

The Importance of addressing Housing, Land and Property (HLP) **CHALLENGES IN HUMANITARIAN RESPONSE**



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The Norwegian Refugee Council (NRC) is an independent, international, humanitarian non-governmental organisation which provides assistance and protection, and contributes to durable solutions for refugees and internally displaced people worldwide.

The International Federation of Red Cross and Red Crescent Societies (IFRC) is the world's largest humanitarian organisation, providing assistance without discrimination as to nationality, race, religious beliefs, class or political opinions.

The Housing Land and Property (HLP) Area of Responsibility (AoR) was established in 2007 under the Global Protection Cluster (GPC). Since September 2015, NRC and IFRC have been the global Focal Point Agencies (within the humanitarian coordination system) for Housing, Land and Property and co-chair the HLP AoR. The HLP AoR brings together non-governmental organisations, UN agencies, and academic institutions working at global and country levels to address HLP issues in humanitarian crises.

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Photos by: NRC, IFRC, Danish Red Cross, Navneet Narayan, Palani Molan, Mark Munkel, and Victoria Stodart



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¹ This roundtable followed on from the event on security of tenure in emergency shelter organised by the IFRC, NRC and the UK Department for International Development, which brought together the then Special Rapporteur on adequate housing (Ms Raquel Rolnik), 40 practitioners, donors and representatives of foreign missions, for two days of discussions on 27 and 28 June 2013, in Geneva. See <http://www.ifrc.org/fr/nouvelles/nouvelles/common/land-rights-and-secure-tenure-fundamental-to-humanitarian-shelter-operations-62681/>

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BACKGROUND

The Global Protection Cluster (GPC) Strategic Framework 2016-19² reiterates the importance of placing protection at the centre of humanitarian response, drawing on the IASC Statement on the centrality of protection in humanitarian action.³ The IASC has identified the challenges facing the humanitarian community in ensuring protection at the field level, including the extent to which relevant actors consider the protection of human rights of affected persons in operational decisions.⁴

In response, the IASC has recommended that international human rights and humanitarian standards form the basis of principled, norm-based, constructive engagement in humanitarian action.⁵ The IASC envisages that use of such a framework will positively impact on the humanitarian community's effectiveness and credibility:

“Critically, a human rights-based approach, which takes into account the specific needs of vulnerable groups and individuals, aims at empowering people to claim their rights and strengthen the capacities and accountability of duty-bearers to meet their legal obligations.”⁶

The IASC Statement⁷ provides the basis for this paper to develop a deeper understanding of how a human rights framework, specifically the right to adequate housing, can inform responses to disasters and conflict and promote protection within humanitarian operations.

The IASC has identified that violations of international human rights and humanitarian law, and pre-existing threats and vulnerabilities are amongst the principal causes and consequences of humanitarian crises. If HLP issues (including associated regulatory barriers) are not addressed from the outset of an emergency they can undermine the entire humanitarian response and exclude the most vulnerable. Understanding and addressing HLP issues will ensure a more equitable and sustainable humanitarian response and will ultimately protect, support and strengthen the security and resilience of those affected by conflict and disasters. Weak protection of HLP rights exacerbates the negative impacts of crises, especially on the most vulnerable groups of

2 Global Protection Cluster Strategic Framework, 2016-19. para 12 http://www.globalprotectioncluster.org/_assets/files/about_us/GPC_strategy/gpcstrategicframework.pdf

3 The Centrality of Protection in Humanitarian Action: Statement by the Inter-Agency Standing Committee (IASC) Principals, 17 December 2013 <https://www.interaction.org/document/centrality-protection-humanitarian-action-statement-iasc>

4 The Protection of Human Rights in Humanitarian Crises; A Joint Background Paper by OHCHR and UNHCR, IASC Principals, 8th May, 2013, para 9, <http://www.refworld.org/pdfid/537f08744.pdf>

5 Global Protection Cluster Strategic Framework, 2016-19. para 14 http://www.globalprotectioncluster.org/_assets/files/about_us/GPC_strategy/gpcstrategicframework.pdf ; and The Protection of Human Rights in Humanitarian Crises; A Joint Background Paper by OHCHR and UNHCR, IASC Principals, 8th May, 2013, <http://www.refworld.org/pdfid/537f08744.pdf>

6 The Protection of Human Rights in Humanitarian Crises; A Joint Background Paper by OHCHR and UNHCR, IASC Principals, 8th May, 2013, para 12, <http://www.refworld.org/pdfid/537f08744.pdf>

7 In conjunction with the four Protection Principles outlined in the Sphere Handbook <http://www.spherehandbook.org/en/protection-principle-1-avoid-exposing-people-to-further-harm-as-a-result-of-your-actions/>

the population. By addressing the key concerns with the support of the human rights community, humanitarian actors can maximise the potential of humanitarian response and put conflict and disaster-affected people at the centre of their own recovery and reconstruction.

This paper is not a comprehensive description of HLP issues nor does it present the full breadth of operational interventions. Rather, it seeks to demonstrate that HLP is a cross-sectoral issue, which although acknowledged by some sectors, is still a barrier to operations. This is primarily due to an overall lack of awareness and understanding, and a need for more available technical support and accessible guidance for humanitarian operations as a whole.

HLP as a humanitarian and human rights concept

Housing, land and property (HLP) rights 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. The concept of HLP includes the full spectrum of rights to housing, land and property held according to statutory or customary law or informally — both public and private housing, land and/or property assets. Land rights are rights held to both land and natural resources. HLP rights are held by owners, tenants, cooperative dwellers, customary land tenure owners and users, and informal sector dwellers without secure tenure. Since the early 1990s humanitarians have called attention to the importance of HLP rights in providing durable solutions for both IDPs and refugees. From a human rights perspective, the concept of HLP is essential to ensure the protection of people in all these categories.⁸

HLP rights are referenced and defined in several international human rights instruments which include universally recognised human rights, particularly the right to adequate housing. Organisations providing protection and assistance to persons affected by disasters and conflict should respect the human rights — including HLP rights — of affected persons at all times, and advocate for their promotion and protection to the fullest extent.⁹

Common HLP issues in emergencies include tenure discrimination leading to inequitable assistance; loss of HLP documentation; access to land for shelter and livelihoods; access to natural resources, such as water; land and property conflicts; forced evictions; secondary occupation; land grabbing; restitution; and disinheritance, particularly of women and children.

The GPC's HLP Area of Responsibility (AoR)

⁸ Norwegian Refugee Council (2011) *Housing, Land and Property, Training Manual*, p.11. <http://www.nrc.no/?did=9165948#.Vs7BE8dMFQZ>

⁹ IASC (2011) *Human Rights and Natural Disasters. Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, General Principle III, p3



INTRODUCTION

In her recent reports,¹⁰ the Special Rapporteur on adequate housing has drawn attention to the 59.5 million people who have been forcibly displaced by armed conflicts,¹¹ and over 19.3 million newly displaced due to disasters¹² worldwide, who have lost their homes and are often subject to discrimination, stigmatization and social exclusion. Displaced people face particular obstacles in accessing adequate housing during displacement and are subject to forced evictions and other human rights abuses. They also struggle to assert their rights to restitution or compensation for their housing, land and property upon return. In instances where return is not possible (for reasons of safety or because land is no longer viable), displaced persons may face relocation, which can lead to violations of their right to adequate housing because of resource constraints (land, financial and relevant expertise). Equally, for

¹⁰ Special Rapporteur on adequate housing, *Report to the Human Rights Council 31st Session*, UN Doc. A/HRC/31/54, 30 Dec 2015 (Homelessness) and Special Rapporteur on adequate housing, *Report to the General Assembly 70th session*, UN Doc. A/70/270, 4Aug 2015 (Habitat III)

¹¹ IDMC & NRC (2015) *Global Overview 2015* <http://www.internal-displacement.org/assets/library/Media/201505-Global-Overview-2015/20150506-global-overview-2015-en.pdf>

¹² *ibid*

those affected but able to remain in or near their damaged or destroyed home, assistance may not be provided owing to their tenure status.

Disputes over land and natural resources are often at the centre of conflict; territorial acquisition and the resulting occupation of homes and land drives displacement. When conflict ends, disputes over occupied property are a continued source of instability, preventing durable solutions for returning populations and threatening fragile peace agreements.¹³

Disasters often highlight significant legal and regulatory barriers, especially around housing and land, which can impede the swift provision of appropriate and equitable assistance and prevent people from returning to their livelihoods. Formal land registration, governance and land administration systems are often lacking or ineffective in many countries and although these are considered the domain of development actors and national governments, the impact is felt acutely in a humanitarian response. Moreover, unlike health or education, housing and land are rarely managed by a single government department or ministry. Responsibility is often spread across several departments, which can be disconnected or run parallel systems especially between national and local levels, and formal and customary levels.

There is a clear humanitarian imperative to provide victims of conflict and disaster with basic shelter, access to water, sanitation, protection, food and healthcare.¹⁴ Recent reports by the Special Rapporteur on adequate housing have underlined the human rights aspects of the provision of humanitarian shelter, particularly in urban areas.¹⁵ This is based on the concept of the right to adequate housing as the right to live somewhere in security, peace and dignity (and the right to non-discrimination in this context).¹⁶ Within the humanitarian sphere the publication of the Pinheiro Principles¹⁷ and the Sphere Standards¹⁸ are just some of the examples of where a human rights framework has been applied to humanitarian response. The seven criteria which make up the right to adequate housing are useful to define housing more comprehensively; not just as a shelter commodity. There is therefore an opportunity to consider how the right to adequate housing can provide the basis for a more integrated approach to the planning and provision of responsible settlements, especially in urban settings.

13 Special Rapporteur on adequate housing *Report to the Human Rights Council Sixteenth Session* UN Doc. A/HRC/16/42 para 6, 20 Dec 2010 (Post Conflict and Post Disaster Response)

14 HPN Network Paper (2003) *Housing Reconstruction after Conflict and Disaster*

15 Special Rapporteur on adequate housing, *Report to the Human Rights Council Twenty-Eighth Session*. UN Doc. A/HRC/25/54, 30 Dec 2013 (Guidelines on Security of Tenure for the Urban Poor) and UN Docs A/HRC/31/54 and A/70/270

16 UN Committee on Economic, Social and Cultural Rights (CESCR), (1991) *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23, para 7.

17 See *Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the 'Pinheiro Principles'*, July 2007, p.36, <http://www.internal-displacement.org/publications/2007/housing-and-property-restitution-for-refugees-and-displaced-persons-implementing-the-pinheiro-principles>

18 See <http://www.sphereproject.org/>

The criteria for an adequate standard of housing includes *Security of tenure; Cultural adequacy; Affordability; Availability of services, materials, facilities and infrastructure; Habitability; Accessibility and Location.*

Out of the seven criteria that comprise the right to adequate housing, the criteria listed below go further than the physical attributes of the structure (i.e. cultural adequacy, habitability and accessibility) and which should also be implied in a shelter programme:

- » **Availability of services, materials, facilities and infrastructure**
Adequate housing must contain certain facilities essential for health, security, comfort and nutrition. All persons should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, adequate sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.
- » **Location**
Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. Housing should not be built on polluted sites nor in immediate proximity to pollution sources.
- » **Affordability**
Personal or household financial costs associated with housing should not threaten or compromise the attainment and satisfaction of other basic needs (for example, food, education and access to health care).
- » **Security of tenure**
There are a multiplicity of legitimate tenure arrangements besides private ownership, such as public or private rental accommodation, cooperative housing, lease, emergency housing, occupation/rent of land or property in informal settlements, and other user or occupancy rights through statutory, customary, religious or hybrid arrangements, all with varying degrees of formality. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.¹⁹

¹⁹ OHCHR and UN-Habitat, n.d. The Right to Adequate Housing, Fact Sheet no.21 p.3 and 4. http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

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**EIGHT REASONS WHY
ADDRESSING HLP ISSUES
IS IMPORTANT IN
HUMANITARIAN RESPONSE**

1. SAVING LIVES, PREVENTING FURTHER DISPLACEMENT AND HUMAN RIGHTS VIOLATIONS

Provision of shelter in the initial phases of humanitarian response is critical for the protection and dignity of those affected by conflict and disasters. Delays in accessing housing after crises puts people in life and health-threatening situations, exposing them to a range of serious protection risks, including the risk of gender-based violence (See IASC Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Response; chapter on HLP).²⁰ The Special Rapporteur on adequate housing has noted that women and children are particularly vulnerable to tenure insecurity, homelessness and other human rights violations and should be prioritised for emergency shelter.²¹

Access to land is required for interventions in the shelter, WASH, livelihoods, food security and CCCM.²² This can entail navigating complex tenure systems which blend statutory and customary access and ownership rights. There is a direct correlation between conflict, secure property rights and food security: hunger is very often associated with poor or insecure access to land and housing. As an emergency measure, access to land can provide livelihood opportunities, as well as shelter. For those affected (displaced or otherwise), this represents a critical step for survival. Strong HLP rights advance food security. When property rights are clear and secure, farmers are empowered to make better economic decisions, including whether to plant short/long-term crops for local consumption and for the market, to sell or lease their land or expand their production, etc.

Once displaced persons have found shelter they may be vulnerable to forced eviction by the government or de facto authorities, if occupying public buildings; or by landlords and host communities if in rental accommodation; and by local power-holders or parties to the conflict asserting control over ad hoc settlements, collective centres and/or allocated shelter. Attention to security of tenure is a vital part of a humanitarian response to prevent evictions, leading to further displacement and homelessness, as the below example shows.²³

Understanding tenure arrangements prior to the provision of shelters and camps is also essential for humanitarians to avoid either building on confiscated land or being unable to provide shelter to the most vulnerable because of a lack of civil and/or land documentation. Humanitarians have a minimum responsibility for due diligence in this regard to avoid contributing to ongoing human rights violations and

²⁰ IASC (2015) *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing risk, promoting resilience and aiding recovery* Available at http://gbvguidelines.org/wp-content/uploads/2015/09/2015-IASC-Gender-based-Violence-Guidelines_lo-res.pdf

²¹ Special Rapporteur on adequate housing Report A/HRC/25/54 (30th Dec 2013).

²² WASH: water, sanitation and hygiene. CCCM: camp coordination and camp management

²³ NRC (2015) *In Search of a Home - Access to adequate housing in Jordan*. pg. 9 https://www.nrc.no/arch/_img/9200922.pdf.

discrimination based on tenure status.²⁴

In the long term, secure HLP rights provide the foundation for agriculture and industry and contribute to a sustainable peace process. In the Liberian-Ivorian border region, for example, secure property rights resulted in increased household food supplies and helped to consolidate the peace and stability of the region.²⁵ There is an important link between housing and livelihood as houses often have the function of a shop, a store or a workshop. Individuals often make a living from home: producing materials, building, offering services, etc. If they don't, they want to live in a location that is close to livelihood opportunities.

Preventing eviction of Syrian refugees in Jordan

To respond to the growing shelter needs of Syrian refugees resident in Jordan, NRC implemented an innovative shelter programme in 74 locations across the Governorates of Irbid, Jerash and Ajloun. In June 2015 these governorates hosted more than a quarter of all registered Syrian refugees in Jordan. NRC provides financial incentives and technical support to Jordanian landlords to finish semi-constructed housing and create new adequate and affordable housing units. In return, vulnerable Syrian refugee households are provided with rent-free accommodation for a period of 12-24 months, depending on each specific agreement. Jordanian landlords and Syrian refugee households sign standard tenancy agreements in line with Jordanian law and are supported to understand their rights and legal obligations. NRC outreach teams monitor the implementation of the lease agreements throughout the course of the rental period and help resolve problems and disputes as they arise.



²⁴ Global Shelter Cluster (2013) *Land Rights and Due Diligence Standard Guidelines (2013) in a post crisis situation* <https://www.sheltercluster.org/sites/default/files/docs/Due%20diligence%20in%20shelter-A4.pdf>

²⁵ NRC (2013) *Land Conflict and Food Security in the Liberian-Ivorian Border Region*, pg.28 http://www.nrc.no/arch/_img/9195236.pdf.

2. ADAPTING HUMANITARIAN RESPONSE TO COMPLEX URBAN ENVIRONMENTS

The right to adequate housing is much more than a roof and four walls; it is about the community where that house is situated; the availability of infrastructure, services, and livelihoods; the perception of security and the feeling of identity. Nowhere is this more tested than in an urban context where spatial pressures and social inequities emphasise the inadequacies of resources. The Special Rapporteur has explained how urbanisation represents the dominant force of our time and the greatest single challenge for the realisation of the right to housing.²⁶ Over half the world's population is living in cities and one in three urban residents live in slums in developing countries.²⁷ It is also estimated that half of the world's IDPs and refugees now live in towns and cities, many in informal settlements.²⁸

Humanitarian action is increasingly taking place in urban contexts and yet humanitarian response struggles to keep up with the pace and complexities that are required. Given the nature of an urban environment it is often difficult to identify and support those that are in need, especially as camps are often not a spatially viable option nor appropriate.²⁹ Adaption of programme models based on rural and camp-based responses have been slow.³⁰ The ability to provide a holistic response with local authorities at the centre remains a challenge to the sector-based approach that has developed since 2005; serious consideration must be given to new approaches such as area based responses.³¹

No longer can the response be targeted at a predictable case load or traditional means of assistance be provided. Humanitarian programmes must be flexible and adaptable to the varying needs of 'neighbourhoods' which are established by administrative boundaries, fixed or transient, and may be shaped by ethnic or other characteristics. In urban areas there is a much higher risk of marginalised and socially isolated people being excluded from assistance. More time is therefore required to understand the social, political and economic environment in urban areas; how to identify the marginalised and socially isolated who are often 'invisible'; and how to support often overburdened local authorities in their leadership of the response. Traditional assessments need to be modified accordingly, along with the way in which the information is

26 Special Rapporteur on adequate housing report A/70/270

27 UN Habitat (2013) *State of the World's Cities* <https://sustainabledevelopment.un.org/content/documents/745habitat.pdf>

28 IDMC (2015) *Home Sweet Home: housing practices and tools that support durable solutions for urban IDPs* <http://www.internal-displacement.org/publications/2015/home-sweet-home-housing-practices-and-tools-that-support-durable-solutions-for-urban-idps>

29 CCCM – Urban Displacement Outside of Camps <http://www.globalccmcluster.org/udoc>

30 HPN Network Paper (2003) *Housing Reconstruction after Conflict and Disaster*,

31 E. Parker and V. Maynard, (2015) *Humanitarian Response to Urban Crises: Literature Review of Area-Based Approaches*. London, IIED <http://pubs.iied.org/10742IIED.html?k=humanitarian&r=p>

gathered. With the increased use of cash modalities, the feasibility and capacity of local and rental markets need to be assessed continually throughout the response, and means of appropriately supporting host families and communities should be included in programme design.

The diversity of tenure forms is also more apparent in urban areas. Overlapping ownership patterns are frequently characterised by a relatively high percentage of renters (documented and undocumented lease agreements) in multiple occupancy buildings or in informal settlements. Not only does the overwhelming number of undocumented dwellers in urban areas present challenges for the humanitarian community; so too, does the physical lack of space. Space is a premium in any urban area, leading to an increasing need for multiple-occupancy and multi-story dwellings, house/flat shares and the sharing of single rooms. This results in several forms of tenure often co-existing on the same plot.

“In Kolkata, thika tenants rent plots and then sublet rooms to others who sublet beds on a shift system, with each party entitled to certain rights.”³²

With such complicated overlapping arrangements existing before a disaster or conflict, it is unsurprising that the issue of land tenure in an urban context has presented such a challenge to the humanitarian community.³³ In urban areas, such as in the Syria refugee crisis and in Ukraine, where rental accommodation is the primary form of housing for the displaced, interventions aim to strengthen tenancy agreements and resolve disputes. Some shelter programmes have incorporated this into their standard operations.³⁴ Specific expertise is therefore required to understand the regulatory and legal frameworks applicable in urban areas; building and planning specifications and infrastructure requirements call for longer-term collaboration with the development sector and local government institutions.³⁵



³² G. Payne, Urban Land Tenure Policy Options: Titles or rights? (2000, Paper presented at the World Bank Urban Forum).

³³ IFRC & NRC (2013)

³⁴ For more information on NRC's Jordan programme please go to <http://www.nrc.no/jordan#.VsyFVp>

³⁵ IDMC (2015)

3. ENSURE EQUAL ACCESS TO HUMANITARIAN ASSISTANCE

The NRC, IFRC report *Security of Tenure in Humanitarian Shelter Operations* outlines the ways in which equality in access to shelter and other humanitarian assistance can be compromised by excluding the most vulnerable; homeless and landless. In many of the regions and contexts in which shelter programmes are implemented, the use of and access to land and housing by individuals and communities — including persons affected by displacement — is of a different character and subject to a different type of governance than ‘formal’ ownership evidenced by documentation and/or official written records. Many people will have lost their documentation during the conflict or disaster. In many contexts, various forms of customary tenure that do not rely on documentary evidence are dominant. However, these may not be recognised by humanitarian actors as a reliable basis for durable shelter assistance.

Despite this operational reality, until recently, both donors and shelter providers have largely adhered to traditional notions of providing shelter solutions based on individual property ownership, given the view that this was the only sufficiently secure form of tenure. As a result, those who did not fit that prevailing paradigm — often those most in need — were excluded from shelter solutions due to their lack of individual ownership. This led to NRC and IFRC’s initiative to develop an operational definition of security of tenure applicable in humanitarian settings, and which contributed to the emphasis of the principle of non-discrimination in humanitarian shelter in the Guidelines on Security of Tenure for the Urban Poor (Para 5):

Combating discrimination on the basis of tenure

Non-discrimination on the basis of tenure status must be guaranteed in the context of, inter alia: (i) Humanitarian assistance, including access to shelter.

The Guidelines recommended that humanitarian actors and donors support states to:

Ensure that all disaster and conflict-affected persons, irrespective of their tenure status and without discrimination of any kind, have access to emergency shelter. A rapid assessment of the land tenure situation should be conducted, recognizing the multiple tenure arrangements that exist or existed prior to the conflict or disaster.³⁶

In this way, humanitarians should seek to promote the design of flexible solutions with tenure that is ‘secure enough’ in that it provides the greatest degree of protection for beneficiaries that is feasible in the context. On the one hand is the ideal of formal tenure with a high degree of security evidenced by official documents. Whereas on the other is the immediate need of beneficiaries for some security in the absence of formal documented tenure, which is more often the reality.

³⁶ IFRC (2015) *Rapid Tenure Assessment Guidelines for post-disaster response planning* http://www.ifrc.org/Global/Documents/Secretariat/Shelter/1301300_Rapid%20Tenure%20Assessment%20Guidelines_En_LR.PDF. This is a pilot version and feedback is welcome to regulatory.barriers@ifrc.org



FIJI – CYCLONE EVAN 2012/2013

Tropical Cyclone Evan hit Fiji on 16th December 2012. IFRC was asked by the Government of Fiji (GoF) to co-lead the Shelter Cluster. On the 21st December the GoF released a 'Housing Policy' that identified persons who qualified for government assistance as those with formal tenure. There was concern that by providing government assistance in informal settlements it would be seen as granting legal status to these settlements. Those who did not qualify for this assistance were expected to self-recover. Consequently, the Shelter Cluster worked with the GoF to ensure that people in informal settlements could receive assistance. A Memorandum of Understanding between the GoF and each registered NGO was established to facilitate NGO intervention in housing in the informal housing sector. This took the form of repairs to existing dwellings or a temporary shelter (timber frame, with CGI roofing and tarpaulin cladding for walls) along with access to adequate water and sanitation.³⁷

The roundtable event on security of tenure in emergency shelter operations in Geneva, 2013 proposed some indicators to assess tenure that may be 'secure enough'³⁸ for humanitarian shelter programming in order to ensure equality in access to assistance and incorporate the

37 IFRC (2013) Shelter Cluster Fiji - <https://www.sheltercluster.org/sites/default/files/docs/Fiji%20Shelter%20Cluster%20Case%20Study-EN-LR02.pdf>

38 The concept of 'secure enough' tenure based on indicators is partially inspired from the Notional Typology of Land Tenure & Property Rights by Payne, G. and Durand-Lasserve, A., 2012, Holding on: security of tenure - types, policies, practices and challenges.; and UN-Habitat and Global Land Tool Network, 2011, Monitoring Security of Tenure in Cities. <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3261&AspxAutoDetectCookieSupport=1>

most vulnerable. These include the following:

- » **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.**

A table with elements for further assessment of tenure security has been presented in the report *Security of Tenure in Humanitarian Shelter Operations*.³⁹

However, it is not only access to humanitarian assistance that is compromised by a lack of security of tenure. The Guiding Principles on Tenure Security for the Urban Poor⁴⁰ state that access to basic services are also compromised:

People without an officially recognized tenure status are often denied access to basic services and facilities. In some situations, public and private service providers, including of water, sanitation and electricity, require the presentation of title as a prerequisite for connection or delivery. In other situations, access to social facilities, such as school enrolment, is conditional on a registered address. States should take measures to ensure that access to basic services and facilities, whether publicly or privately provided, is not dependent on tenure status, official registration of residence, or the presentation of title.

Tenure status therefore can have far-reaching implications for displaced and non-displaced persons' access to humanitarian assistance as well as basic services such as healthcare and education. This presents a strong rationale for supporting better security of tenure for all crisis affected people.

A lack of civil documentation is another barrier to the enjoyment of HLP rights as it denies individuals their legal standing and ability to give evidence before the statutory justice system (this is extremely problematic for example for displaced Afghan women⁴¹); their eligibility to enter the social security system (e.g. Colombian refugees in Ecuador⁴²); and their ability to open a bank account to receive cash assistance. For example, in Nepal this is a requirement for people to receive the Government's full reconstruction grant if their house was totally destroyed by the 2015 Earthquake, whereas less than half of the population have bank accounts.⁴³

39 IFRC & NRC (2013)

40 Special Rapporteur on adequate housing Report A/HRC/25/54 Para 52

41 NRC (2014) *Strengthening displaced women's housing land and property rights in Afghanistan*, <http://www.refworld.org/docid/5486c4684.html> pg 10.

42 NRC (2013) *Ecuador: Housing, land and property rights for Colombian refugee women and persons in need of international protection*, <http://womenshlp.nrc.no/wp-content/uploads/2014/06/EcuadorEnglishWeb.pdf> pg 16.

43 CARE (2016) *Housing, Land and Property Issues in Nepal and their consequences for the post-earthquake reconstruction process* pg. 9 <http://insights.careinternational.org.uk/publications/housing-land-and-property-issues-in-nepal-and-their-consequences-for-the-post-earthquake-reconstruction-process>

4. PROMOTING ACCESS TO JUSTICE IN CRISIS CONTEXTS AND CONTRIBUTING TOWARDS DURABLE SOLUTIONS

Promoting access to justice, including at the national level, and seeking accountability for violations of human rights law are essential elements of the IASC's protection of affected populations.⁴⁴ From a human rights perspective, access to justice to claim and enforce the right to adequate housing is critical, not simply to ensure meaningful accountability but also as a means to identify and remedy barriers that need to be addressed in order to maximise efficiency and effectiveness of programmes, with the primary responsibility lying with the State.⁴⁵

Violations of HLP rights are often a significant aspect of conflict and can continue well into the post-conflict period. They can also be a barrier to reconstruction in post disaster contexts. As such, documenting violations of HLP rights and abandoned HLP assets; prevention of illegal occupation and destruction of abandoned HLP; and encouraging bans on HLP transfers, is extremely important.⁴⁶ Furthermore, resolving HLP disputes and issues such as confiscation and occupation of HLP can be a central aspect of transitional justice and re-establishing rule of law.⁴⁷ Other aspects of the post-conflict environment further complicate HLP issues, including the deliberate destruction or theft of cadaster records and other documentation, and the absence of the rule of law and functioning authorities.

HLP disputes are very common in post crisis and displacement contexts as a result of secondary occupation, loss of ownership documents, illegal or forced sales as well as insecurity of tenure, unequal distribution of land and unresolved festering grievances over land and property. This is particularly the case in countries that are impacted by conflict and disasters, such as Nepal, where approximately 60 per cent of cases are land related.⁴⁸ HLP disputes can be politically, socially and economically destabilising. The adjudication of these disputes is essential in order to achieve security and contribute to the achievement of durable solutions. In Central African Republic, for example, resolving HLP disputes will be a key component of a return process and the achievement of durable solutions; if not, they are likely to contribute to renewed instability.⁴⁹

44 The Protection of Human Rights in Humanitarian Crises; A Joint Background Paper by OHCHR and UNHCR, IASC Principals, 8th May, 2013 <http://www.refworld.org/pdfid/537f08744.pdf>

45 Special Rapporteur on adequate housing (2015) Report A/70/270 para 25

46 NRC, (2014) *Displacement and Housing, Land and Property Rights in the Central African Republic*, http://www.nrc.no/arch/img.aspx?file_id=9195624

47 Global Protection Cluster Working Group (2010) *Handbook for the Protection of Internally Displaced Persons* pgs. 302 - 311.

48 CARE 2016

49 NRC, (2014) *Displacement and Housing, Land and Property Rights in the Central African Republic*, http://www.nrc.no/arch/img.aspx?file_id=9195624 p.46

There have been important developments in national jurisprudence for displaced persons claiming their right to adequate housing. The Special Rapporteur has noted the case T-025 in Colombia, in which the Constitutional Court required the implementation of effective programmes to respond to the unconstitutional state of affairs confronting internally displaced persons. This was because 63.5 per cent of the displaced population had inadequate housing and 49 per cent lacked access to appropriate public utilities.⁵⁰

The Special Rapporteur has stated her intention to devote a thematic report to the issue of access to justice in relation to the right to housing, including assessing and documenting barriers experienced by claimants.⁵¹ This initiative aims to explain the barriers to justice experienced by many displaced persons which impact on their ability to find a safe refuge and achieve lasting solutions to their displacement.

Access to justice can take different forms ranging from access to statutory courts or commissions to more traditional mechanisms such as customary or faith based dispute resolution bodies. The use of collaborative dispute resolution modalities such as negotiation, mediation or arbitration can be an effective way to resolve HLP disputes. This can be particularly appropriate in cases of good faith secondary occupation of housing or land or when the parties to the dispute are equally vulnerable and in need of protection.⁵²



50 Special Rapporteur on adequate housing (2015) *Report A/70/270*; para 48; For NRC's support of IDPs in the case see <http://www.nrc.org.co/images/documentos-internos/Libro-Caminantes-Invisibles.pdf>

51 Special Rapporteur on adequate housing's *Report to the General Assembly Sixty-Ninth session: UN Doc. A/69/274* 7 Aug. 2014 para 78.

52 See for example: NRC, (2015) *Displacement and Housing, Land and Property Disputes in Puntland*, http://www.nrc.no/arch/_img/9201808.pdf, pgs 17 – 20; and NRC, (2011) Searching for soap trees, NRC's Land Dispute Resolution Process in Liberia, http://www.nrc.no/arch/_img/9195224.pdf

5. ADDRESSING LOSS OF LAND OR INABILITY TO RETURN TO LAND AND HOMES AFTER DISASTERS

In many post disaster situations the ability of people to return to their homes and land is prevented by standing flood water or rubble, which may prevent immediate return and lead to temporary displacement in camps, collective centres or with families and friends. However, in other instances land may have disappeared completely (washed away by flooded rivers – Bangladesh for instance) or is no longer safe to remain owing to landslide risk (Nepal post-earthquake), repeated storm surge (Philippines), or the impact of climate change and continual flooding as a result of rising sea levels (Pacific Islands).

In the instances of voluntary or forced relocation of populations, specific international standards must be met. Evictions and relocations should be a measure of last resort and should not render persons homeless or vulnerable to the violation of other rights.⁵³ These protections apply to all affected persons, irrespective of their tenure status.

Experience shows that relocating people involves large costs in terms of infrastructure and services and can also severely disrupt people's livelihoods and community lives.⁵⁴ Settlement and housing patterns are not random but reflect a specific economic and social fabric that may be difficult to replicate elsewhere.⁵⁵ Responsible settlements are about more than the construction of shelter, they are about creating a safe environment for the entire community where they not only have access to an adequate standard of housing but also to utilities, critical infrastructure and livelihood opportunities⁵⁶ – all components of the right to adequate housing and a means of ensuring a more resilient future for the most vulnerable. Resources (both financial and technical) for critical infrastructure and services must be identified and committed at the outset of any relocation project.⁵⁷

53 IASC (2011) *Operational Guidelines on the Protection of persons in Situations of Natural Disaster*, C.2.5, p42

54 See World Bank, *Hazards of Nature, Risks to Development: an IEG Evaluation of World Bank Assistance for Natural Disasters*, 2006, p46; Active Learning Network for Accountability and Performance in Humanitarian Action, *Responding to earthquakes, 2008: Learning from Earthquake Relief and Recovery*, 2008, p21.

55 Special Rapporteur on adequate housing, *Report to the General Assembly, Sixty-Sixth Session*, UN Doc. A/66/270, 5 August 2011, para 48.

56 IFRC (2012) *Post-disaster Settlement Planning and Guidelines*, http://www.ifrc.org/PageFiles/71111/PostDisaster_Settlement_Guidelines.pdf p7.

57 CARE International (2016) *Post-disaster shelter in India: A study of the long-term outcomes of post-disaster shelter projects* http://insights.careinternational.org.uk/media/k2/attachments/Post-Disaster-Shelter-in-India_full-report_2016.pdf

Philippines – Typhoon Haiyan 2013/2014

Super Typhoon Haiyan hit the Philippines on 8th November 2013. Within a couple of weeks the President of the Philippines recommended that a 40 metre No Build Zone (NBZ) in all Haiyan affected coastal areas be enforced by local government units as a means of protecting their citizens from future storm surges. The government identified 205,000 families to be permanently relocated and stated that Government assistance would not be provided to anyone in the NBZ. In some municipalities shelter agencies were told by Mayors that should they provide assistance in the NBZ their programmes would be shut down. Following an inter-cluster initiative,⁵⁸ the Humanitarian Country Team worked with the Government to allow humanitarian assistance to those stuck in the NBZs, advocated that relocation should be considered as a measure of last resort and that hazard mapping should be carried out to identify those at risk as opposed to relying on the arbitrary use of a law designed to protect water sources from people as a means of installing NBZs. The proposed NBZ was one of the biggest barriers to recovery for all actors, including local governments, none more so than in Tacloban.



⁵⁸ Shelter Cluster Philippines (2014) *Inter-Cluster Advisory to the HCT on the provision of assistance in proposed 'no dwelling zones'*: <https://www.sheltercluster.org/sites/default/files/docs/Advisory%20Note%20-%20No%20Dwelling%20Zones.pdf>

6. PROTECTING WOMEN AND SUPPORTING THEIR RECOVERY

The Guiding Principles on Tenure Security for the Urban Poor⁵⁹ have underlined how in humanitarian settings, women and children are particularly vulnerable to tenure insecurity, homelessness and other human rights violations. The Principles emphasise prioritising safe emergency shelter to women and children. They also underline State responsibility to ensure that women are able to access humanitarian assistance and exercise their right to return, restitution and resettlement, regardless of their family status or whether their name is recorded on tenure documentation. Humanitarian organisations are therefore tasked with supporting governments in this regard.

The Special Rapporteur has committed to ensuring that the housing conditions of women will remain prominent during her mandate⁶⁰ and has drawn attention to the importance of strengthening women's registration of tenure rights in humanitarian shelter:

*The registration of tenure rights in joint or multiple names, including of women, should be promoted as standard procedure, in order to avoid de jure or de facto discrimination if registration is authorized solely in the name of the head of the household.*⁶¹

Strengthening women's tenure rights requires more than the provision of land or property title to women. There needs to be a meaningful discussion from the outset with men and boys as well as women and girls as to the reasons for equal title, gender equality and clear explanations provided as to the meaning and use of title documentation.⁶²

The human rights framework has made an important normative contribution to supporting women in humanitarian response. In recognising the unique effects of "multiple discrimination"⁶³ it provides a solid rationale for a better understanding of the particular barriers women face in housing and access to justice. This discrimination affects women because they are refugees, internally displaced or homeless; economically disadvantaged; members of ethnic or religious minorities; and because many are living in societies where significant structural inequalities persist. Discrimination on the basis of sex exists under all types of land tenure systems and patriarchal laws, attitudes and customs affect the governance of land in many societies.⁶⁴

59 Special Rapporteur on adequate housing, UN.Doc. A/66/270 para. 65

60 Special Rapporteur on adequate housing, UN.Doc A/69/274 para 61

61 Special Rapporteur on adequate housing UN. Doc A/HRC/25/54 para 62

62 CARE International (2016) *Post-disaster shelter in India: A study of the long-term outcomes of post-disaster shelter projects pgs. 30,75,89 and 103*

63 Special Rapporteur on adequate housing UN Doc A/69/274 para 46,para 46

64 Special Rapporteur on adequate housing UN Doc A/HRC/25/54 Para 60; and NRC (2013) *Ecuador: Housing, land and property rights for Colombian refugee women and persons in need of international protection*, <http://womenshp.nrc.no/wp-content/uploads/2014/06/EcuadorEnglishWeb.pdf>



Discrimination against Colombian women increases eviction risk

Many Colombian women refugees bear the psychological consequences of the violence which forced them to leave their place of origin. This is compounded by the multiple discrimination they face in countries of exile in the region: Ecuador, Venezuela and Panama. It affects all aspects of their lives and constitutes a significant barrier to secure tenure, leading to their increased risk of eviction.

In Ecuador, Colombian refugee women described the strength of discrimination and xenophobia they encountered when looking for rental accommodation. A study conducted by NRC found that without exception, female interviewees cited instances of discrimination due to their nationality, Afro-Colombian ethnicity, refugee status and gender. This discrimination is even greater towards single mothers with young children. They have to deal with stereotypes of Colombian women as sex workers, and reluctance from house owners to have them as tenants.

NRC's research found that discrimination against Colombian women was also cited as a basis for higher rent, increased deposits and less formalisation of rental contracts. As a result, women reported having to live in poor quality, overcrowded housing where more than one family share a single rented room. Colombian women also reported problems with return of deposits when they left properties but were afraid to seek redress for fear of coming into contact with the authorities, losing their refugee documentation or otherwise having to leave the country.

Displaced women therefore continue to experience violations of housing rights long after the conflict ends. Because discriminatory practices are often perpetrated by women's families and their communities, they warrant specific interventions that are different from addressing the loss of housing and land as a result of the conflict. In the Central African Republic, returnee widows and their children face eviction from their

marital home by the family of their deceased husband.⁶⁵

In some cases, discriminatory national laws or gaps in law can exacerbate this, despite the existence of equality guarantees in national constitutions. The Special Rapporteur has identified the different forms of discrimination which can apply in housing situations and are relevant in a humanitarian context. This includes direct discrimination (for example when a law or policy explicitly bars women from obtaining loans in order to purchase housing) or indirect discrimination (for example, when, in order to provide credit for the purchase of housing, a bank requires that borrowers have a type of collateral or specific employment references that many women and migrants, particularly if they are undocumented, are unable to provide).⁶⁶

The IASC Guidelines on GBV advocate for particular attention to the effects of forced evictions on women and girls.⁶⁷ They also describe the problems facing GBV survivors who may be at an increased risk of HLP problems. In urban areas survivors may find themselves unable to work or pay rent. In camp settings where residents are allocated land but required to build housing themselves, some survivors may be too physically or emotionally incapacitated to undertake such a task. HLP programmes that identify the context specific links between HLP and GBV can develop strategies to mitigate the risks of violence against women, girls and other at-risk groups. When effectively designed, these programmes can challenge inequitable social norms and promote gender equality by assisting women, girls and other at-risk groups in claiming HLP rights after the humanitarian emergency and improve family security during economic and social transitions.⁶⁸

Conflict and disasters can bring devastation and loss for women. But they can also provide opportunities to promote equality during recovery, when lives are rebuilt, even in protracted displacement. Experience shows that there is a window of opportunity following periods of conflict and disasters, to intervene in progressive ways that address discrimination. Organisations have a responsibility to ensure that gender- and diversity-sensitive strategies are considered in the design, implementation, monitoring, evaluation and reporting of their interventions.⁶⁹ With this in mind, there is potential to assist women to claim HLP rights after crises, as they challenge social norms within their families and communities, to achieve greater equality.

65 NRC (2015) *Consequences of Evicting Widows*, <http://womenshp.nrc.no/2015/03/eviction-widows-central-african-republic/>

66 Special Rapporteur on adequate housing UN Doc : A/69/274 para 44

67 IASC (2015) *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing risk, promoting resilience and aiding recovery* Available at http://gbvguidelines.org/wp-content/uploads/2015/09/2015-IASC-Gender-based-Violence-Guidelines_lo-res.pdf and NRC (2014) *Life Can Change* <http://womenshp.nrc.no/wp-content/uploads/2014/03/GlobalReportWHLp.pdf> for more information on traditional practices

68 NRC (2015) *The Kampala Convention: Make it Work for Women*, <http://womenshp.nrc.no/2015/12/the-kampala-convention-how-to-make-it-work-for-women/>

69 IFRC (2015) *Minimum Standard Commitments to Gender and Diversity in emergency programming*: <http://www.ifrc.org/Global/Photos/Secretariat/201505/Gender%20Diversity%20MSCs%20Emergency%20Programming%20HR3.pdf>

7. HLP FOR CONFLICT PREVENTION AND PEACE BUILDING

Since 1990, at least 18 violent conflicts have been fuelled by the exploitation of land, natural resources and property which, if not addressed, carry the potential to further exacerbate conflict.⁷⁰ Unequal and discriminatory HLP policies exacerbate existing tensions in conflict-prone or conflict-ridden countries. Côte d'Ivoire provides a clear example of how land issues can become drivers of conflict.⁷¹

In spite of the obvious significance of HLP for conflict management, these issues have only recently seen growing recognition as drivers of conflict and violence. For instance, access to land and natural resources are increasingly included in peace negotiations and their resulting agreements. While roughly half of all peace agreements concluded between 1989 and 2004 (51 out of 94) contained direct provisions on natural resources, all major agreements from 2005 to 2014 contained such provisions.⁷²

The United Nations increasingly view HLP concerns as essential components of conflict-prevention and as an indispensable prerequisite for the rule of law.⁷³ The EU-UN Partnership on Land, Natural Resources and Conflict Prevention is an example of this recognition.⁷⁴ In 2014 the Rule of Law Unit of the Executive Office of the Secretary General requested UN Habitat to lead the drafting of a Secretary General's Guidance Note on Land and Conflict.⁷⁵ A draft Scoping and Status Study containing key findings and recommendations on how to engage at scale on land and conflict was recently developed. The content of the study aligns with the recommendations coming out of the high level reviews on peace operations, peace building architecture and the UN Security Council Resolution 1325 on women, peace and security (Resolution 1325).

70 1 November 2012, *Secretary-General Urges Recommitment to Safeguarding Natural Resources in Message on International Day for Preventing Exploitation of Environment in Armed Conflict*, <http://www.un.org/press/en/2012/sgsm14615.doc.htm>

71 IDMC (2009) *Whose land is this? Land disputes and forced displacement in the western forest area of Côte d'Ivoire* <http://www.internal-displacement.org/publications/2009/whose-land-is-this-land-disputes-and-forced-displacement-in-the-western-forest-area-of-cote-divoire/>

72 UNEP (2015) *Natural Resources and Conflict: A Guide for Mediation Practitioners*, page 46 http://postconflict.unep.ch/publications/UNDPA_UNEP_NRC_Mediation_full.pdf

73 UNHCR (2005): *Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework* <http://www.unhcr.org/425683e02a5.pdf>

74 For more information, please visit <http://www.un.org/en/land-natural-resources-conflict/>

75 For more information, please visit <http://www.gltm.net/index.php/work-stream/land-and-conflict>

Ten years ago, UNHCR recommended that the UN (and other institutions carrying out similar activities) develop a consistent, transparent and effective policy on HLP as part of its work supporting the establishment of the rule of law within post-conflict settings.⁷⁶ With the launch of the Human Rights up Front initiative (HuRF) by the UN Secretary General in 2013, the responsibility goes even further: to initiate action to prevent and respond to serious violations of human rights, as part of conflict prevention. The HuRF initiative calls for operational changes that promote system wide analysis and early action; which includes attention to HLP violations, significant in themselves, but also as predictors of a deteriorating situation and increasing violence. UN entities therefore hold a collective responsibility to prevent serious human rights violations through attention to HLP issues in conflict-prone states.⁷⁷

Resolution 1325 on Women, Peace and Security provides a firm basis for this responsibility in stating the need to address the root causes and structural drivers of conflict, such as exclusion, discrimination, attacks on dignity and structural inequality. As outlined above, there is a strong case to be made that HLP abuses and violations fall within this description, including with particular attention to how women are affected and assisted. UN Women has emphasised that Resolution 1325 is a human rights mandate and that any policy or programme on women, peace and security must be conducted with this in mind, thus further highlighting the responsibility to address HLP violations that particularly target women.⁷⁸

76 UNHCR (2005): Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework <http://www.unhcr.org/425683e02a5.pdf>

77 Factsheet: Rights up Front in the Field: https://www.humanitarianresponse.info/en/system/files/documents/files/013_fact_sheet_-_rights_up_frontin_the_field_draft_2014-08-21_2.pdf

78 UN Women (2015) A global study on the Implementation of United Nations Security Council Resolution 1325 <http://wps.unwomen.org/~media/files/un%20women/wps/highlights/unw-global-study-1325-2015.pdf>

8. SUPPORTING LOCAL SYSTEMS AND BRIDGING TRANSITION / DEVELOPMENT GAP

The challenges of local and subnational governments outlined in the Special Rapporteur on adequate housing's report⁷⁹ are very often exacerbated in times of disaster (and thereafter). Inadequate resources, insufficient knowledge and capacity, along with overlapping mandates can often result in severe delays and inaction in the provision of shelter to the most vulnerable. Humanitarian agencies are faced with worsened vulnerabilities in informal settlements because of the challenges that a local government had in trying to realise the right to adequate housing prior to a disaster.

Such challenges are understandable and experience shows that re-establishing neighbourhoods and communities after a disaster involves large costs in terms of infrastructure and services whilst severely disrupting people's livelihoods and community lives. Both humanitarian and development actors at the operational level need to understand the importance of supporting subnational governments on the need to respect the right to adequate housing so as to ensure a more durable and resilient future for the most vulnerable.

HLP issues are often only considered in the early recovery phase (post six months) as they are not seen as life threatening nor is the expertise readily available in the humanitarian sector to support operational agencies. As can be seen from the seven reasons above, if HLP issues are not considered and incorporated from the outset of a response protracted and renewed displacement will remain a challenge. However overcoming such issues should not be seen as the remit of a certain sector, or for a certain time period. Humanitarian agencies should also consider where the expertise existed prior to the crisis; for instance in rural responses agricultural/food security NGOs or cooperatives are generally well placed to advise on land rights and in urban responses slum upgrading NGOs or homeless organisations. If transition out of a crisis is to happen in a sustainable way then States and development actors must engage and support humanitarian partners from the outset in developing longer term recovery plans.

⁷⁹ Special Rapporteur on adequate housing, *Report to Human Rights Council, twenty eighth session*: UN Doc. A/HRC/28/62 22Dec 2014

Equally, humanitarians should not wait for the crisis to happen to work towards overcoming HLP barriers. More work can be done together in the preparedness phase to ensure that legal and regulatory frameworks applicable to HLP allow for the provision of equitable assistance. States are encouraged to take disaster risk reduction (DRR) measures such as ensuring that a land use planning system is in place and is respected.⁸⁰ This would avoid the same communities being repeatedly affected by similar disasters (2015 and 2016 floods in Argentina, for instance) and prevent neighbourhoods being exposed to disasters (especially landslides)⁸¹ it would also protect arable lands from the encroachment of unplanned urban sprawl, especially with the increase of informal settlements and post conflict migration.

As can be seen from above, in many contexts, the relevant land tenure and housing legislation is often obsolete, confusing, incomplete and often contradicts international instruments ratified by the state. The revision and development of HLP legislation and its transparent enforcement is another area where relevant humanitarian and development organisations can provide technical and financial support with the Special Rapporteur, providing a platform for ongoing engagement with States.



80 IFRC & UNDP (2015) *The Handbook on Law and Disaster Risk Reduction* <http://www.drr-law.org/resources/Handbook-on-law-and-DRR-LR.pdf> pgs. 46 - 50

81 CARE (2016) pg 11 - Nepal does not have an effective land use planning system

CONCLUSIONS AND WAY FORWARD

The Roundtable held on the 2nd March 2016 brought together humanitarian and human rights practitioners and States to consider the importance of addressing the HLP issues outlined in this paper. The overall aims of the Roundtable were to:

- » Demonstrate a collective understanding of the operational barriers that HLP issues create during a humanitarian response and to determine how appropriate and inclusive action can be initiated;
- » Consider the linkages between humanitarian and development work and the need to consider HLP from the outset of a humanitarian response;
- » Inform the work of the Special Rapporteur on adequate housing (Ms Leilani Farha was the keynote speaker) and reflect on the commonalities between the mandate of the Special Rapporteur and the work of operational humanitarian agencies.

THE MAIN CONCLUSIONS WERE AS FOLLOWS:

1. HLP issues should be considered from the outset of a response. However, the breadth and complexity of HLP presents real challenges for operational agencies to engage with.⁸² Support is needed from HLP actors for Shelter, Protection, WASH, Livelihoods, Food Security, CCCM and other sector programme staff to be able to identify and engage with HLP issues from the beginning. Consequently there is a need to promote a better understanding of how HLP issues can become barriers to programmes.
2. Humanitarian actors have a vital role to play in promoting and protecting housing, land and property rights. Ideally, this should be done by supporting national efforts to realise the right to adequate housing by working with government at all levels (national, regional and local).
3. The main pillar of the right to adequate housing — equality and non-discrimination — should be the bedrock of humanitarian work, and should be grounded in a strong contextual understanding.
4. Responsible settlement programming can be seen as the operationalisation of the right to adequate housing. Whilst the minimum immediate aspects of the right to adequate housing can be addressed by humanitarian actors in emergency response, full realisation is often not achievable in its entirety, and falls outside the remit of humanitarian actors. However, humanitarian actors have a responsibility to promote and protect to the fullest extent possible the human rights of those

⁸² Presentations were given by UNHCR on behalf of the Global Protection Cluster, IFRC and NRC on behalf of the Global Shelter Cluster and IOM on behalf of the Global Camp Coordination and Camp Management Cluster.

affected and in doing so ensure that the support provided is adequate in each specific context and that ‘no harm’ is done. The seven criteria of the right to adequate housing are useful in this regard and are consistent with the Sphere Standards.

5. Whilst prioritising the humanitarian imperative and ensuring the most vulnerable are assisted, humanitarians should ensure that their programmes contribute to transformative change and the progressive realisation of the right to adequate housing, and do not undermine existing national plans. This follows the minimum core obligation of the State to ensure “access to basic shelter, housing and sanitation” and at the same time take appropriate measures towards the full realisation of housing rights to the maximum of their available resources.⁸³

WAY FORWARD FOR THE HLP AOR AND ITS PARTNER AGENCIES

1. Enhanced global attention to HLP

- » Continue to work with the Special Rapporteur on adequate housing to ensure that housing and access to land challenges in post conflict and post disaster programmes are considered in country mission reports and represented in high level forums. Ongoing engagement will also be important to develop further guidance on how to operationalise the right to adequate housing in a humanitarian response and consideration as to what is adequate enough; as well as how to meet standards of adequacy and reasonableness in each context.
- » Continue to raise awareness of the operational challenges that HLP can cause for humanitarian actors and help to break down their complexities through the provision of country and sector-specific guidance; engage with clusters to support actions to identify and address barriers within each sector, from the beginning of a humanitarian response.
- » Work with the Solutions Alliance Rule of Law Thematic Group to understand and address the challenges of mainstreaming HLP in humanitarian and development programmes.
- » Use the opportunity presented by the World Humanitarian Summit, Habitat III, the revision of the Sphere Standards, and the Global Alliance on Urban Crisis⁸⁴ to advocate for increased understanding of HLP issues in humanitarian response and to promote closer engagement with development actors.
- » Within the next two years organize another roundtable which will take stock of progress in this field, including the achievement of these recommendations, and address ongoing gaps and areas of concern.

⁸³ OHCHR Factsheet no. 33 Frequently Asked Questions on Economics, Social and Cultural Rights Page 17.

⁸⁴ The Global Alliance on Urban Crisis brings together urban professionals, UN agencies, the development community, municipalities under the leadership of the UCLG (United Cities and Local Governments) and the private sector. The Alliance will be officially launched at the World Humanitarian Summit <http://www.uclg.org/en/media/news/uclg-will-take-part-new-global-alliance-urban-crisis>

2. Build capacity

- » Engage further with the Shelter and CCCM practitioners and cluster coordinators; providing expertise and training on HLP issues, where required.
- » Ensure integration of HLP guidance into inter-cluster initiatives.

3. Preparedness

- » Work with local actors to carry out rapid tenure assessments⁸⁵ and ensure the information is accessible to all relevant clusters.
- » Continue to engage with States to review and address their existing regulatory frameworks and procedures relevant to the equitable provision of post disaster shelter.⁸⁶

4. Assessments

- » Work with specific clusters and assessment agencies to ensure that more information is gathered about people's HLP rights in the assessment phase, including through a rapid tenure assessment which considers statutory and customary tenure. Work with development actors who have undertaken poverty assessments prior to the crisis, for instance the recent support provided by IWDA to the Cyclone Fiji response.⁸⁷

85 As an example: IFRC's Rapid Tenure Assessment Guidelines http://www.ifrc.org/Global/Documents/Secretariat/Shelter/1301300_Rapid%20Tenure%20Assessment%20Guidelines_En_LR.PDF. To be published in Arabic, Spanish and French in 2016 and the Global Shelter Cluster's Land Rights and Due Diligence Standard Guidelines (2013) in a post crisis situation <https://www.sheltercluster.org/sites/default/files/docs/Due%20diligence%20in%20shelter-A4.pdf>

86 Resolution 7 of the 31st International Conference of the Red Cross and Red Crescent (in particular paragraphs 10 - 13) which calls on all State parties to the Geneva Conventions and humanitarian organizations to address regulatory barriers to the provision of shelter http://rcrcconference.standcom.org/docs_upl/en/R7_Disaster_Laws_EN.pdf

87 International Women's Development Agency (2015) Individual Deprivation Measurement Study Fiji: Preliminary Results to Inform Cyclone Winston Response and Recovery Planning

