SECURITY OF TENURE
in Humanitarian Shelter Operations

NRC NORWEGIAN REFUGEE COUNCIL

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INTRODUCTION

In recent years, increasing attention has been devoted to the different basis on which beneficiaries of humanitarian shelter assistance[1] occupy their homes, (otherwise known as 'tenure'). The humanitarian community has made progress in better orienting emergency shelter toward addressing the needs of the most vulnerable conflict and disaster-affected populations. However, increased requirements for tenure documentation (often freehold title as evidence of ownership[2]) to establish beneficiary eligibility, presents challenges to this progress in providing timely assistance. While the rationale may be understandable, this paper argues that restrictive notions of security of tenure are often a poor fit in the humanitarian context and can unnecessarily lead to discrimination against the most vulnerable, the very persons who should always be the primary target of humanitarian assistance.

Why do humanitarian actors often insist on documented title? Verifying each beneficiary's documented property right provides a degree of assurance against later property disputes, forced eviction or other issues that could result in the beneficiary being moved off the land where the assistance was provided. This may therefore reduce the possibility of inadvertently misappropriating the property of others. It could also ensure that intended beneficiaries are not disturbed after shelter is provided. Such 'official' documentation can also provide a means of accountability (within organisations, to donors, the general public or others). It may be a way of mitigating the risk that humanitarian funds will be spent on solutions that are not considered sustainable. Thus, for instance when landowners are not already registered, regularisation (whereby land holders need to formally register their land) can become a necessary prerequisite for a household to access humanitarian assistance.[3]

Yet, in many contexts, title documents are not the only or even the most common means by which a beneficiary may demonstrate security in their tenure (assuring protection from eviction). Depending on local law, custom and practice, documented title may represent only one among several commonly-accepted land tenure arrangements. In many contexts in which humanitarian shelter is provided various forms of customary land rights are dominant. For example, in Africa, statutory tenure is generally thought to cover only between two and ten per cent of the land. While possible in some areas, formal registration can be costly and time-consuming. Thus it may not be pursued by many who instead rely on the strength of the customary system for their tenure

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1   For the purposes of this document, humanitarian shelter is considered to be emergency and transitional. However, it is recognised that decisions taken during the early response phase can influence longer-term considerations, including implications for permanent reconstruction.

2   For an explanation of freehold tenure, see UN Habitat, Security of Tenure Best Practices, p.3 at http://www. unhabitat.org/downloads/docs/10784_1_594339.pdf; accessed 21.10.2013.

3   UN Habitat, 2010, Land and Natural Disasters: Guidance for Practitioners (2010) p. 82 includes a case study on the response to the 2001 earthquake in Bhuj, India, where the World Bank, Asian Development Bank and other donors insisted on regularisation. http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2973

security.[4] Likewise, in several states in Myanmar more than half of all households are legally classified as landless.[5] Under such formal criteria they would be ineligible for shelter assistance in their place of origin if displaced by conflict or disaster. In these, and many similar contexts, there is a risk that over emphasis on freehold title, or individual property ownership, may prevent individuals from accessing shelter assistance. This particularly affects those without registered title or other documentation to evidence their landholding – including customary landholders, renters, women and socially vulnerable groups.

The challenges of providing humanitarian shelter assistance can be extreme when evidence of occupancy is physically destroyed and lost forever (Aceh 2004, Darfur 2004), land registries ruined (Haiti 2010) or when rule of law is absent (Liberia 2003; Afghanistan post 2002). But even in less extreme situations, humanitarian actors cannot assume that fully-functional and comprehensive land registries were operating prior to the conflict or disaster. Formal land registration and governance systems are often lacking or ineffective in many countries. Large segments of the world's population find security in their rights to use and occupy land from sources other than title registration. Such a situation is perhaps more common among otherwise vulnerable groups.[6] UN Habitat estimates that in most developing countries only ten per cent of land parcels are documented.[7]

This paper explores three key challenges of providing humanitarian shelter assistance: legal pluralism and customary rights; urban contexts and disadvantaged groups. The paper concludes with questions for further discussion in order to advance progress towards a proposed operational definition of security of tenure suited to the tasks undertaken by the humanitarian community.

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4   Deininger, K., 2003, Land Policies for Growth and Poverty Reduction: Key Issues and Challenges Ahead, World Bank. http://www.fig.net/pub/mexico/papers_eng/ts2_deininger_eng.pdf

5   In this context, we refer to 'landless' as those households without land. See: Centre on Housing Rights and Evictions (COHRE) COHRE, 2007, Displacement and Dispossession: Forced Migration and Land Rights – Burma., COHRE Country Report, November 2007, page 51. http://www.cohre.org/sites/default/files/burma_-_displacement_and_dispossession_-_forced_migration_and_land_rights_nov_2007.pdf

6   IFRC, 2011, Addressing Regulatory Barriers to Providing Emergency and Transitional Shelter in a Rapid and Equitable Manner after Natural Disasters, Background report for the 31st International Conference of the Red Cross and Red Crescent. http://www.rcrcconference.org/docs_upl/en/IC31_5_5_3_barriers_shelter_2Oct_EN.pdf

7   Augustinus, C. and Benschop, M. (n.d.) UN Habitat, Security of Tenure Best Practices, p.3. http://www.unhabitat.org/downloads/docs/10784_1_594339.pdf

SECURITY OF TENURE: UNPACKING THE CONCEPT

The Special Rapporteur for adequate housing, who has dedicated the remainder of her mandate to the issue of security of tenure, has defined security of tenure as follows:

"Security of tenure is understood … as tenure of land and/or housing which ensures a secure home and enables one to live in security, peace and dignity."[8]

This definition builds upon General Comment Number 4 by the Committee on Economic, Social and Cultural Rights:

"Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. 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."[9]

The Human Rights Council in a resolution adopted at its 19th Session in March 2012 urged states in the context of post-disaster settings to:

"…ensure that all affected persons, irrespective of their pre-disaster tenure status and without discrimination of any kind, have equal access to housing…."[10]

It is important to note that the responsibility to protect against forced eviction and to ensure equal access to housing is held by states. This differentiates the role of humanitarian organisations in responding to crises from the governments of the countries in which they operate. Aspirational definitions are difficult to apply in operational settings by humanitarian actors who are not in a position to protect, respect or fulfil the right to adequate housing. The challenge is, therefore, to be able to understand and assess tenure arrangements in a way that facilitates the delivery of shelter interventions. What constitutes 'secure tenure' where registries are either non-existent or inaccessible to large segments of the population? When are tenure rights 'secure enough' as a basis for humanitarian shelter assistance?

It was for this reason that the Roundtable was convened in Geneva on 28 June 2013. The Roundtable brought together humanitarian shelter practitioners, donors and the Special Rapporteur on adequate housing.[11] The gathering was a first step towards advancing an operational definition of security of tenure – one that recognises the multiplicity of legitimate tenure arrangements and serves as a basis for equity in the delivery of humanitarian shelter. Such an operational definition would, necessarily, go beyond the current focus on freehold title so as to embrace customary rights' holders, urban dwellers, women and others without formal documented title.

The complexity of security of tenure as a concept and the vast diversity of its forms within, as well as among, countries may be contributing to the emergence of registered title as the *de facto* preferred tenure form in humanitarian settings. A number of organisations are dedicating considerable resources to building greater clarity and understanding in this area.[12] And yet, despite these contributions, there is no clear framework by which to assess and properly take into account security of tenure in the delivery of humanitarian shelter programming.

8   Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 24 December 2012, A/HRC/22/46, para. 23.

9   Committee on Economic, Social and Cultural Rights, 1991, General Comment Number 4 on the right to adequate housing , para. 8. http://www2.ohchr.org/english/bodies/cescr/comments.htm

10   Human Rights Council Resolution on Adequate housing as a component of the right to an adequate standard of living in the context of disaster settings, 22 March 2012, A/HRC/19/4, para. 4(a).

11   For a summary of the event see http://www.nrc.no/?did=9678864 and https://www.ifrc.org/en/news-and-media/news-stories/international/land-rights-and-secure-tenure-fundamental-to-humanitarian-shelter-operations-62681/

12   For example, the United States Institute of Peace (USIP) in collaboration with the International Organization for Migration (IOM), the World Bank and USAID offers regular training on "Land, Property and Conflict". NRC and the Internal Displacement Monitoring Centre (IDMC) have developed a multilingual training course on Housing, Land and Property (HLP). http://www.nrc.no/?did=9642898. The continuum of land rights developed by the Global Land Tool Network is a well-known tool on security of tenure and UN Habitat's Guidance for Practitioners on Land and Natural Disasters (http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2973) provides examples of how to respond to tenure insecurity through documentation.

KEY ISSUE 1:

LEGAL PLURALISM AND OVERLAPPING LAND TENURE SYSTEMS

Security of tenure varies greatly depending on the context and also upon the policies of the affected state. Many countries are characterised by legal pluralism – the co-existence of parallel laws and authorities that guide and inform the administration of justice on similar matters. Often these are

- statutory laws – acts, rules or regulations approved and promulgated by a government
- customary laws – customs, rules or practices that regulate social behaviour that have developed over time in a specific community and are considered to be mandatory
- faith-based legal systems such as *shari'a*[13]

In many countries such as Uganda and Mozambique, customary systems are incorporated into and regulated by state law, regulations and/or jurisprudence. However, in countries where customary rights are not recognised by the state, customary law is law only to the extent that the people who follow it, voluntarily or otherwise, consider it to have the status of law. In Liberia for example, rural community members have no formal legal basis for their tenure security. However, they enjoy significant *de facto* security in their land rights as recognised by the community members themselves.[14]

Whether formally recognised or not, customary land rights can, and often do, enjoy more legitimacy in the eyes of local community members than statutory rights. In these situations, security of tenure based on informal or customary rights may be at least as 'secure' as formally registered rights when considering the relative risk of eviction or similar challenges. Moreover, where customary rights are applied, land is often held in a series of overlapping communal, individual, family, clan and entire community rights. Alternatively, land ownership may not be vested at all, but instead considered as reserved for future generations and changing community needs.

In Afghanistan customary land tenure is often considered the most reliable given the long history of conflict, displacement and the wide-ranging ideological differences and ethnic bias of the various governments that have influenced adjustments in the laws around land allocation and ownership. With so many conflicting systems that have governed land rights over the years, the customary systems are still seen as the most reliable for they are underpinned by principles of *shari'a* law often used in conflict resolution.[15] In these situations, reliance on formal notions of security of tenure may tend to distort, rather than clarify, the pattern of land rights.

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13 Harper, E.,2011, Customary Justice: from Programme Design to Impact Evaluation, International Development Law Organization. http://www. worldjusticeproject.org/sites/default/files/customary_justice_idlo.pdf

14 Alden Wiley, Liz. 2007, So Who Owns The Forest' – an investigation into forest ownership and customary land rights in Liberia, Sustainable Development Institute, Monrovia. http://www.fern.org/sites/fern.org/files/media/documents/document_4078_4079.pdf. For more information on de jure, de facto and perceived security of tenure, please see Jean-Louis van Gelder's paper "What tenure security? The case for a tripartite view".

15 Alden Wily, L., 2004, L. Putting Rural Land Registration in Perspective: The Afghanistan Case. http://dspace. cigilibrary.org/jspui/bitstream/123456789/7917/1/Putting%20Rural%20Land%20Registration%20in%20 Perspective%20%20The%20Afghanistan%20Case%202004.pdf?1

Mapping customary land rights in post-conflict or disaster situations is not without challenges. Access to and control over land is frequently contested and customary claims are often constructed on the basis of social differentiation and inequality (particularly among pastoralists; migrants and indigenous groups; men and women within households and elders and youth).

However, in many cases the participation of rural community members has proven successful in understanding and reaching a stable consensus on existing customary rights.[16] Community participation in the presence of all relevant parties, particularly landowners and land users can be an effective means of taking stock of existing land tenure arrangements and identifying beneficiaries for shelter assistance. For example, NRC's Shelter Programme in the Democratic Republic of the Congo (DRC) has cooperated with the Information Counselling and Legal Assistance (ICLA) Programme to provide building materials to returnees who have reached negotiated agreements through collaborative dispute resolution procedures.

In Puntland (Somalia), World Vision secured land for a housing construction project through a consensus-driven customary law process involving extensive engagement of the council of elders, *shari'a* practitioners, local government, the host community and beneficiaries. Each beneficiary was eventually allocated a 100 square metre block of land on the site. Through robust advocacy and extended consultation beneficiaries were given individual ownership of a block. The housing erected on each block was given to beneficiaries through joint ownership between husband and wife.[17] During the response to the 2010 floods in Pakistan, IFRC and the Pakistan Red Crescent Society undertook a tenure programme in Sindh, the worst affected province. Some 1.5 million people were rendered homeless, the majority tenant farmers without any type of land ownership or documentation. In order to overcome the challenge of supporting these people with shelter, agreements were signed between the beneficiary farmers (*haris*) and landlords (*zaminders*), stipulating a minimum five-year period in which the landlord agreed not to evict the beneficiary.[18]

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16 During the 1990s and 2000s, the main innovative approaches included community land mapping, participatory land mapping, decentralised land registration and certification and community-based management of land.

17 World Vision; No Fixed Address: Housing, Land and Property Issues in a Stateless Somalia, i-Rec Conference 2013. http://www.i-recconference2013.ch/Home.aspx

18 IFRC, 2012, A new lease of life for the landless, video case study. http://www.youtube.com/watch?v=hDh2Jl5cUjM

KEY ISSUE 2:
URBAN CONTEXTS

The overlapping ownership patterns common to customary landholdings are commonly found in urban contexts, and nowhere is the diversity of tenure forms more apparent.

Urban and peri-urban areas are frequently characterised by a relatively high percentage of renters (documented and undocumented) in multiple occupancy buildings or in informal settlements.[19] In some areas informal settlements outnumber legally planned developments and are increasing more rapidly.[20] For instance, in Nairobi a reported 2.65 million people (out of a population of four million) live in informal settlements[21] in which the population density can be as high as 1,000 people per hectare. The majority of these dwellers (92 per cent) are rent-paying tenants with no tenure security, either legal, de facto or perceived.[22] Non-empirical evidence suggests that between 30 and 50 per cent of urban residents in the developing world lack any kind of legal document to show they have tenure security.[23] This is true even among individuals who hold formal legal title. This was illustrated by a 2005 study by the Central Statistical Bureau in Indonesia which found that of those owning their home only 32 per cent can show legitimate proof in the form of a certificate from the national land agency.[24]

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-storey dwellings, house/flat shares and the sharing of single rooms. This results in several forms of tenure often co-existing on the same plot. For instance, 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.[25] 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. This is exemplified by the response to the 2010 earthquake in Haiti.[26]

A particular situation characterising post-conflict settings is the presence of displaced individuals in urban informal settlements or

19 In Sao Paulo, for example, only 35 per cent of the population have formal tenure arrangements. UN-Habitat and Global Land Tool Network: Monitoring Security of Tenure in Cities (2012), p.46.

20 USAID, 2005, Land Tenure and Property Rights, Volume 1: Framework p.12. http://usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_Framework_Tool_0.pdf

21 British Red Cross, 2013, Learning from the City. http://www.ecbproject.org/news/latest-news-library/post/304-learning-from-the-city---a-scoping-study-by-the-british-red-cross

22 USAID, Property Rights and Resource Governance, Country Profile – Kenya. http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_LandTenure_Kenya_Profile.pdf

23 World Bank, 2003, Land Policies for Growth and Poverty Reduction.

24 UN Habitat, 2006, State of the World's Cities 2006/2007 p.95. http://www.unhabitat.org/pmss/listitemdetails.aspx?publicationID=2101

25 Payne, G., 2001,Urban Land Tenure Policy Options, p.3. http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.202.6387

26 The 2010 earthquake displaced over 1.2 million people. In Port au Prince, the capital, an estimated 70 per cent of the population lived in slums. Many were undocumented tenants with an average living space of less than 2m². IFRC, 2011, Evaluation of the Haiti Earthquake 2010: Meeting Shelter Needs, Issues, Achievements and Constraints. http://www.ifrc.org/docs/Evaluations/Evaluations2011/Global/HTShelterClusterReview11.pdf

in temporary rental accommodation. In Iraq, the Representative on Internally Displaced Persons (IDPs) has noted that over 75 per cent of IDPs live in rented accommodation or with host families, while over 20 per cent live in irregular settlements, former military camps, tents and public buildings. At the time of the Representative's visit, an estimated half a million persons, the majority of whom are believed to be IDPs, were living in informal settlements on property which they did not own.[27]

The use of cash as a means of delivering humanitarian assistance is becoming increasingly common and often has particular benefits in urban areas where a range of supply driven markets are more likely to be functioning efficiently. During displacement to or within urban settings, the provision of some form of subsidy is increasingly being used, or considered, as an option in assisting people affected by disaster to access both the formal and informal housing markets. This subsidy, either financial or in kind, is most often attached to landlords or hosting families, thus allowing the displaced to occupy a building or room for a defined period of time. In its most basic form this could be direct cash rental support or the more complicated provision of cash/vouchers or materials for repair and retrofit to incentivise the hosting arrangement. In

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27 Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Consultation background paper: Security of Tenure - Commentary and Recommendations by UN Human Rights Mechanisms (2012), p.9.

either case a thorough understanding of the terms under which tenure has been agreed is essential. Indeed such is the importance of tenure security in urban settings that the provision of support to beneficiaries to ensure proper documentation of tenure arrangements – and therefore protection from eviction – could be seen, in itself, as a legitimate shelter intervention.

Such approaches however are comparatively new to humanitarian shelter actors. There is a growing body of evidence to show that a post-crisis increase in the demand for housing and an influx of external capital resulting from such an intervention has impacts on local rental markets which can negatively affect the tenure security of others already living within the rental sector. Therefore an appreciation of the possible impacts that market distortions can have, alongside an understanding of the varied forms of tenure operating within a particular context, are essential in ensuring interventions follow the principles of 'do no harm'.

Given the co-existence of different tenure arrangements, the informalities of housing markets and the constantly changing environment of urban areas there is a distinct need to understand the *de jure* and *de facto*[28] tenure systems which exist (including individual or collective security), along with the political systems that accompany them. Finding housing solutions in emergencies in big cities is extremely complex. These difficulties are not just restricted to developing cities but have also been seen in the response to the Great East Japan Earthquake in 2011 where, among many other issues, incomplete land registries and lack of proof of ownership continue to delay recovery.[29]

Evidence suggests that, especially in the early recovery phase, favouring those beneficiaries who have documentary evidence of tenure excludes the majority of urban dwellers and especially the most vulnerable from humanitarian assistance[30]. Humanitarian organisations must work with community members including landowners, local organisations and local governments so as to understand existing complexities in tenure arrangements and what are the causes of insecurity. By doing so, the humanitarian community would be able to address some of the worst forms of inequality and insecurity that are found in urban shelter responses.[31] This would additionally avoid prolonged camp displacement and consequential forced evictions – such as those recently reported in Port-au-Prince.

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28 In this instance de jure means the law of the state and de facto is the reality on the ground.

29 Japan News, August 26, 2012 Land confusion hinders relocation of areas hit by disaster
    http://www.accessmylibrary.com/article-1G1-300815446/land-confusion-hinders-relocation.html

30 UN Habitat estimates that 30 per cent of land globally is currently registered though statutory systems, and less than two per cent of women's land and property rights are registered worldwide, UN Habitat: Land and Property UN-Habitat in Disaster and Conflict Contexts
    http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3192. Also see previous footnotes 7 (statistic for the developing world) and 19 (urban).

31 Report of the Special Rapporteur A/66/270, supra note 6, para. 34.

KEY ISSUE 3:

DISADVANTAGED GROUPS, INCLUDING VULNERABLE WOMEN

The humanitarian sector has learnt that conflicts and disasters both disproportionately affect the most vulnerable and also exacerbate existing inequalities in affected societies. The Special Rapporteur on adequate housing has identified that refugees and IDPs are among the groups most affected by tenure insecurity.[32] Women frequently have insecure tenure because their access to housing and land hinges on a relationship with a man. They may also face additional hurdles as vulnerable sole household heads.[33] It is clear that conflict brings about significant demographic changes. There are higher numbers of women-headed households and widows who face additional barriers in access to secure land and housing. These constraints are severe, particularly in contexts with discriminatory marital property and inheritance laws.

The World Bank has noted that globally, land ownership remains largely restricted to men, both by tradition and law.[34] In Afghanistan, for example, around 50 per cent of the population (women) are customarily barred (through social discrimination) from land holding; given the high numbers of widows and a large proportion of *de facto* female-headed households through out migration of males for work, this is proving more and more constraining.[35]

Most humanitarian shelter programmes aim to provide assistance for the most vulnerable, including particularly disadvantaged women. However, in practice where women face existing discrimination in access to land, they are ineligible for shelter programmes that require proof of land ownership. The Special Rapporteur on adequate housing has noted that in most housing reconstruction programmes tenure documentation and legal proof of rights are prerequisites for establishing beneficiary eligibility. She further observed this had the consequence of excluding the poorest and most vulnerable, including those residing in informal settlements with temporary or informal rights of tenure.

In South Sudan, some of the most vulnerable returnees, including widows, are unable to pay registration fees for government-allocated land. They are not only at risk of eviction, but are excluded from shelter assistance from international organisations as a result of being unable to prove ownership. The effect of this emphasis on individual property ownership is, therefore, the exclusion of many displaced women from assistance, and particularly the most economically and socially disadvantaged (widows, older women, and single heads of households).

NRC´s experience of providing legal assistance in over 15 conflict-affected countries also shows that women are less likely to hold formal documentation as proof of identification, as well as tenure documentation. This decreases their chances of inclusion in humanitarian programmes. An NRC survey in Afghanistan found that while 83 per cent of men have *tazkeras* (ID cards), only 18 per cent of women do.

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32 Report of the Special Rapporteur A/66/270, supra note 6, paras. 11-13; Report of the Special Rapporteur on the human rights of internally displaced persons, March 2013, A/HRC/23/44, para. 21.

33 Report of the Special Rapporteur A/66/270, supra note 6, para. 20.

34 World Bank, World Development Report 2012: Gender Equality and Development (2012). https://openknowledge.worldbank.org/handle/10986/4391

35 Alden Wily, L., 2004, op. cit.

In Afghanistan *tazkeras* are often necessary for access to assistance. They may be cross-referenced with voluntary repatriation forms issued by UNHCR or with IDP documentation as proof of identity and displacement. Worldwide, women also have much higher rates of illiteracy, affecting their ability to complete applications for assistance as well as to participate meaningfully in land allocation processes and other transactions involving written documentation.

The humanitarian community must work hard to ensure that existing discrimination on the basis of gender and other factors is not reinforced in humanitarian response. In the wake of the 2004 Indian Ocean tsunami it was reported that the international response on many occasions strengthened those who were better off and/or more articulate whilst marginalising those who had few assets, notably women.[36] Relief efforts were also found, on occasion, to have directly undermined women's pre-existing rights, such as their rights to housing or land in matrilineal communities.[37]

Therefore one of the greatest challenges in the provision of equitable humanitarian assistance is to find ways to incorporate disadvantaged groups, including vulnerable women, in relief programmes. The principles of equality and non-discrimination in international law place an obligation on aid organisations as well as governments to pay particular attention to addressing existing inequalities and protecting the most vulnerable. This will include expanding the current understanding of security of tenure to reflect the situation that most displaced women are in. If the human-itarian community broadens its criteria to include more diverse tenure arrangements other than freehold – and particularly including customary recognition of tenure and arrangements governing informal settlements – this would enable more vulnerable groups to access assistance. Even where it is actually not the case that customary and other arrangements provide greater *de facto* security to women, in light of the existing tenure discrimination women face, the humanitarian community should consider taking a greater risk in order to accommodate them. Women's frequent lack of documentation and illiteracy should not constitute addi-tional barriers to eligibility considerations based on tenure. Rather, these constraints should be recognised and incorporated into programmes, for example through the provision of legal assistance to those affected.

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36 Telford, J. and Cosgrove, 2006,, Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report, Tsunami Evaluation Coalition
http://www.preventionweb.net/english/professional/publications/v.php?id=2097 , p 104, cited in the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, August 2011, A/66/270, para 19.

37 Lyons, M. and Shilderman, T., 2001. Building Back Better: Delivering People-Centred Housing Reconstruction at Scale, Practical Action (2010) (with respect to communities in Sri Lanka)
http://practicalaction.org/docs/ia3/building-back-better-lyons-schilderman.pdf; ActionAid, 2006, Tsunami response: a human rights assessment , pp.43-47, cited in Report of the Special Rapporteur A/66/270, supra note 6, para 19.

CONCLUSIONS, RECOMMENDATIONS AND NEXT STEPS

The Roundtable brought together operational shelter organisations and several of the most active donors in order to raise awareness of the challenges outlined in this paper and the consequential impact that they have in shelter programming. The overall aims were:

➢ raising understanding among international actors working in humanitarian shelter of the main challenges involved in dealing with security of tenure

➢ contributing to the Special Rapporteur on adequate housing's forthcoming guidelines on security of tenure from a humanitarian perspective (Ms Rolnik was the keynote speaker)

➢ building consensus towards developing an operational definition of security of tenure applicable in humanitarian settings.

The questions below were posed in the original draft paper as a means of better understanding the implications of and common dilemmas around restrictive perceptions of security of tenure:

1. *As shelter providers or as donors, what do you consider to be the key elements for eligibility for humanitarian shelter assistance, bearing in mind any accountability requirements*?

2. *In your experience, are registered landowners in fact favoured in the provision of humanitarian shelter assistance*?

3. *How can the humanitarian community ensure equitable shelter assistance; including between 'recognised' property owners, (those with documented legal title to land) and others with tenure status reliant on customary/religious systems and community perception*?

4. *What is your impression of the increasingly common practice of putting in place agreements or memoranda of understanding among beneficiaries, landowners and local authorities or others*?

Two key themes emerging from the Roundtable were that of risk and accountability.

1. It was noted that the humanitarian community (including donors)trends towards higher levels of risk aversion, generally for reasons of accountability. They therefore perceive forms of tenure other than individual ownership as being higher risk either from a legal perspective, or from a practical viewpoint because of the possibility of shelter beneficiaries being evicted. Cases presented showed that it is not always the case that individual ownership is, in essence, a less risky basis for shelter assistance, nor does this assumption cater to the majority of affected populations. It was agreed that consideration needs to be given as to whose risk it is — that of the beneficiary, the humanitarian agency or the

donor and what that risk is – eviction, reputational or financial?

2. Further questions arose during the Roundtable around how the humanitarian community should address accountability in this area. It was highlighted that 'risk avoidance does not equate to accountability' and that over-caution can severely restrict operations. Consideration is required around 'secure enough for who'? At times it feels that many shelter providers look at sustainability with a focus on how long a beneficiary may remain in the shelter, as opposed to basing assistance on needs. Beneficiaries may prefer to balance longer-term considerations about remaining on a piece of land against the importance of having immediate shelter from the elements. There was a general consensus that when it comes to security of tenure all must bear an element of risk.

Prior to the Roundtable participants were additionally asked to name the key elements / indicators if the humanitarian community were to adopt a 'secure enough'[38] policy. These may include:

➤ 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.

It was agreed that the concept of 'secure enough' will be useful in providing practical guidance on how to resolve the different perspectives discussed at the Roundtable.

In addition to the issues surrounding accountability and risk, consideration will also be given to a number of points which were raised during a consultation with shelter practitioners held on June 27th 2013. These mainly concerned – but were not limited to:

1. differences of approach for occupiers of state/public land and private land

2. suitability of similar indicators being used for both conflict and disasters

3. appropriateness of similar indicators for those who are displaced and non-displaced[39]

4. variation of indicators between 'secure enough' at place of displacement and 'secure enough' at place of return/resettlement (see table below as an initial example)

5. consideration around land and housing and the ownership/occupancy

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

39 Please note that this paper, and consequently the preliminary indicators, are in reference to humanitarian shelter provision only and not to shelter in protracted displacement situations.

thereof and the distinctions that should be made

6. applicability of indicators to short term and long term occupiers

7. challenges around tenants and unrecognised occupiers i.e. the landless, and whether such a set of indicators can be utilised by both recognised and unrecognised owners.

The following table includes some of the elements for consideration of security of tenure, differentiated according to situation of displacement or return/ resettlement.

Secure enough at the place of displacement	Secure enough at the place of return/ resettlement
➤ Community norms on forms of ownership and occupancy rights	➤ Community norms on forms of ownership and occupancy rights
➤ Community consultation/consensus/verification/ perception	➤ Community consultation/consensus/verification/ perception
➤ Payment of rent, utilities, taxes etc.	➤ Payment of rent, utilities, taxes etc.
➤ Documentation, including documentation showing displacement status; documentation of assistance from humanitarian organisations	➤ Documentation, including endorsement by national restitution processes (e.g. Colombia); documentation of inclusion in government land allocation (e.g. South Sudan)
➤ Agreement/contract in place and adherence to terms thereof	➤ Agreement/contract in place and adherence to terms thereof
➤ State/local authority agreement for land use	➤ State/local authority agreement for land use
➤ Political declaration	➤ Political declaration
➤ Administrative recognition	➤ Administrative recognition
➤ Prevalence of tenure arrangement in the specific context	➤ Prevalence of tenure arrangement in the specific context
	➤ Duration of occupancy
	➤ Investment in the property
	➤ Use of the property as a source of livelihood

NRC and IFRC are undertaking further work on the 'secure enough' approach. The global aim is to bring about a consensual operational definition of security of tenure which may be applied in responses to humanitarian crises.