B.3   Security of tenure and humanitarian shelter

Based on "Security of Tenure in Humanitarian Shelter Operations". Abridged by Jake Zarins.

Tenure and humanitarian assistance

In recent years the humanitarian community has made progress in better orientating emergency shelter toward addressing the needs of the most vulnerable conflict- and disaster-affected populations. During this time, increased attention has been devoted to the different bases upon which beneficiaries of humanitarian shelter assistance occupy their homes, (otherwise known as 'tenure').

At the same time, humanitarian organisations increasingly require potential beneficiaries to provide documented evidence of tenure in order to receive assistance. While the rationale may be understandable, restrictive notions of security of tenure can lead to discrimination against the most vulnerable, the very people who should be the primary target of humanitarian assistance.

So why do humanitarian actors often insist on documented title? Insisting on documentation enables humanitarian organisations to reach clear agreements on how and where assistance should be provided, with key stakeholders, including beneficiaries, landlords and local authorities. Documented proof of tenure also acts as a mechanism for accountability, not least to donors to demonstrate that funds are being spent on solutions that are sustainable, since the beneficiary is less likely to be a victim of eviction.

An illegally occupied building on the outskirts of Kabul in 2012. The occupation was unofficially tolerated by local authorities.
Photo: Jake Zarins.

However 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. Likewise, in several states in Myanmar more than half of all households are legally classified as landless. Therefore under 'formal' criteria they would be ineligible for shelter assistance in their place of origin if displaced by conflict or disaster.

In these situations there is a risk that making freehold title, or individual property ownership, a condition of assistance will result in the exclusion of socially vulnerable groups from accessing shelter assistance. This particularly affects those without registered title or other documentation to evidence of their landholding. This group includes customary landholders, renters, and especially women.

Parallel systems

The increased focus on 'accountability', the complexities of security of tenure as a concept, and the vast diversity of the forms of tenure may have contributed to the emergence of registered title becoming a pre-requisite for humanitarian assistance. Title documents, however, are not the only or even the most common means by which a beneficiary may demonstrate security of tenure. Depending on local law, custom and practice, documented title may represent only one among several commonly accepted land tenure arrangements. This is known as legal pluralism – the coexistence 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 Sharia.

State law is often known as "de jure" law, while "de facto" law is the reality on the ground, which may be customary law.

Sometimes the customary systems are incorporated into state law and regulated by the authorities (for example, in Uganda and Mozambique). In other cases, customary rights may not be recognised by the state and

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.

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.

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 biases of the various governments that have influenced adjustments in the laws around land allocation and ownership. With so many conflicting systems informing land rights over the years, the customary systems are still seen as the most reliable, as they are underpinned by principles of Sharia law often used in conflict resolution. In these situations, reliance on formal notions of security of tenure may tend to distort, rather than clarify, the pattern of land rights.

Urban complexities

The overlapping ownership patterns common to customary landholdings are also 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. In many urban areas informal settlements outnumber legally planned developments and are increasing more rapidly.

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, which is a premium in any urban area. This can result in several forms of tenure co-existing on the same plot in multiple-occupancy and multi-storey dwellings.

For instance, agencies aiming to support people displaced from the north of Mali to Bamako and other urban centres in 2012 found a wide range of tenure arrangements being used by the IDPs and hosting populations. There were households who were tenants in rooms, shared rooms or storeys of houses built by land-squatters, households on land claimed by others but with no formal title, and widely varying rental arrangements in terms of both rights and contract lengths, which varied from days to months. These complicated and varied living conditions made decisions on assistance levels very difficult, both in terms of determining per-household assistance and the application of per-square-metre humanitarian standards.

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 challenges to the humanitarian community. 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.

The need for greater understanding

Evidence suggests that, especially in the early recovery phase, favouring those beneficiaries who have documentary evidence of tenure excludes large numbers of beneficiaries, and especially the most vulnerable, from humanitarian assistance. Humanitarian organisations must work with community members, including landowners, local organisations and local governments, in order to understand existing complexities in de jure and de facto tenure arrangements and in order to identify the primary causes of insecurity. This understanding needs to include analysis of both individual and collective security as well as the political systems that accompany them. By doing so, the humanitarian community can address some of the worst forms of inequality and insecurity that are found during the delivery of shelter responses and take action, often through advocacy, to avoid prolonged displacement and forced evictions.

There are several case studies in Shelter Projects 2013-14 that illustrate issues with tenure. Often these demonstrate how negotiations with local authorities or government can result in providing a modified form of assistance where structures can be officially classified as "temporary" and therefore do not violate land issues. For examples of this issue see non-permanent shelter in Fiji (case study A.7), the change in policy on providing assistance in the "No Build Zone" in Tacloban in the Philippines (case study A.25), and the distribution of "lightweight" repair materials in informal settlements in both Kurdistan and Lebanon (case studies A.9 and A.13). In other situations, such as the response to hurricane Sandy in Haiti (case study A.6), beneficiaries who are unable to prove identity and land tenure were unable to receive the full level of assistance on offer.

Further reading

This is a heavily edited version of "Security of Tenure in Humanitarian Shelter Operations", a paper released jointly by NRC and IFRC in June 2014.

The full paper including references can be downloaded from IFRC's website: www.ifrc.org
For an explanation of freehold tenure, see UN Habitat, Security of Tenure Best Practices, p.3 at:
   www.unhabitat.org