ownership should be established before construction of the shelter starts. However, this can be very difficult to establish in post-conflict situations where there is an urgent need to provide shelter, and in customary land tenure systems where the land may be used or managed collectively and there are no documents to prove ownership. Customary systems are guided by the traditions of the group(s) they are meant to serve and therefore the involvement of local leaders and communities in the identification of the site, the owner and the land's rights, is extremely important and can contribute to avoiding disputes and creating harm in the community.

Shelter assistance should also be provided to those IDPs and RRs who were landless or squatters or did not have formal title to the land and housing they occupied before the conflict. In such situations of insecurity of tenure, competent authorities should, whenever possible, provide legal recognition to occupation and use of housing by non-owners⁸⁷.