



Land is everything.  
© Stephen Kelly/ UNHCR, Ohn Taw Gyi IDP camp in Rakhine State, Myanmar.

# Preventing dispossession

## Why housing, land and property rights cannot be ignored

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Housing, land and property (HLP) rights are the collective bundle of human rights laws, standards and principles that have a direct bearing on the residential conditions in which people live, and the rights they possess as dwellers. HLP rights are applicable at all times, whether in peace, conflict or disaster. They are about having a home free from the fear of forced eviction: a place that offers shelter, safety and the ability to secure a livelihood.

Increased attention to HLP rights in post-crisis response has led the humanitarian sector to consider how shelter and settlement assistance can be provided to affected people whose HLP rights are uncertain. In particular, consideration of HLP is essential for resolving the lingering vulnerability of people in situations of protracted

displacement, to encourage self-reliance and bring about durable solutions. Alongside disruption, crises may provide opportunities to remedy underlying problems, such as forced evictions and overall inequality in HLP rights for the most marginalized – including the displaced. A focus on security of tenure has emerged as a practical way to tackle this.

One of the most important HLP rights is the right to adequate housing. Criteria for an adequate standard of housing include security of tenure; cultural adequacy; affordability; availability of services, materials, facilities and infrastructure; habitability; accessibility; and location.<sup>1</sup> Of these seven criteria, security of tenure is arguably the most conceptually complex. For shelter workers, promoting security of tenure presents

considerable difficulties that reflect the evolving nature of humanitarian response. This chapter describes some of these difficulties, and suggests ways to overcome them.

The first step is to recognize the repercussions of HLP for post-crisis assistance. We need only reflect on post-earthquake Haiti, where land rights were a major obstacle to recovery operations. Haiti's land laws and administration are complex and confused, and it was almost impossible to know definitively who owned what, with many people seeing occupation of land as a normal way to establish (de facto) possession.<sup>2</sup> The shelter sector has made great strides in demonstrating how an early understanding of HLP can lead to better-informed, more equitable and sustainable assistance, with much work being carried out in conjunction with the HLP Area of Responsibility (as part of the Global Protection Cluster) and specific working groups in the Global Shelter Cluster, as well as by individual agencies.<sup>3</sup>

But there is a long way to go. Security of tenure is still not fully understood in humanitarian response; it is too often equated with ownership rights, thus excluding people living in informal settlements, the homeless and the most vulnerable. Security of tenure is frequently left aside as being too technical, or relegated to early recovery or to the remit of development. HLP issues identified during a response often fall by the wayside when response agencies depart after little or no overlap or cooperation with longer-term development agencies. There is still a need to be clearer about what security of tenure entails, and to demonstrate the advantages of building HLP capacity into humanitarian operations, working together across the sectors. This was especially recognized in an inter-agency evaluation of the 2013 Typhoon Haiyan response in the Philippines, which recommended that HLP be prioritized much earlier in the response.<sup>4</sup>

Alongside a deeper understanding of HLP, shelter practitioners have been finding ways to translate security of tenure into operations,

including revising beneficiary selection criteria that discriminate on the grounds of HLP, which in some instances require proof of legal ownership. New methods cater to a range of tenure situations, such as efforts to strengthen tenancy agreements (especially for displaced urban populations) and resolve disputes.<sup>5</sup> Although the need to account for a variety of tenure forms is better recognized, much work is still needed, especially on advocacy, raising awareness, integrating HLP rights into response and recovery programmes, and the development of practical tools. These are needed not only by organizations trying to provide shelter assistance, but also to understand how HLP may offer particular opportunities to better link response, recovery and reconstruction.

### Recognizing the importance of HLP rights in humanitarian response

Since the early 1990s, humanitarian agencies have called attention to the importance of HLP rights in underpinning durable solutions for both internally displaced persons and refugees. In recent years, attention has shifted from well-established principles for the restitution of pre-displacement homes and lands, to situations of protracted displacement, in which unresolved conflicts rule out both restitution and voluntary return. This has led to the emergence of a new set of HLP issues, related for example to security of tenure at the site where displaced people take refuge; ensuring that tenure arrangements and instruments are secure enough and proportionate to the benefit; expected duration; and phase.

As described above, security of tenure is an essential component of HLP rights. Secure tenure means that people can live in their homes without fear of forced eviction, whether in a camp, informal settlement, host community or after return. It is the foundation of the right to adequate housing, and of many other human rights.

Shelter agencies continue to raise awareness of the operational difficulties that HLP uncertainties can cause for humanitarian

workers, particularly for efforts promoting security of tenure. Any humanitarian response should take into account the ways in which underlying land-tenure uncertainties are exacerbated by conflict, such as through land-grabbing, reallocation, forced evictions, and discrimination against women. A crisis can draw attention to inequality and violations of HLP rights, and present an opportunity to resolve some of the longer-term problems. For example, after the 2016 earthquake that struck Ecuador, many families who lost their homes found themselves disadvantaged when it came to receiving assistance from the government, as reconstruction programmes were directed only to formally recognized landowners. Approximately 70 per cent of Ecuador's population lacks documentation proving that they own the land on which they live. In some cases, people have inherited their land, but the transfer was never properly registered with the relevant authorities. In other instances, land title records did exist, but were lost or destroyed due to the disaster itself. A cross-cluster, multi-agency HLP group was successful in actively influencing public policies through the adoption of a ministerial agreement by Ecuador's Ministry of Development and Housing, which included provisions for owners who did not possess a formal title, and made them eligible for support from earthquake reconstruction programmes. Other results achieved since the earthquake include an action brought before the Constitutional Court of Ecuador to recognize a person's right to adequate and decent housing, regardless of the possession of a formal land title.<sup>6</sup>

Further progress requires dialogue across the entire humanitarian sector. A solution will require in-house capacity to understand how tenure relations affect each crisis situation, and legal expertise to work through the complexities and recommend an appropriate response.

Two aspects of shelter response have been identified by the shelter sector as vital to resolve. The first is providing shelter for the most vulnerable. As we have seen, equating security of

tenure with ownership can lead to discrimination against the most vulnerable populations in crisis. This can also happen when humanitarian agencies ignore different forms of tenure, such as renting, or living in informal settlements or camps, or in protracted displacement. In so doing, they exclude the most vulnerable – those facing the highest risk of eviction – and undermine the humanitarian imperative. Recent developments in the shelter sector take this one step further by suggesting that those with the most insecure tenure should be considered for priority assistance – a significant departure from the days when ownership was a precondition for shelter assistance.<sup>7</sup> Reviews have also called for better country-level preparedness for resolving property and land issues.<sup>8</sup>

The second aspect of shelter response identified is the humanitarian–development nexus. Attention to HLP early in a humanitarian response brings an opportunity to strengthen the nexus – that is, to reinforce links between response to acute crises and continuing developmental programmes, which are often undertaken by aid agencies. It is important to recognize, and avoid undermining, the years of support that development agencies have provided to many crisis-affected countries. While prioritizing the humanitarian imperative and ensuring that the most vulnerable are assisted, shelter and development organizations can work together to effect transformative change and the progressive realization of the right to adequate housing, by focusing on security of tenure. To do this, joint planning, programming and analysis, as well as multi-year approaches, are needed, as envisaged by the 'New Way of Working',<sup>9</sup> but the main obstacle remains a lack of funding for long-term collective efforts.

## Enforcing HLP rights in shelter response

Making security of tenure relevant to the humanitarian situation requires analysing the underlying concepts and demonstrating how these can be applicable in a response. Tenure relations can be extremely complex, even in stable states, and in conflict and disaster this complexity is exacerbated. From the beginning of a humanitarian response, shelter agencies have the opportunity to work with other sectors and clusters to identify and dismantle the HLP barriers they encounter, and to adapt guidance – such as the Global Shelter Cluster’s *Due Diligence Standard* – to country-specific and sector-specific tools.<sup>10</sup> The *Due Diligence Standard* or checklist was designed to help non-HLP-specialist shelter personnel respect existing rights over plots of land, and to identify land rights in contexts where information is difficult to obtain. They have been used in different places, for instance in South Sudan with the support of the International Organization for Migration,<sup>11</sup> and in Ukraine with the Protection Cluster.<sup>12</sup>

Additionally, carrying out due diligence and legal verification can support advocacy campaigns for overcoming HLP difficulties (such as potential relocations) and ensuring equity when providing humanitarian assistance. An example of this was the work carried out by a cross-cluster working group in the Philippines in 2013–14, opposing a government recommendation that a ‘no-build zone’ be enacted as a response to Typhoon Haiyan. Had this arbitrary zone been implemented in full, it would have resulted in more than 205,000 families requiring permanent relocation.<sup>13</sup>

## ‘Secure enough’ and incremental approaches

Shelter agencies have been developing an understanding of what is ‘secure enough’<sup>14</sup> for the purposes of designing shelter methods that support the most vulnerable people – those with the most insecure tenure. The Norwegian Refugee

Council and the International Federation of Red Cross and Red Crescent Societies (IFRC) have drawn up a checklist of factors to take into account in an assessment, specifically to guide decision makers on matters of risk and accountability. For instance, the following considerations help determine someone’s security of tenure:<sup>15</sup>

- duration of occupancy
- documentation
- investment in the property (improvements)
- payment of rent, utilities and taxes
- use of the property as a source of livelihood, including for such purposes as agriculture or commerce, rental space or collateral for credit
- community norms on forms of ownership and occupancy rights
- community consultation, consensus and verification.

Supporting security of tenure often requires an incremental (step-by-step) approach. This recognizes that displaced people can be helped to improve their living conditions in different types of accommodation. It doesn’t mean prioritizing owners for assistance, nor does it necessarily convey permanence or ownership.

## Preparedness

In November 2013, the 31st International Conference of the Red Cross and Red Crescent, attended by all 194 signatories to the Geneva Conventions, adopted a resolution on disaster law for ‘Strengthening normative frameworks and addressing regulatory barriers concerning disaster mitigation, response and recovery’ (Resolution 311C/11/R7). This encourages every state (with support from its Red Cross or Red Crescent national society) to review its regulatory frameworks and procedures relevant to post-disaster shelter, to determine whether they adequately:<sup>16</sup>

- provide for rapid measures to assign and/or temporarily requisition land for emergency and transitional shelter, if needed
- address how to provide shelter assistance to persons who lack documented title to their damaged or destroyed homes
- reduce the potential for any ambiguities or disputes with regard to land or property ownership to delay or hamper the provision of emergency and transitional shelter
- allow for tailored building standards relevant to the emergency and/or transitional shelter context
- include measures to mitigate the heightened risk of corruption associated with the provision of assistance in the wake of a naturally triggered disaster.

As a result of this resolution, the IFRC developed *Rapid Tenure Assessment Guidelines* to support post-disaster response planning.<sup>17</sup> Intended for use by legal advisors to national Red Cross societies, and law firms working pro bono, these pose a series of questions on six matters (land administration and management, access to land, security of tenure, compulsory purchase and relocation, and land and property dispute resolution) from both formal and informal perspectives.

To further contextualize these guidelines and help identify local risk factors, the Australian Red Cross has been working with the IFRC Disaster Law team and Allens law firm in Australia

to develop country-level profiles. Each includes an overview of the six areas and other relevant information in twelve countries in the Asia Pacific.<sup>18</sup> They offer a quick, targeted understanding of country-specific tenure arrangements, and help identify potential HLP problems, including vulnerabilities (such as those related to gender) that may need to be considered in a response. For instance, in Tonga:

Women cannot own estates and rarely own allotments. It is common for women to live on estates or allotments owned by their husbands or male family members. In this situation, women do not have a legal entitlement to occupy the land. Instead, they rely on their husbands' or male family members' good will.<sup>19</sup>

This type of information can help agencies deliver stronger, more equitable and more consistent emergency responses. To date, the profiles have been shared by the Shelter Cluster to cluster partners in the 2018 Cyclone Gita response (Tonga),<sup>20</sup> 2018 Ambae volcano response (Vanuatu),<sup>21</sup> and in draft form during the 2018 floods in Bangladesh, to help prioritize the most vulnerable groups in affected communities. They will also be used to build HLP understanding and capacity and foster more inclusive contingency planning among agencies and governments. The mapping method can be replicated in other regions to build up a base of context-specific HLP information that is kept up to date and useful for future humanitarian activities.



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- 8 Valid International (2014).
- 9 During the World Humanitarian Summit, the former UN Secretary-General, eight UN agencies, the World Bank and the International Organization for Migration endorsed a 'New Way of Working' that provides a vision for how to effectively address protracted crises by working towards collective outcomes between humanitarian and development actors, over multi-year timeframes, based on comparative advantage. Agenda for Humanity (2018) *Initiative: New Way of Working*. United Nations Office for the Coordination of Humanitarian Affairs. [www.agendaforhumanity.org/initiatives/5358](http://www.agendaforhumanity.org/initiatives/5358).
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- 16 International Federation of Red Cross and Red Crescent Societies (2011) *Strengthening Normative Frameworks and Addressing Regulatory Barriers Concerning Disaster Mitigation, Response and Recovery*. Resolution. 31st International Conference of the Red Cross and Red Crescent, Geneva. [www.ifrc.org/PageFiles/93534/31IC\\_R7\\_disaster%20laws\\_adopted\\_12Dec\\_clean\\_EN.pdf](http://www.ifrc.org/PageFiles/93534/31IC_R7_disaster%20laws_adopted_12Dec_clean_EN.pdf).
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## Hard decisions in Eastern Ukraine

### Rebuilding homes in a conflict zone

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As the conflict in Eastern Ukraine's Donbass region grinds on into its fourth year, humanitarian shelter agencies must grapple with the real difficulties of operating without doing harm. On the one hand, providing shelter in conflict-affected communities can increase people's risk by enabling them to remain in hazardous areas. On the other hand, concentrating resources on more than one million displaced people and the communities hosting them has the potential to create pull factors that draw people into displacement, either into the periphery of the conflict zone or into nearby towns and cities.

There are many reasons why people may choose to remain in a conflict zone – sometimes as a form of self-protection. In Ukraine, displacement often leads to substandard and insecure accommodation in collective centres and dormitories, high rents, loss of livelihoods, psychological distress, and dealings with the entrenched bureaucracy made worse by displacement status.<sup>1</sup> Additionally, houses left behind may be occupied and looted by the military – on both sides of the contact line – severely undermining civilians' ability to return in the future.<sup>2</sup>

At the moment, the critical question for shelter agencies working in Eastern Ukraine – an area heavily contaminated with unexploded ordnance (UXO), where sporadic shelling and small-arms fire will likely continue – is this: does assisting households who choose to remain cause harm, or mitigate it?<sup>3</sup> If an agency installs windows today, will they be blown out next week? If a shelled house is rebuilt, will it be shelled again next year? If an older person is supported to live in the conflict zone today, will she or he step on an anti-personnel mine tomorrow? Various agencies operating in



Eastern Ukraine, including the Danish Refugee Council (DRC), have witnessed these events, or versions of them. These are difficult calculations to make, and such decisions weigh heavily on conflict-affected residents and humanitarian workers alike.

Agencies choosing to work in Ukraine's buffer zone must be prepared for a number of complex threats. To this end, DRC has been implementing an integrated shelter programme since 2016, systematically combining protection, legal assistance and mine action with shelter. This has allowed DRC to mitigate harm where possible, while linking humanitarian action to longer-term development.

When a potential shelter beneficiary is identified by DRC, a series of complementary services is set in motion. In areas with suspected or confirmed UXO contamination, people are often precluded from receiving assistance to repair or rebuild their houses. In such cases the Danish Demining Group, part of DRC, conducts a non-technical survey (to identify hazardous and non-hazardous areas) of every property where a shelter project is planned. Removing UXOs helps protect the physical safety and wellbeing of everyone involved in the project: beneficiaries, staff and builders. Knowing that a particular address is free from UXO can also open up access to other organizations. Additionally, DRC holds mine-risk education sessions on what to do if a person encounters UXO or a landmine.

At the same time, DRC's lawyers begin working on unresolved housing, land and property issues. Ukraine's labyrinth of bureaucracy and legislation has been a major obstacle for shelter agencies. For example, 93 per cent of DRC beneficiaries who registered to receive a newly constructed house were not in possession of their land title, rendering unlawful any new construction. A host of interconnected housing, land and property issues – ranging from inheritance, land title, technical documentation and post-Soviet land privatization – require extensive time, expertise and fees to resolve. While some agencies have chosen not to support such complex legal cases, DRC tries to solve these problems directly by providing legal counselling, paralegal assistance and documentation assistance, paying court fees, and even providing in-court representation for clients.

Finally, this integrated programme includes a protection component, which trains shelter staff in protection mainstreaming, as well as in identification and referral of protection cases. The protection department worked with the shelter team to develop vulnerability criteria, and then helped to identify and validate beneficiaries. A community protection component has also been rolled out, to improve quality of life beyond the garden gate.

While the current model works, DRC believes there is an opportunity to build upon it by involving other sectors. For example, many older people in particular ask for additional technical or cash assistance to fix livelihood assets beyond the core house.<sup>4</sup> The most frequent requests include repair of collapsed root cellars, barns, summer kitchens and other outbuildings, as well as equipment to rear animals. Future programming by DRC – or any organization taking an integrated approach to shelter – could include livelihoods, water, health, education and infrastructure components, in order to reinforce the connections between humanitarian action and longer-term recovery, which are difficult to maintain in protracted crises, where people move in and out of a relief phase.

In Ukraine, several organizations, including DRC, have lost beneficiaries to landmine accidents, shelling, illness and old age. These losses invariably bring into focus the difficult questions about shelter programming in the buffer zone. The Humanitarian Charter asserts the right to protection and security for people affected by disaster and conflict, including the protection principles of prevention, response and remedy. Under what circumstances are these principles compatible with supporting vulnerable people who choose to remain in an inherently dangerous area?

The humanitarian imperative is a reminder that people affected by disasters or conflict have a right to life with dignity and, therefore, a right to assistance. How best to provide assistance is a conundrum that humanitarians responding to conflicts around the world must grapple with.

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