



Rapid tenure assessment Guidelines for post-disaster response planning

Pilot version

© International Federation of Red Cross
and Red Crescent Societies, Geneva, 2015

Copies of all or part of this manual may be made for noncommercial use, providing the source is acknowledged. The IFRC would appreciate all request being directed to the IFRC at secretariat@ifrc.org.

The opinions and recommendations expressed in this manual do not necessarily represent the official policy of the IFRC or of individual National Red Cross or Red Crescent Societies. The designations and maps used do not imply the expression of any opinion on the part of the IFRC or National Societies concerning the legal status of a territory or of its authorities. All photos used in this manual are copyright of the IFRC unless otherwise indicated.

Cover photo: Bhaktapur, Nepal (IFRC)

Rapid Tenure Assessment Guidelines
1301300 12/2015 E

P.O. Box 372
CH-1211 Geneva 19
Switzerland
Tel: +41 22 730 42 22
Fax: +41 22 733 03 95
E-mail: secretariat@ifrc.org
Web site: www.ifrc.org

Rapid tenure assessment Guidelines for post-disaster response planning

Pilot version

The International Federation of Red Cross and Red Crescent Societies (IFRC) is the world's largest volunteer-based humanitarian network. With our 190 member National Red Cross and Red Crescent Societies worldwide, we are in every community reaching 160.7 million people annually through long-term services and development programmes, as well as 110 million people through disaster response and early recovery programmes. We act before, during and after disasters and health emergencies to meet the needs and improve the lives of vulnerable people. We do so with impartiality as to nationality, race, gender, religious beliefs, class and political opinions.

Guided by *Strategy 2020* – our collective plan of action to tackle the major humanitarian and development challenges of this decade – we are committed to saving lives and changing minds.

Our strength lies in our volunteer network, our community-based expertise and our independence and neutrality. We work to improve humanitarian standards, as partners in development, and in response to disasters. We persuade decision-makers to act at all times in the interests of vulnerable people. The result: we enable healthy and safe communities, reduce vulnerabilities, strengthen resilience and foster a culture of peace around the world.

Table of contents

Glossary of terms	4
Acknowledgements	7
1. Introduction	9
2. Background to the Guidelines	11
3. Why use the Rapid tenure assessment Guidelines?	13
4 When and how to use the Guidelines	18
5. Rapid tenure assessment questions:	20
A. General overview of land and property	20
B. How are land and property administered and managed?	21
C. Access to land. How are land and property occupied?	23
D. Evidence of security of tenure. How do people prove they live somewhere?	24
E. Compulsory purchase and relocation	26
F. How are land and property disputes resolved?	28
<hr/>	
Annexes	30
1. Official structures for land and housing administration in the Philippines	30
2. Common forms of tenure and their characteristics	33

Glossary of terms applicable to these Guidelines

(adapted from the Food and Agriculture Organization's
Multilingual land tenure thesaurus 2003)

Adverse possession. The possession of land as a trespasser or squatter. A trespasser or squatter can gain the right to possession after a period of limitation. The owner (or a person who has the right to possess the land) can recover possession from a trespasser or squatter but the principle of limitation restricts the time within which he or she can do this. In most countries the period of limitation will be statutorily defined.

Cadastral system. Normally a parcel-based and up-to-date land information system that contains a record of interests in land (including rights, restrictions, and responsibilities). It usually includes a geometric description of land parcels which is linked to other records that describe the nature of the interests, ownership or control of those interests, and often the value of the parcel and its improvements. It may be established for fiscal purposes (to value land and tax it equitably), legal purposes (conveyancing), or planning and other administrative purposes (to assist land management and use).

Customary laws. Customs, rules and or practices regulating social behaviour that a social or geographical group has developed over time and that many members of the group consider mandatory.

Faith based systems. Faith-based systems such as sharia apply to members of the relevant religion, rather than to a geographically-defined jurisdiction, such as a state.¹

Land access. Opportunities to temporarily or permanently occupy or use land, for shelter, productive activity or recreation and rest. Land access may be obtained by direct occupation, exchange (purchase or rent), by virtue of membership of family or kin groups, or following allocation by government, other land owners or management authorities.

Land rights. Socially or legally recognized entitlements to access, use and control areas of land and related natural resources.

Parcel plan. Generally a large-scale map showing all the property parcels and their use, boundaries and the distances between them, and buildings and improvements. A parcel plan usually includes a register of the parcels. In the context of land administration, a cadastral plan is a parcel plan.

Property rights. Recognized interests in land and property vested in an individual or group. They can apply separately to land, and to developments and property on it (houses, apartments, offices, agricultural buildings, etc.). A recognized interest may include customary, statutory or informal social practices that enjoy social legitimacy in a given place.

Security of tenure. Can be defined in various ways:

- The degree to which land users can be confident that they will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it.
- The certainty that an individual's rights to land will be recognized by others and protected in case of challenges.

¹ E. Harper, Customary Justice: from Programme Design to Impact Evaluation (2011, International Development Law Organisation).

- More specifically, the right of all individuals and groups to effective government protection from forced evictions.

Conversely, tenure is insecure when urban or rural users and holders of land consider that their rights to land are threatened by other actors or may not endure.

Statutory laws. Acts, rules or regulations approved and promulgated by a government.

Tenure. The way that land is held or owned by individuals and groups, or the relationships with respect to land that are legally or customarily defined between people. Tenure reflects relationships between people and land directly, and relationships between individuals and groups of people in their dealings in land.

Tenure systems. Sets of formal or informal rules and institutions that determine access to, and control over, land and natural resources.

Acknowledgements

The author of this document is Victoria Stodart, Shelter and Settlements Department, IFRC.

The Guidelines were made possible by generous financial support from the EU Humanitarian Aid and Civil Protection Department and the Swedish Red Cross.

The Philippine Red Cross and Nepal Red Cross Society are thanked for the support they provided during field missions in 2015. These visits permitted consultations with shelter practitioners on the ground and informed the approach the Guidelines adopt.

The following persons from the IFRC Secretariat, Displacement Solutions, Habitat for Humanity, IOM, the Norwegian Refugee Council, and World Vision made particularly valuable contributions: Wardell Eastwood, Gabrielle Emery, David Fisher, Siobhan Foran, Fiona Kelling, Elyse Mosquini, Anna Pont, Graham Saunders, Ela Serdargolu, Laura Cunial, Ana Palao, Zeke Simperingham, and Jake Zarins.

‘Land tenure and property rights issues should be examined as early as possible because without clear rights to a given piece of land, programs based on rebuilding infrastructure or resettling displaced populations will be subject to conflict, delay and increased costs.’²

Rapid Tenure Assessment Guidelines for post-disaster response planning

Pilot version

These Guidelines are designed to assist assessment of a country’s housing, land and property sector, to ensure a more equitable, informed and consequently sustainable shelter response.

² USAID, Land Tenure and Property Portal – Land Tenure and Disasters, October 2014.

1. Introduction

The International Federation of Red Cross and Red Crescent Societies (IFRC) has acquired considerable experience in shelter assistance, from decades of involvement in disaster response and as co-convenor of the IASC Global Shelter Cluster.³ Significant legal and procedural obstacles can impede the swift provision of appropriate and equitable shelter assistance after natural disasters, harming individuals and families whose homes have been damaged or destroyed. Many of the problems arise because people lack clear title to land or property that they own or occupy; others are caused by the confusion that follows disasters, or arise because responders do not understand local and national legal and regulatory frameworks and their application.

Many shelter assistance programmes (both government and humanitarian) require beneficiaries to show legal proof of ownership. The reasoning behind this eligibility test is evident. However, such a restrictive approach can result in discrimination against vulnerable people who should be the primary targets of humanitarian assistance. Only about one third of land in the developing world is registered.⁴ In many countries, customary or

³ The Inter-Agency Standing Committee (IASC) oversees inter-agency coordination of humanitarian assistance. It includes various UN agencies, the IFRC, the ICRC, and the main international NGO consortia, as full members or standing invitees. In 2005, the IASC initiated a humanitarian reform process (the Transformative Agenda) to improve the effectiveness of humanitarian response by increasing predictability and accountability and strengthening partnership. The cluster approach is a component of the reform process. It ensures clear leadership, predictability and accountability in all the main sectors of a humanitarian response. The Global Shelter Cluster (GSC) is one of the global humanitarian clusters established under the cluster approach. It supports and provides predictable, effective and timely shelter coordination services, strengthens system-wide preparedness, and increases technical capacity to respond to humanitarian emergencies by improving global, regional, and national coordination. The GSC is co-led by the IFRC and UNHCR.

⁴ UN-Habitat, *Designing a Land Records System for the Poor* (2012, Nairobi). At: <http://www.stdm.gltn.net/docs/Designing-a-Land-Records-System-for-The-Poor.pdf>.

informal tenure systems predominate, especially at community level. Such systems are often complex. It may be time-consuming to understand them, let alone after a disaster, which often destroys documentation and damages cadastral records. Without a sound understanding of local systems, nevertheless, it is difficult to implement shelter programmes efficiently and equitably and make sure that the shelter needs of the most vulnerable are met.

To complicate matters further, more than one government department is usually responsible for the administration of housing and shelter. As a result, misunderstandings can easily arise between governments and shelter providers, who may not know which authority to work with or which regulations should be applied, causing delay and frustration.

Lack of understanding can also affect the resolution of land disputes, especially when legal documentation has been destroyed or never existed.

2. Background to the Guidelines

In June 2013, the UK Permanent Mission in Geneva hosted a Roundtable on ‘Security of tenure in humanitarian shelter: programming for the most vulnerable’, co-organized by the Norwegian Refugee Council (NRC) and the IFRC, and funded by DFID.⁵ The donors and shelter agencies that attended generally agreed that they needed to understand security of tenure better. It was recognized that shelter practitioners, disaster managers and decision makers need to understand relevant local legal, regulatory and customary frameworks, and acknowledge more diverse forms of tenure so that they can adopt a more flexible approach.⁶ Programmes equipped to consider different forms of evidence of ownership or use and consequently deeming them ‘secure enough’, for the purposes of receiving shelter assistance, could assist many individuals and families who do not possess formal legal proofs of ownership.⁷

Answering the questions asked in these Guidelines, as part of the process of preparing for disasters, will assist responders to promptly understand relevant frameworks and how to apply them if a disaster occurs. The information will improve the quality of assessment and beneficiary selection, and enable practitioners to design and deliver a more effective shelter response that takes account of the variety of tenure arrangements that exist, especially in urban environments. The Guidelines give attention to statutory

⁵ For a summary of the event, see: <https://www.ifrc.org/en/news-and-media/news-stories/international/land-rights-and-secure-tenure-fundamental-to-humanitarian-shelter-operations-62681/>.

⁶ IFRC and NRC, *Security of Tenure in Humanitarian Shelter Operations* (2014, online). At: <http://www.ifrc.org/Global/Documents/Secretariat/201406/NRC%20IFRC%20Security%20of%20Tenure.pdf>.

⁷ IASC and the Brookings Bern project on Internal Displacement, *Operational Guidelines on the Protection of Persons in Situations of Natural Disasters* (2011). Section C.1.1 states: ‘Property rights, whether individual or collective, should be respected whether they are based on formal titles, customary entitlements or prolonged and uncontested possession or occupancy’.

obligations but also consider customary, religious and informal systems, especially those that have an impact on vulnerable and marginalized groups.

These questions are grouped under six headings:

- ↘ General overview of land and property.
- ↘ How are land and property administered and managed?
- ↘ Access to land. How are land and property occupied?
- ↘ Evidence of security of tenure. How do people prove they live somewhere?
- ↘ Compulsory purchase and relocation.
- ↘ How are land and property disputes resolved?

The Guidelines presume that the assessment will be completed, before a disaster occurs, by an appropriately qualified person who understands the housing, land and property sector in the country concerned and is also familiar with the informal sector and cultural sensitivities. Recognizing that it will not always be possible to complete the assessment beforehand, questions that are a priority are marked by an asterisk [*]. In all cases, the results of the assessment should be shared as widely as possible with the humanitarian community (for example through the Shelter Cluster), to ensure that affected people receive appropriate assistance without discrimination and that ‘no harm’ is done.

These Guidelines build on work done by IFRC and the NRC, especially Security of Tenure in Humanitarian Shelter Operations (2013/14), and the Global Shelter Cluster’s Land and Due Diligence Checklist (2013).⁸ An early draft of these Guidelines was reviewed by technical experts from the IFRC, NRC and IOM and tested during field visits to the Philippines and Nepal. This is nevertheless a ‘pilot version’ that will be reviewed after a period of use. Feedback is welcomed. Please send comments to regulatory.barriers@ifrc.org.

⁸ At: <https://www.sheltercluster.org/sites/default/files/docs/Land%20and%20Shelter%20Checklist.pdf>.

3. Why use the Rapid tenure assessment Guidelines?

Many countries are characterized by the concept of legal pluralism; the co-existence of parallel laws and authorities that guide and inform the administration of justice on similar matters.⁹ Statutory laws may sit alongside, overlap, or incorporate customary laws or faith-based legal systems that (some) members of a group may consider to be more legitimate, whether formally recognized or not. Consequently it is imperative to understand both the *de jure* systems (written laws and procedures) and the *de facto* systems (what happens in practice).

Housing, land and property systems are often subject to legal pluralism. This is especially true of tenure and security of tenure. ‘Tenure’ refers to the form of occupation or use of a house or plot of land. Property may be rented (publicly and privately), leased, owner-occupied, or it may be emergency housing, an informal settlement, etc.¹⁰ How land and homes are occupied is influenced by the rights and conditions that attach to each form of occupation or use, and these in turn are derived from relevant statutory, customary, religious or informal tenure arrangements.¹¹ The grounds that a person has for believing that he or she is not at risk of eviction (that he or she has ‘security of tenure’) may also be informal as much as formal.

⁹ IFRC and NRC, *Security of Tenure in Humanitarian Shelter Operations* (2014, online). At: <http://www.ifrc.org/Global/Documents/Secretariat/201406/NRC%20IFRC%20Security%20of%20Tenure.pdf>.

¹⁰ Committee on Economic, Social and Cultural Rights, General Comment Number 4 on the Right to Adequate Housing (Article 11), in UN DOC E/1992/23, 13 December 1991, para. 8.

¹¹ As rural to urban migration and urbanization intensify, statutory and customary tenure systems, and urban and rural systems of regulation, increasingly collide, generating confusion and sometimes conflict.

Security of tenure is one of seven criteria that compose the right to adequate housing. Adequate housing is more than a commodity: in addition to security of tenure, it must be culturally adequate; affordable; make available services, materials, facilities and infrastructure; be habitable; be accessible; and in an appropriate location.¹² Of these seven criteria, security of tenure is arguably the most complex.

It is usually understood to derive from statutory rights over land, often evidenced by documentation (for example, a registered land title or a contract) that formally registers the ownership or use. However, given that only one third of land in the developing world is registered, title documents are not the only or even the most common proof of occupancy. Freehold ownership is just one of many tenure options.

Formal registration can be costly and time-consuming. In addition, in many countries, formal registration is often unavailable, ineffective, or costly. Many people therefore rely on customary or informal systems to provide security of tenure. In many instances, families have lived for generations in the same home or on the same plot of land without documentary title. They believe they own their land or home and expect to remain there indefinitely, should they choose. Such people have a strong perception of their security of tenure, which is often supported and validated by their neighbours and community. If the social legitimacy of such subjective assumptions is understood and recognized, disaster responses can be more informed, equitable and sustainable.

A key purpose of these Guidelines is to help the Red Cross Red Crescent Movement and other shelter agencies to improve their shelter support. To do this, a balance must be found between

¹² Committee on Economic, Social and Cultural Rights, General Comment Number 4 on the Right to Adequate Housing (Article 11), in UN DOC E/1992/23, 13 December 1991.

meeting the shelter needs of the most vulnerable and ensuring that beneficiaries will not be evicted by a third party. The questions in these Guidelines will not mechanically resolve housing, land and property issues after a disaster. But understanding the way in which land and housing are occupied in particular contexts can enable programmes to be more flexible as well as responsible, while improving people's security of tenure.

A rapid tenure assessment can strengthen a response in five main areas.

1. Assessments. If the housing, land and property context is understood, it will be possible to ask households appropriate assessment questions about how they occupy their homes and land. Humanitarian responses can also plan programmes in a way that takes proper account of how people live, social structures, vulnerabilities, the types of assistance needed (for instance rental or cash), and protection issues.

2. Beneficiary selection criteria. To ensure that humanitarian shelter responses are equitable and support the most vulnerable, a flexible approach to tenure is necessary. Processes for selecting beneficiaries should consider and recognize forms of tenure other than registered title.

If the due diligence procedure recommended by these Guidelines is followed, decision makers will be in a better position to quantify the risk associated with providing assistance to households that lack formal title. The process should make it possible to define tenure and security of tenure more broadly in the context of a humanitarian response, and disaggregate the risks associated with different forms of tenure. If more focused legal support were available, then those categorized as 'high risk' or not 'secure enough' might also be assisted. For example, programmes could

ensure that, following a death, plots of land could be sub-divided correctly, in accordance with due process.

3. Community mapping. Before designing a community mapping programme, it is important to understand how land is occupied and to consider and include all categories of occupier. This will not only make the mapping programme more comprehensive and credible but earn the support of the community and local authorities.

4. Improving security of tenure and doing 'no harm'. Many shelter programmes seek to improve security of tenure by furnishing documentation to beneficiaries who receive shelters. These documents often copy standard shelter documents produced for other crises, adopting a blanket approach that takes little account of local context or local tenure practices. Tailoring documentation to match circumstances on the ground can improve security of tenure as well as the quality of the programme.

Clearly, shelter programmes need to have a level of confidence that beneficiaries will be permitted to remain on the land they occupy. Documentation may not be the best means to achieve this objective. Contracts or Memorandum of Understandings (MoUs) may deter or prevent landowners from allowing repair or reconstruction; documents that appear to grant families a formal claim to land they have occupied informally may cause landowners to terminate the arrangement. It is therefore vital to address each situation on its merits. Obliging landowners or residents to sign agreements which they are reluctant to sign may have damaging consequences and increase insecurity of tenure or exploitation when the agreement ends. It may be better to reach a verbal agreement between the parties, witnessed and attested by members of the community, especially where community-based recognition of possession is the norm.

Due diligence requires programme managers to take reasonable steps to ensure that potential beneficiaries are entitled to occupy parcels of land that are used for shelter or housing. This requires time, expertise and resources. To ensure that the most vulnerable safely receive the assistance they require, it is good practice to employ a local lawyer to help with verification, prepare and advise on documentation, and assess high risk cases.¹³

Resettlement. If resettlement is required (for instance because the authorities have prohibited reconstruction on land that is now not safe), it must meet international and national standards and guidelines. National laws may impose statutory duties with respect to consultation, notice, and compensation, for example. National and international standards are also highly relevant when large infrastructure projects (such as hydropower plants) displace communities, and in many post-disaster settings when governments may consider moving people in the interests of safety. From both a programming and advocacy perspective, they should be well understood.

Irrespective of whether national laws and standards exist, forced eviction is incompatible with the right to adequate housing under international law and can ‘only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law’.¹⁴

¹³ For example, lawyers might help to register the subdivision of lots after inheritance, recreate documents that have been lost, document the purchase of properties correctly, and register title deeds.

¹⁴ Committee on Economic, Social and Cultural Rights, General Comment Number 4 on the Right to Adequate Housing (Article 11), in UN DOC E/1992/23, 13 December 1991, para. 18.

4. When and how to use the Guidelines

Ideally these Guidelines will be completed by a legal adviser to a Red Cross Red Crescent National Society or shelter agency, a pro bono law firm, or a housing, land or property expert, for the benefit of the shelter sector.

Each set of questions follows the same pattern:

1. An *Overview* explains the overall purpose of the questions in the section.
2. *Key considerations* describes broader considerations that should be borne in mind.
3. A list of specific *Questions*.

Housing, land and property raises complex issues in all countries. You may be tempted to give long in-depth answers to many of the questions. However, it is best to be concise. Concise answers will help practitioners to understand and engage. The ‘at minimum’ questions (which should be answered if the Guidelines have not been completed before a disaster occurs) are marked by an asterisk [*].

Overall considerations

- ↘ Where possible, support your answer by referring to specific laws, regulations or procedures.
- ↘ Where a question enquires about a process, describe it. For example, if asked how land is registered, indicate what documents or forms are required, where they must be filed, what approvals are required, the time it takes to complete the process, and applicable fees.

- ↘ Distinguish theory from practice. Note bottlenecks. If the law says that a procedure will take 28 days, how long does it typically take in reality?
- ↘ Consider:
 - Rural and urban contexts, because land and property rights are often regulated differently.
 - Both written laws and procedures (de jure) and what happens in practice (de facto), especially in remote areas and informal settlements.

5. Rapid tenure assessment questions

A. General overview of land and property

Overview

Land is increasingly a finite resource. It has financial but also emotional value. Consequently it is often a cause and driver of conflict. As the Sustainable Development Goals declare, access to land and housing is the foundation of economic development, poverty reduction and social inclusion (SDG 1.4). Yet many people are excluded and lack access to land or property. Land is a complex issue, especially in situations of crisis: it generates a unique mix of economic, political, legal, regulatory and customary concerns.

To recognize and manage the impact that housing, land and property issues can have in the context of an emergency response, it is important to understand: relevant laws and regulations; how the state manages land; its accessibility; how formal and informal systems interact; what sensitivities surround it; and the extent to which rights to land are respected. Insight into these questions will indicate likely challenges and barriers that need to be addressed, help programmes to strengthen the security of tenure and resilience of affected populations, and avoid creating parallel systems.

Key considerations

- ↳ Does the state recognize housing rights?
- ↳ Has the country recently reformed its land or property system?
- ↳ How are housing, land and property rights addressed in urban and rural areas?

Questions

1. Has the State ratified the International Covenant on Economic, Social and Cultural Rights?
2. Is the right to adequate housing specifically recognized in the Constitution?*
3. How is land classified (disposable, non-disposable)? What are the main ways to access land (acquisition, inheritance, marriage, renting, collective ownership, etc.)? Are there differences between urban and rural areas?*
4. What laws and regulations govern housing, land and property rights? Consider land ownership but also other forms of occupancy and use (leasehold, community land trusts, other forms of community or collective management). What are the key provisions? Are they the same in urban and rural areas?*
5. Are informal rights (such as customary law or communal rights) formally recognized? Are they recognized in practice?*
6. How does the legal framework integrate religious laws (such as sharia)? Are religious laws applied in practice? Where laws conflict, which law takes precedence?

B. How are land and property administered and managed?

Overview

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. Moreover, the department responsible for shelter during an emergency response (the Shelter Cluster lead for instance) is not necessarily the primary housing department. It is therefore important to understand which government stakeholders need to be considered and consulted when developing a shelter programme.

Key considerations

- ↳ Which government departments or ministries have responsibility for what? Do local structures differ from national ones?
- ↳ Do traditional authorities play a role?
- ↳ How are records kept? Do they differ at national and local level?
- ↳ Represent roles and responsibilities graphically to more easily identify overlaps. See Annex A for an example (the Philippines).

Questions

1. Which department or ministry is responsible for what, with respect to the administration and regulation of housing, land and property? Are roles clearly defined? How do institutions function at local level?*
2. Is land administration centralized? Is there a central database of land records? If not, how is it managed?*
3. How accurate and accessible is the land registry or cadastral system? How is it maintained and updated? Are there differences between rural and urban, or national and local? Is the system digitized? Do backup systems exist in case of disaster?*
4. What percentage of land remains unregistered? How fast is land being registered?
5. How is ownership or occupancy of unregistered land recorded (for example, in community records, by village elders)?*
6. How much does it cost to register a property for the first time? What is the procedure? What is the procedure for, and cost of, transferring ownership?
7. Is the process of registration the same for urban and rural land?
8. Does the land registry provide information on different types of tenure?
9. How transparent is the land administration system?

C. Access to land. How are land and housing occupied?

Overview

How people own, occupy or use housing and land varies from country to country (and within countries) and rights to land and housing also vary. People may have various rights of use, control, transfer and enjoyment of the same plot of land. It is important to understand these different rights so that flexible shelter solutions can be found for diverse forms of tenure such as usufruct.

Usufruct is a common form of tenure in the Philippines. It allows a person to remain on a property for a certain time but not to sell or mortgage it. (See Annex B for common forms of tenure.)

Key considerations

- What different forms of formal and informal tenure exist? What are their features?
- Are gender and minority rights' respected? For instance, is joint ownership recognized and practised? Are indigenous people protected?
- What access do the poor have to land and housing? Are squatters' rights respected?
- Consider drafting a table of formal and informal tenure typologies. (1) list types of tenure; (2) describe rights and restrictions to them; (3) list documents that are used to provide security of tenure (such as rental agreement, tax declaration, a will). Analyse what the most appropriate shelter response is for the particular tenure type (rental, cash, reconstruction).

Questions

1. What types of tenure are recognized by the state? What tenure 'norms' are not?*
2. What rights (protection from forced eviction, to inherit) are linked to each form of tenure?

3. Which forms of tenure are most common?*
4. Are any forms of tenure considered as secure as freehold ownership? Is customary ownership recognized in law?*
5. Can women legally own or inherit land? In practice do they? Consider regional, religious and customary differences.*
6. Is joint titling recognized or encouraged? In practice, does it occur? Does it only apply to marital properties?*
7. Can minors own land? In practice do they?
8. Does the legal framework allow minority groups (ethnic minorities, immigrants, stateless people, etc.) to own, occupy or use land or housing? Are they subject to special conditions?*
9. Do any ethnic, religious or cultural practices prevent certain groups from owning or leasing land or housing?*
10. Do landless people have rights (for example, adverse possession)? If so, what rights do they have and what procedures are relevant? In practice are their rights recognized and upheld?*
11. Do policies (like socialized housing programmes) assist the poor? If so, what is the procedure for accessing land and housing, what is the cost, and what documentation is required?*

D. Evidence of security of tenure. How do people prove they live somewhere?

Overview

As outlined above, people use and accept many forms of proof of land and home ownership and use. These may be formal (title deeds) or informal (utility bills). It is important to understand the forms of evidence that are recognized and how common they are. The questions below can help identify what forms of evidence are 'secure enough' for the purposes of beneficiary assessment criteria and what forms of evidence shelter agencies may rely on.

Key considerations

- How is land bought and sold in both formal and informal markets?
- What is required of parties who want to register land? Are procedures respected? How reliable is the process?
- How important is written documentation? What other conditions may be required (for example, a bank account)? What informal processes exist (such as community verification)?
- If documentation is lost or destroyed, how can it be recreated?
- What rules and procedures govern inheritance?

Questions

1. What official statutory instruments or documents identify land ownership (title deeds) and land occupation (lease agreements)? How are the necessary documents obtained? Is formal ownership widespread? (For example, what proportion of poor families in rural areas possess title deeds?)*
2. What is the procedure for surveying land (spatial measurement and mapping)? Is risk/hazard mapping done? If so, how and where are the findings reported?*
3. Are informal documents (tax declarations, utility bills, etc.) used to confirm land ownership and occupation? How common is this practice? Is the same practice followed in urban and rural areas?*
4. What documents are produced when land is sold? Can the same documents be used to prove ownership while land is being registered?
5. What informal actions (such as verbal agreements or handshakes) establish land or housing transactions? How consistently are they respected?*
6. Is a formal postal address system in place? Are informal settlements included in it?
7. Are informal tax systems in place? If so, are receipts produced?

8. What safety nets exist (such as social housing or state welfare programmes)? What identification do they require? What form of receipt do they provide?*
9. What is the procedure for transferring land or housing that is inherited?*
10. What is the procedure for subdividing plots of land?
11. In the absence of written documentation, are local government officials or community representatives able to witness verbal agreements?*

E. Compulsory purchase¹⁵ and relocation

Overview

Compulsory purchase occurs when a state legally acquires a person's land for a specified purpose. Acquisitions should not be arbitrary; they should be in the public interest, should follow due process, and those affected should receive fair and just compensation. Public infrastructure projects (airports, hydropower, roads, etc.) are the most common reason for compulsory purchases. However, they also occur during crises, to enable authorities to move people from hazard areas or to new land after land has been lost (for example, to flood). Relocation after a disaster should be a solution of last resort; it should respect due process and the rights of those who are relocated.

Key considerations

- ↳ Responsible resettlement is not just about building shelters. Programmes must construct a safe environment in which communities have access to adequate housing and utilities, essential infrastructure, and livelihood opportunities.¹⁶ A holistic approach should be adopted.

¹⁵ Compulsory purchase is also called eminent domain or land expropriation.

¹⁶ IFRC, *Post-disaster Settlement Planning and Guidelines* (2012), p. 7.

- As a preparedness measure, governments may identify land that will be used for temporary shelter after a disaster. Land planning for this purpose should involve the agreement of all parties affected and should consider the normal use of the land in question as well as the actions that will be taken following a crisis.
- International standards on relocation state that involuntary relocation must be a measure of last resort,¹⁷ to protect the lives and health of affected populations (for example as a measure of disaster risk reduction). Forced eviction is a violation of human rights, and national standards or laws should define procedures for relocation that prevent it from occurring.
- Land acquisitions associated with large development projects can often generate abuse of process. For both advocacy and protection, it is important to know the legal and regulatory framework.

Questions

1. Is compulsory purchase (eminent domain, land expropriation) recognized or allowed? If so, what conditions are attached?*
2. Are the conditions or processes for compulsory purchase strictly enforced? Is regulation adequate (or are land grabs frequent)?*
3. Can the government temporarily expropriate land during emergencies? If so, what is the procedure? Is there a (just) compensation system, and is it applied?*
4. Do forced evictions occur? If so, is the problem recognized? Do laws or rules prohibit it? *
5. What protective or compensatory measures provide for people who are evicted or relocated? Are they applied? Is an established procedure for relocation in place?

¹⁷ IASC, *Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters* (2006), paras. A.1.6 and C.2.9; IASC, *Operational Guidelines on the Protection of Persons in Situations of Natural Disaster* (2011), para. D.2.4.

F. How are land and property disputes resolved?

Overview

The resolution of land disputes is usually time-consuming and expensive. In practice, formal procedures are often available only to those who have access to expertise and resources. This problem is compounded during crises. At local level, people may address grievances in different ways. Leaders and members of the community often act as judge and jury. Such approaches may not be officially recognized, but they are often more accessible and their decisions may be as respected and enforceable as decisions handed down by courts. It is important to understand community level processes for resolving disputes so that these can be supported and respected appropriately.

Key considerations

- ↘ If the rule of law is to be effective, equitable and transparent, the justice system needs to be accessible and affordable. In many countries, it is not.
- ↘ Many mechanisms for dispute resolution are likely to exist in both formal and informal systems. The mechanisms are likely to be different in rural and urban areas.
- ↘ Consider how equitable formal and informal dispute resolution mechanisms are. Are they accessible to women, minors, and other minorities? Is assistance available to people who cannot pay the fees or do not understand the procedures?

Questions?

1. How are land disputes most commonly resolved?*
2. Are effective and efficient dispute resolution mechanisms in place to resolve land and property disagreements? If so, how does a person bring a claim? How long does the procedure take? What does it cost?
3. Are recognized informal means of dispute resolution available (through the community council, for example)? If so, are

these processes equitable? To what extent are their decisions recognized by the formal judicial system?*

4. Are means of resolving land disputes effective and efficient? For instance, is there a backlog of land disputes in the courts?
5. What percentage of land dispute cases end in court proceedings?
6. Can non-documentary forms of evidence be used to obtain formal recognition of claims to property when other forms of evidence are not available? What forms of evidence (such as testimonies) are accepted?
7. Is the justice system accessible? Is there a system of legal aid? What are its eligibility criteria?*
8. Have accelerated dispute mechanism processes been used in the past for a particular event or in disaster situations?
9. How are claims of land ownership or occupation validated? What is the procedure?*
10. If legal documents are lost or damaged, how can they be replaced? Describe the procedure.*

Annexe 1. Official structures for land and housing administration in the Philippines

	Department of Social Welfare (DSWD)	Mines & Geo-Science Bureau (MGB)	National Economic Development Authority (NEDA)	Department of Agrarian Reform (DAR)	Department of Environment and Natural Resources (DENR)	Department of Agriculture	Housing and Urban Development Coordinating Council (HUDCC)	Housing and Land Use Regulatory Board (HLURB)	National Housing Authority (NHA)	Land Management Bureau (LMB)	Land Registration Authority (LRA)	Local Government Units (LGU)	National Commission on Indigenous Peoples (NCIP)
Disaster management													
Emergency response													
Hazard mapping and delineation of no build zones													
Recovery and reconstruction													
Agrarian reform													
Land surveys													
Processing of compensation													
Registration of land													
Issuance of certification of ownership													
Land survey and distribution													
Delivery of support services													

Department of Social Welfare (DSWD)			
Mines & Geo-Science Bureau (MGB)			
National Economic Development Authority (NEDA)			
Department of Agrarian Reform (DAR)			
Department of Environment and Natural Resources (DENR)			
Department of Agriculture			
Housing and Urban Development Coordinating Council (HUDCC)			
Housing and Land Use Regulatory Board (HLURB)			
National Housing Authority (NHA)			
Land Management Bureau (LMB)			
Land Registration Authority (LRA)			
Local Government Units (LGU)			
National Commission on Indigenous Peoples (NCIP)			
Indigenous peoples	Securing title to ancestral lands	Approves disposal or utilization of ancestral lands	Approves management of ancestral lands

Annexe 2. Common forms of tenure and their characteristics

Tenure system	Characteristics	Advantages	Limitations
Freehold	Ownership in perpetuity. Freehold is found in market economies at all levels of economic development, including transition economies in eastern Europe.	Provides a high degree of security. Freedom to dispose of property or use it as collateral for loans. Maximizes commercial value, enabling owners to realize substantial increases in asset values.	Costs of access can be high. Collateral value may not be relevant if incomes are low or financial institutions are weak. Property values can fall as well as rise and the unwary may be trapped in properties worth less than they paid for them.
Delayed freehold	Conditional ownership. Title is granted on completion of payments or when developments have been completed. Delayed freehold is also found in all market economies.	Provides the same high degree of security as freehold, providing payments are made as required, and developments are completed. Freedom to dispose of property or use it as collateral for loans. Maximizes commercial value, enabling owners to realize substantial increases in asset values.	Failure to maintain payments or undertake developments may result in eviction and loss of the funds invested. Collateral value may not be relevant if incomes are low. Property values can go fall as well rise and the unwary may be trapped in properties worth less than they paid for them. Expectations of increased values can divert investments from more productive economic activities.

Tenure system	Characteristics	Advantages	Limitations
Registered Leasehold	Ownership for a specified period from a few months to 999 years. This is based on English property law and exists in most countries where this legal system applies, particularly members of the Commonwealth and countries once under British colonial administration.	As secure as freehold, but only for the period specified in the lease.	Requires legal framework. Costs of access can be high.
Public rental	Rental occupation of publicly owned land or housing. Renting occurs in countries with every kind of political and legal structure.	Provides a high degree of security, providing terms and conditions of occupation are met.	Limited supply may restrict access. Often badly located for access to livelihoods. Terms are often restrictive. Properties may deteriorate if they are not maintained.
Private rental	Rental of privately owned land or property. Private renting exists in all countries that have a private property market.	Provides good security if tenants are protected by legally enforceable contracts. Tenants enjoy flexibility of movement.	Open to abuse by disreputable owners. Properties may deteriorate if they are not maintained.
Shared equity	Combines delayed freehold with renting: residents purchase a stake in their property (often 50%) and pay rent on the remainder to other stakeholders. This form of tenure originated in the USA and now exists in several European countries.	Allies security with the potential increase in asset value of delayed freehold, and has the flexibility of renting. Residents can increase their stake over time, ultimately leading to full ownership.	Requires a legal framework and efficient management.

Tenure system	Characteristics	Advantages	Limitations
Shared ownership, including co-operative tenure and Community Land Trusts (CLTs)	Ownership of a property is vested in a co-operative or association that is co-owned by the residents. Various types of cooperative exist worldwide. Shared ownership is particularly popular in Scandinavian countries. CLTs are common in the USA, Canada and more recently the UK.	Good security. Maintains social cohesion.	Requires a legal framework. Restrictions may reduce incentives to invest. Requires double registration, first of the land or property and then the association
Customary ownership	Ownership is vested in the tribe, group or community. Land is allocated by customary authorities such as chiefs.	Widely accepted. Simple to administer. Maintains social cohesion.	May lose its legal status in urban areas. Vulnerable to abuse under pressure of urbanisation. Poor customary leadership may weaken its legitimacy.
Religious tenure systems (Muslim example).	There are four main categories of land tenure in Muslim societies. Waqf land is land 'held for God'; mulk or private lands are also protected in law; miri or state-controlled land has tassruf or usufruct rights and is increasingly common; musha or communal land, allocates arable land in accordance with tribal practices and is falling into disuse.	Sometimes facilitates family/group tenure. Provides accessible and affordable land management procedures.	Because they fall outside the commercial land market, waqf land is often inefficiently managed. Inheritance disputes can cause land conflicts

Tenure system	Characteristics	Advantages	Limitations
Non-formal tenure systems	These include a wide range of informal tenures that have varying degrees of legality. They include regularized and unregularized squatting, unauthorized subdivision of legally-owned land, and various forms of unofficial rental arrangement. In some cases, several forms of tenure may co-exist on the same plot, with each party entitled to certain rights.	Some non-formal categories (such as squatting) start as a response to the inability of public allocation systems or commercial markets to meet the needs of the poor, and are informally permitted and overlooked by local authorities.	As demand has intensified, even informal tenure systems have become commercialized. As a result, it is increasingly difficult for lower income groups to access them.

Source: Adapted from UN-Habitat, *Urban Land for All* (2004, Nairobi).

The Fundamental Principles of the International Red Cross and Red Crescent Movement

Humanity The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

**For more information on this IFRC publication,
please contact:**

**International Federation of
Red Cross and Red Crescent Societies**

Graham Saunders

Head, Shelter and Settlements Department

E-mail: graham.saunders@ifrc.org

Tel: +41 22 730 42 41

Fax: +41 22 733 03 95