

Housing, Land and Property in Rental Interventions

Understanding and addressing housing, land and property (HLP) issues is critical to providing secure and safe shelter in humanitarian settings. As tenants and landlords face different HLP issues to owner-occupiers, humanitarian actors need to adapt their approach when implementing rental assistance programmes. This is particularly true as rental interventions usually take place in urban areas, where the HLP situation is often more complex than in the rural contexts in which humanitarians have traditionally operated.

This paper explores the key HLP issues which need to be considered by humanitarian actors when implementing rental market interventions.

What is tenure?

Tenure is the relationship among groups or individuals with respect to housing and land, established through statutory law or customary, informal, or religious arrangements. Tenure systems determine who can use what resources, for how long, and under what conditions. There are many forms of tenure arrangements, ranging from full ownership and formal rental agreements to emergency housing and occupation of land in informal settlements. Regardless of the tenure arrangement, all people still retain housing, land and property rights. People living in informal settlements, who are often internally displaced, may not possess a legal right to occupy the land but still possess the right to adequate housing and protection against forced eviction from their home. In order to determine whether an appropriate security of tenure is in place, information such as tenure documentation and organisational use of due diligence methods are required¹.

Rental tenure provides the right to use housing (or land) for a specified period at either a given price or in exchange for other commodities, without the transfer of ownership. Tenure is often assured on the basis of a written or verbal contract, usually with a private or public owner. The type of contract or lease, and its form and contents are determined by the legal requirements and customs in a given context. The right to use may be limited to specified individuals (e.g. only immediate family members), and/or specified purposes (e.g. residence, self-sustaining agriculture)². It is more common in urban areas but can also be found in rural contexts.

¹ The Sphere Project (2018) The 2018 Sphere Handbook, p. 267

² Adapted from *ibid*, p. 15

What is security of tenure?

Security of tenure can be understood “as the degree of certainty that a person will not be evicted or dispossessed...having secure tenure of land and/or housing ensures a secure home and enables one to live in security, peace and dignity”³. Having security of tenure means that people can live without the fear of forced eviction, whether in rental accommodation, informal or communal settlements, host communities or in their own houses. Security of tenure is an integral component of adequate housing⁴.

Documentation such as title deeds or a rental contract usually help to improve tenure security, but it is also linked to the perceptions of the individual, families, or communities. This can be a decisive factor for families when deciding how long they can stay in a shelter, and whether or not to settle in, or invest in, a given location⁵. For example, if a government has not made efforts to dismantle an informal settlement, the residents’ perception of their tenure security will increase over time, despite them illegally occupying land. For tenants, a positive relationship with their landlord can also help to improve a tenant’s tenure security, partly because they perceive their risk of eviction as lower.

Barriers faced by women and other vulnerable groups

Women and other vulnerable groups, such as those with physical or mental disabilities, are at particular risk of tenure insecurity because they often have fewer property rights, are subject to more discrimination, exploitation, and violence, and are at greater risk of poverty. They may also have less access to courts or other dispute resolution mechanisms. Because they may have fewer rights by law or be unable to exercise them or access them in practice, women are less likely to be named on tenancy agreements and are more likely to live in precarious housing situations.

They may have no means of escaping domestic violence or abuse without becoming homeless and are more likely to be forced into coping mechanisms such as transactional sex in exchange for housing. They face several other barriers to being able to exercise their rights. These include both social and practical barriers, including because customary norms and practices are not aligned with religious or statutory laws. They can face discrimination based on cultural and social norms, or ostracization if they try to exercise their HLP rights, which can have a serious impact on her own survival. They are also often a socio-economic disadvantage and poverty, or a lack of financial resources often prevent women from making a claim. They are also more likely to be illiterate than men so even where their HLP rights are protected by law, they are often unaware of them, and low literacy levels are a further barrier to being able to claim these rights. They may be unable to complete the necessary paperwork or participate in processes which involve written documentation. Illiteracy exacerbates their lack of understanding of key processes relating to the acquisition of land and housing rights as well as their ability to address disputes. These issues can be particularly acute in conflict and post-conflict settings, where statutory systems may not, or no longer, exist or function effectively, where poverty is likely to be aggravated and as humanitarian programmes can exacerbate these issues by registering households’ in men’s names⁶. Providing humanitarian support to women and other vulnerable groups can also be a challenge as they may be less visible in the community.

³ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 24 December 2012, A/HRC/22/46.

⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, available at: <https://www.refworld.org/docid/47a7079a1.html> [accessed 14 January 2020].

⁵ Global Shelter Cluster (2018) Securing Tenure in Shelter Operations: Guidance for humanitarian response.

⁶ NRC (2014) Life Can Change: Security HLP Rights for Displaced Women. Available [here](#)

Box 1. HLP challenges in urban environments

The nature and complexity of urban environments present challenges for humanitarian organisations in trying to understand and address HLP issues. These include:

- Multiple, complex and overlapping tenure arrangements, combined with unregulated transactions, weak governance, legal pluralism and scarcity of land make it difficult to identify who has the rights to land, property or natural resources, and what rights they are.
- Refugees and IDPs are among the most at risk of tenure insecurity, often living in informal settlements or renting without formal, or clearly defined, agreements. In some cases, tenants may not know with whom they have made an agreement. Problems can be further exacerbated for refugees, particularly where documentation is needed.
- The high population density and lack of services in existing informal settlements make it difficult for humanitarians to provide shelter assistance in line with international standards. Unlike in camp settings these settlements preceded and will likely outlast humanitarian presence and have no formal management structures through which to ensure assistance is provided in accordance with these standards.
- A higher proportion of the housing stock is residential buildings with various forms of communal, corporate or public ownership, complicating legal aspects and the role of agency shelter interventions;
- Complex social structures and vulnerability patterns.

The 'What is secure enough' (WISE) approach

The concept of 'secure enough' tenure recognises that the ideal form of tenure, secured by official documentation, may not be available to the beneficiary population and/or can take time to attain. In such situations, the emphasis should be on meeting their immediate need for some security, and how this can be achieved without formal documentation. The determination of 'what is secure enough' must be done with the people concerned, considering all relevant risks and issues faced.

Once 'secure enough' tenure has been achieved, an incremental approach to improving this may be appropriate⁷. This requires an understanding of the housing, land and property issues in a given context, how the legal framework impacts, and differs from, reality on the ground, and an understanding of how tenure systems, arrangements and practices impact the affected population and at-risk groups. It is important also to recognise that some modalities and distribution mechanisms can exacerbate HLP-related risks and cause harm. For example, in some contexts, distributing cash to the tenant can lead to increased rents; elsewhere, distributing cash to the landlord may lead to the exploitation of the tenant. An analysis of these risks and relevant mitigation measures should always form part of the programme design and planning. In urban areas, with complex and overlapping tenure arrangements, organisations should aim for 'good enough' proof that landlords own the rental property, as proving this conclusively may not be possible, and where it is, can take time, delaying beneficiaries access to the assistance.

⁷ Wyckoff, M (2018) *Securing Tenure in Shelter Operations: Guidance for humanitarian response. Updated edition.* Global Shelter Cluster..

Box 2. Security of Tenure in the Sphere Handbook – Key Actions

Humanitarian shelter actors have a responsibility to design and implement programmes which:

- ✓ do not weaken the tenure security of either the targeted households or the wider population (a Do No Harm approach);
- ✓ recognise and address the risks and issues specific to certain groups (such as women, disabled or displaced populations); and
- ✓ promote and contribute to security of tenure, which at a minimum, is ‘secure enough’: that which provides the greatest degree of protection for beneficiaries which is feasible in the context.

Further details are underlined in the Sphere Handbook (2018) which provides specific guidance in the Shelter and Settlements chapter with the following key actions:

- 1 Undertake due diligence in programme design and implementation
 - ✓ Achieve as much legal certainty about tenure as possible (the “secure enough” approach), given the context and constraints.
 - ✓ Coordinate and work with local authorities, legal professionals and interagency forums.
- 2 Understand the legal framework and the reality on the ground.
 - ✓ Map tenure systems and arrangements for the different post-crisis shelter and settlement scenarios; identify how these affect the most at-risk groups.
 - ✓ Work with local authorities to understand which regulations will be enforced and which will not, and the related time frames.
 - ✓ Understand how tenure relations are managed and disputes resolved, and how this may have changed since the onset of the crisis.
- 3 Understand how tenure systems, arrangements and practices affect security of tenure for at-risk groups.
 - ✓ Include security of tenure as an indicator of vulnerability.
 - ✓ Understand what documents may be required by people participating in a programme, noting that the most vulnerable may not have, or be able to access, these documents.
 - ✓ Ensure that the response is not biased towards owner-occupier or freehold arrangements.
- 4 Implement shelter and settlement programmes to support security of tenure.
 - ✓ Use local expertise to adapt programming to the different types of tenure, especially for vulnerable groups.
 - ✓ Ensure that documentation, such as tenure agreements, is properly prepared and reflects the rights of all parties.
 - ✓ Reduce the risk that the shelter programme may cause or contribute to tensions within the community and with surrounding local communities.
- 5 Support protection from forced eviction.
 - ✓ In case of eviction, or risk of eviction, undertake referrals to identify alternative shelter solutions and other sectoral assistance.
 - ✓ Assist with dispute resolution.

Factors which contribute to tenure security in rental housing

For peoples living in rental housing, several factors contribute to improving their tenure security. These include:

- ✓ **A clear legal framework**, which give fair rights to tenants, although these may not be applicable or enforceable on the informal rental market;
- ✓ **Community validation**, where community leaders, neighbours and local authorities recognise and accept the landlord as the rightful owner of the rental property.
- ✓ **Humanitarians adopting a preventative approach** to resolving disputes and evictions, including understanding tenure and how the informal rental market – often the only option for the target population – functions. (outlined in Box.2)
- ✓ **Robust and accessible dispute resolution mechanisms**, through which issues between landlords and tenants can be resolved, without prohibitive costs to the tenant.
- ✓ **Renting on the formal market**, where they are more likely to have access to formal dispute resolution mechanisms and be protected by laws and regulations.
- ✓ **Household income levels**: as income rises, tenants have more choice over where to live, and this contributes to a more even balance of power between tenant and landlord. Tenants may also have better access to often costly dispute resolution mechanisms.
- ✓ **Demand is lower than supply**: households are at increased risk of tenure insecurity where demand for rental housing outstrips supply. In such situations, the power balance tilts further towards the landlord and tenants are more easily replaceable.
- ✓ **A positive relationship with their landlords**, including social or familial ties, as this helps to build trust. Studies have also shown that the proximity of the landlord to the tenant often contributes to tenure security, as they are more likely to have a personal relationship. In humanitarian rental assistance programmes, a positive relationship between landlords and the humanitarian organisation, including treating landlords as an equal partner can help to build this relationship.
- ✓ **Landlords having clear ownership rights to the property**: in informal markets, tenants may rent housing from a landlord who does not have the legal title to a property, increasing their risk of eviction by the government or by the rightful owner.
- ✓ **Cultural norms** which govern rental practices and norms around evictions. In some contexts, cultural norms dictate that a tenant can remain in a rental property almost indefinitely having made an upfront rental payment.
- ✓ **Knowledge of their rights and responsibilities**: knowing their rights as a tenant makes it easier for households to exercise them, all things being equal. Lack of knowledge of their rights is a particular concern for refugee populations who are less likely to be familiar with the local legal context than other displaced groups, as well as for other vulnerable at-risk groups including women, older people and those with disabilities.
- ✓ **Longer-term agreements** provide extended security of tenure, although these are less likely in informal rentals⁸. Whether such agreements should be written or verbal – and how this will impact tenure security will depend on the context.

⁸ World Bank (2013) *Rental Housing: Lessons from International Experience and Policies from Emerging Markets*.

Security of Tenure related activities and risks for rental housing

Key Activities

- ✓ Preventative approach: understanding tenure and the HLP context, working with communities to understand markets and the factors which lead to evictions and disputes preventing tenure insecurity and proactively addressing issues.
- ✓ Due diligence: seeking 'good enough' evidence that landlords are the rightful owner of rental property. This may come from the landlord, but organisations may need to validate claims from other sources of information such as local authorities, neighbours and elders.
- ✓ Capacity building: information and training for landlords and tenants on their rights and responsibilities, as well as for local authorities to manage HLP issues.
- ✓ Documentation: establishing some form of tenancy agreements, in accordance with local law, including specific clauses on household privacy, non-discrimination and get-out clauses, and ensuring that women are included in them. Supporting tenants and landlords to access the documentation necessary to rent housing.
- ✓ Dispute resolution: strengthening dispute mechanisms or supporting tenants and landlords to resolve disputes where formal procedures are non-existent or not functional.
- ✓ Referrals: providing multi-sectoral support to beneficiaries to prevent eviction and help households to manage their own rental as far as possible, including through referrals.
- ✓ Advocacy: to improve legislation to protect tenant rights, prevention of forced eviction, and tenure rights of vulnerable groups (inc. women, displaced and refugees). Advocating for, and supporting the government to, preserve or establish tenure/land records. Working with development actors to advocate for more affordable housing options.

Risks

- ✓ Written rental contracts usually improve tenure security. However, where these are not possible (legal barriers, informality of the property, etc.) making those mandatory can undermine the existing relationship between the landlord and the tenant, including in some cases an increase in the power imbalance between landlord and tenant, and the risk of exploitation and abuse.
- ✓ The provision of cash assistance can create a pull factor and encourage more people to rent out their properties or evict existing tenants, and can increase the supply of substandard housing units. This can contribute to increased tensions with local communities, as it can lead landlords to give preferential access to properties to those supported by the programme.

Housing, Land and Property: Key Resources and Tools

- ➔ Global Protection Cluster [Index of Key HLP and Security of Tenure Documents](#)
- ➔ Global Protection Cluster [Housing Land and Property and Cash-based Interventions Tip Sheet](#)
- ➔ NRC (2014) [Life Can Change: Securing HLP Rights for Displaced Women](#)
- ➔ NRC (2017) [Security of Tenure in Urban Areas](#)
- ➔ Global Shelter Cluster (2013) [Land Rights and Shelter: The Due Diligence Standard](#)
- ➔ Global Shelter Cluster (2018) [Securing Tenure in Shelter Operations: Guidance for Humanitarian](#)
- ➔ NRC/IFRC (2013) [Security of Tenure in Humanitarian Shelter Operations](#)
- ➔ Sphere Project (2018) Sphere Handbook: [Chapter 8: Shelter and Settlements](#)