



# HOUSING, LAND AND PROPERTY RIGHTS (HLP) IN SHELTER

## DUE DILIGENCE GUIDELINES



## PURPOSE

The Due Diligence Guidelines are provided for the purpose of supporting National Shelter Cluster and its partners that implement shelter activities in Iraq. The guidelines will assist shelter actors to better understand Housing, Land and Property (HLP) issues by addressing the challenges faced during their activities, in addition to creating shelter standard operating procedures (SOPs) related to HLP.

The guidelines aim to ensure HLP and tenure rights are protected by all actors involved in shelter in the best possible manner, and that “Do No Harm” principles are respected.

These guidelines are an adaptation of the Global Shelter Cluster ‘Land Rights and Shelter - Due Diligence Standard, December 2013’<sup>1</sup> to the operational context of the Iraq Shelter Cluster.

## HLP RIGHTS

Housing, land and property (HLP) rights are about having a home free from the fear of forced eviction; a place that offers shelter, safety and the ability to secure a livelihood. Land rights are rights held to both land and natural resources. HLP rights are held by owners, tenants, cooperative dwellers, customary land tenure owners and users, and informal sector dwellers without secure tenure.<sup>2</sup> HLP rights include more than ownership rights – they are the full spectrum of rights to housing, land and property held according to statutory or customary law or informally both public and private housing, land and/or property assets.

Common HLP issues in emergencies include: tenure discrimination leading to inequitable assistance; loss of legal documentation; access to land for shelter and livelihoods; access to natural sources such as water, land and property conflicts; forced evictions; secondary occupation; land grabbing; restitution; and disinheritance, particularly of women and children.<sup>3</sup>

HLP rights in humanitarian contexts are generally known as:

- Right (equal and non-discriminatory access) to adequate housing;
- Right to be free to decide where to live;
- Right to security of tenure;
- Right to access HLP rights and redress mechanisms;
- Protection against forced eviction.

<sup>1</sup> [https://www.sheltercluster.org/sites/default/files/docs/shelter\\_hlp\\_and\\_due\\_diligence.pdf](https://www.sheltercluster.org/sites/default/files/docs/shelter_hlp_and_due_diligence.pdf).

<sup>2</sup> [http://www.globalprotectioncluster.org/\\_assets/files/tools\\_and\\_guidance/housing\\_land\\_property/ifrc-nrc-hlp-report-2016.pdf](http://www.globalprotectioncluster.org/_assets/files/tools_and_guidance/housing_land_property/ifrc-nrc-hlp-report-2016.pdf).

<sup>3</sup> [http://www.globalprotectioncluster.org/\\_assets/files/tools\\_and\\_guidance/housing\\_land\\_property/global-hlp-aor-work-plan-2016-2018-narrative.pdf](http://www.globalprotectioncluster.org/_assets/files/tools_and_guidance/housing_land_property/global-hlp-aor-work-plan-2016-2018-narrative.pdf).

HLP rights are not only relevant for private property but also for state or public property. They include a range of statutory, customary and religious rights pertaining to the use, control, transfer, and enjoyment of HLP and its assets. The below guidelines support HLP rights which should be considered prior to the implementation of any shelter rehabilitation or construction. Identifying the relevant HLP matters early on will help enhance the understanding of relevant HLP rights and prevent or reduce the risk of any unintentional violation of HLP rights, potential conflict, or future eviction of those being assisted.

Recognizing these challenges, the guidelines aim to support shelter actors to:

- Achieve as much legal certainty about HLP rights as is possible and reasonable in the Iraqi context, taking into consideration the constraints on access, resources and time;
- Reduce, as much as possible, the risk that Iraq shelter programming causes or contributes to potential increasing tensions conflicts on land and HLP disputes;
- Avoid any potential future evictions of the beneficiaries related with shelter;<sup>4</sup>
- Ensure that donor assistance is utilized in a way that protects rights and complies with “Do No Harm” principles.

Furthermore, the guidelines are focused on the below types of shelter interventions:

- Shelter construction of both transitional/temporary structures and permanent ones;
- Shelter rehabilitation/repairs of partially damaged houses and residential buildings;
- Shelter rehabilitation/upgrade of abandoned and unfinished buildings, collective centers and other substandard structures.

## A) PREPARATION

In order to provide a shelter intervention for the beneficiaries, the following preparatory steps need to be taken in order to understand the HLP situation and integrate HLP rights to any shelter program.

### 1. Learning HLP

It is highly important that all shelter actors are aware of and fully understand the general principles of HLP rights. Shelter actors should provide HLP training for team leaders and field staff members. Training should focus on topics relating to the right to adequate housing, the right to non-discrimination, the right to security of tenure, the right to access HLP rights, protection against eviction, and the

<sup>4</sup> Global Shelter Cluster (2013). Land Rights and Shelter, the Due Diligence Standard.

protection of the HLP rights of vulnerable and marginalized persons, particularly female-headed and elderly-headed households, widows, persons with disabilities and other specific needs. In addition, shelter actors should engage (where possible) HLP actors or a partner to provide HLP basic training prior to performing shelter activities; this is to ensure that all engaged staff members understand the connection between land rights and durable shelter programs.

## 2. Understanding HLP Issues in the area

It is essential that all shelter actors to understand what the main HLP violations are in the project targeted area. Moreover, it is suggested that shelter actors closely coordinate with HLP actors and relevant authorities to obtain a clearer picture of HLP violations and needs. Additionally, shelter actors should consider involving authorities, particularly institutions that are responsible for HLP rights such as local courts, land registration offices, local representatives, community leaders and Mukhtars, in order to further understand the specificities of HLP issues in each area.

## 3. Considering vulnerable and marginalized groups

Shelter actors should take into consideration the perspective and specific needs of vulnerable and marginalized groups, such as female-headed and children-headed households, widows, and persons with disabilities. In many cases the community for various reasons does not respect and recognize the HLP rights of vulnerable and marginalized groups. Accordingly, shelter actors should proactively identify such practices and do their best to protect the HLP rights of vulnerable and marginalized groups prior carrying out any shelter activities.

## B) PLANNING

Planning and coordination should be prioritized for the purpose of avoiding overlapping projects, duplication, and unnecessary activities. Ideally, needs assessment should also be coordinated in order to avoid duplication. As such the following should be taken into account:

- I. It is highly recommended that at the planning phase of any shelter project, all partners should be involved in coordination meeting to share information. Participating in cluster coordination meetings will greatly help all humanitarian actors obtain proper and accurate information relating to their concerns, as well as fully understand the needs of the specific areas where shelter activities are planned.
- II. Additionally, it is recommended that the Shelter Cluster coordinate with all local institutions and authorities, community leaders, IDPs representatives,

and relevant actors present in the area. This will help planning bodies to understand issues that are cross-cutting between Shelter and HLP, which will in turn into a better response. This could include vital information about whether there are currently any active or non-active local institutions in the area working on Shelter and HLP, such a functional land registry office, status of tapoos and property documents, and any other related institutions.

- III. Nevertheless, it is worthy to mention that in many cases, the best sources of information gathering in particular areas are local sources. This would allow shelter actors smoother access to the area in order to expand assessments, planning phases and access to the project target area.



#### **4. HLP related concerns in the area and the community**

Coordinating with the above-mentioned actors is of integral importance with regards to the understanding the needs of the target area, ongoing projects, and present actors. This will enable shelter actors to evaluate and assess the present issues related to Shelter or HLP before the implementation of the project. Accordingly, during the planning and preparatory phase, it is necessary that actors clarify the following:

- What are the national laws that regulate property rights?
- What type of land/property tenure exists in the area?
- Is the property state, publicly or privately owned?
- What are the HLP functioning institutions in the area?
- To what extent are local authorities accessible?
- Are there any available HLP ownership documents?
- If yes, where are they?
- Is the local Land Registry Office still functional?
- If not, since when?
- Does the owner have any missing/damaged/destroyed property documents?
- Are there alternative documents that could serve as proof of ownership?
- If yes, what are the alternative proof of ownership documents?
- How did the owner acquire the alternative ownership documents?
- Which authority is involved in issuing alternative proof of ownership documents?
- What is the scale of secondary occupation in the area?
- Are HLP disputes common in the area?
- How are the HLP disputes resolved?
- Are there and what are the HLP dispute resolution mechanisms?
- Which local level authority is involved in solving HLP disputes?
- What are the main HLP challenges in the area?
- What is the HLP situation regarding vulnerable people, women, venerable households and minority groups in the area?
- Are there any potential conflicts within community?

Answering the above questions will assist all shelter actors better understand the HLP situation and the issues faced, and will serve as a referral platform to HLP actors in the area.

#### **5. Informing local authorities on shelter activities**

It is very important to emphasize that community leaders and/or members of tribes/Mukhtars are informed about any planned shelter activities. Close coordination with the above authorities is critical in obtaining their support for project/shelter activities and to convey the transparency of these activities.

Shelter actors should ensure that community leaders understand all details accurately and that no misunderstanding occurs. Community leaders should be briefed about project activities, the type of activities, who the beneficiaries are, selection criteria and the duration of the project.

Establishing and maintaining good relations with community leaders, in addition to exchanging contact information, is essential in order to have direct contact regarding any issue that may arise during shelter activities and for follow-up discussions. Shelter actors should introduce the team and partners carrying out shelter activities to community leaders and provide a short brief about the outcomes.

#### **6. Shelter/Housing assessment**

Prior to implementation, shelter actors must fully understand the housing situation and conduct the assessment in the pre-selected area for shelter activities. The assessment will help properly plan the shelter operation, save time, as well as understand the needs and plan activities accordingly. Each organization should develop a housing assessment based on the category of the damages developed by Shelter Cluster in Iraq, and should also ensure that their House Damage Assessment include HLP questions related to ownership, male/female households, documents and vulnerable people.

#### **7. Raising awareness in the community**

Community awareness raising campaigns related to a variety of HLP topics often turn out to be very productive in terms of educating people about their rights. The experience shows that awareness raising is the most effective and efficient way of communicating information towards targeted people and communities. In this regard, shelter actors should consider developing awareness raising strategies and campaigns focusing on shelter activities, HLP documents, and compensation. Awareness raising should also include a brief explanation on the documents that beneficiaries needs to submit in order to be selected. This will help shelter actors to communicate with people in advance, rather than discussing each case separately, will save time and ensure that the project is implemented faster and more efficiently.

## 8. Missing or destroyed documents

Intentional damage or destruction of HLP and land registries has been widespread during the conflict with ISIL in Iraq. Yet it should be noted that even prior to the conflict many Iraqis were not in possession of complete and accurate HLP documentation, if at all. While some had left their homes without their HLP documents, others have had theirs confiscated by ISIL; therefore, it is very important to inform the local community about the shelter project in order for people who are missing HLP documents to start gathering evidence of their HLP rights for the selection process.

## 9. Compensation

It should be emphasized that raising awareness on the compensation mechanism and the procedures to file a claim to the Compensation Committee is crucial for beneficiaries and should be conducted before shelter rehabilitation. Based on Iraqi Law No. 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions, all houses that were damaged, destroyed by ISIL, terrorist actions, military operations and mistakes, have right to file a claim for compensation of the damages. The compensation scheme set up by the government of Iraq may be applied to all damaged and destroyed properties in relation to recent conflict (including post 2003). Therefore, it is necessary to explain to beneficiaries that no repair, rehabilitation or any other shelter activity would be undertaken by shelter actors unless a compensation claim to respective courts and compensation committee has been filed. All beneficiaries must be advised to file a compensation claim before they are selected for any repair or rehabilitation.

In the case where a shelter is repaired without going through the compensation process, the owners/beneficiaries might not be able to prove that the damage was war-related and would therefore hinder the court's ability to assess the level of damage and provide a lump sum figure that the owner is entitled to compensation. Going through the compensation process will also help shelter actors easily verify ownership documents as the filing of the compensation claim must be verified by Court and the Compensation Committee.

However, if the beneficiaries insist on the rehabilitation, they should state that they are aware of the compensation procedure and still want to be selected for shelter rehabilitation without filing a compensation claim. Shelter actors should therefore include in the rehabilitation agreement the above sentence stating that he/she has been informed of the compensation process yet agrees to rehabilitation prior to filing a compensation claim. Including the compensation paragraph in the agreement will also help shelter actors to prevent any post-facto complaints on shelter operations or related issues.

## C) PRE-IMPLEMENTATION PHASE

Establishing a clear implementation plan as well as procedures and main criteria related to HLP are necessary to shelter operations. The implementation plan, criteria and procedures will allow organizations to implement all shelter operations properly and address all HLP issues that may arise during the implementation phase. If HLP related concerns are not included in the implementation plan, this may create a misunderstanding between the implementing organization, the community, and the local representatives during the selection process.

Actors must ensure that they have checked the following questions during the beneficiary selection process and before implementation begins;

- Has the beneficiary been identified?
- Is the owner present in the area?
- Has contact been established with the real owner/all other owners of the property?
- Has the beneficiary's plot/property been identified?
- Does the beneficiary own, rent or occupy the property?
- Has the owner provided valid ownership documents?
- Did the beneficiary acquire the land before or after the conflict?
- Is the property occupied by someone other than the owner?
- Is yes, who is the tenant/current occupant?
- Has he/she purchased or rented the property?
- Does he/she have the property purchase/rent/lease agreement?
- Is the agreement formal or informal/verbal?
- What is the duration of this agreement?
- Where did the family live before (or after) the conflict in the property?



## 10. HLP document verification

No shelter activities should be carried out prior to the verification of ownership documents. Identifying and verifying the owner of the land/property in question as well as verifying the property title ensure that owners' rights are protected.

In principle, the ownership/HLP documents of the land/property should be verified through the relevant institutions (if available). If the verification is not completed shelter actors should refrain from implementing their activities as this may result to HLP violations. The verification process should be considered as a preventive measure against falsified/fraudulent documents, potential illegal occupation and secondary occupations or forced eviction. In the absence of ownership documentation, alternative means of verification should be considered in consultation with the community, local leaders and elders, Mukhtars and at least two neighbors. Consulting with local authorities will help shelter actors to verify legal ownership over the land or property. It is encouraged that implementing actors seek advice from community representatives, local authorities, leaders and elders, Mukhtars and neighbors who are knowledgeable about the property ownership in the area.

Where there are lost, missing, confiscated or destroyed documents, involving the aforementioned actors in the process of ownership verification will help shelter actors in preventing secondary occupation and any potential disputes in the community, and ensure that the correct beneficiaries receive humanitarian shelter aid.

Additionally, many individuals may have not transferred their inheritance ownership for different reasons. Widowed women for example typically face obstacles in transferring property rights from their deceased husband or relatives to themselves due to damaged or missing civil documents that are required to complete the transfer. The level of tenure security of Iraqi people and especially women is very low, and therefore additional effort should be directed towards strengthening it. Alternative solutions should be sought for those who are unable to prove property ownership.

Shelter actors are strongly advised not to exclude the beneficiaries who are not in possession of HLP documents. All shelter actors should seek alternative solutions to prove the ownership of such beneficiaries in cooperation with local authorities, local leaders, Mukhtars, neighbors or other authorities present in the area. If any of the above stakeholders states that the beneficiary was and still is in possession of the property/land and that the property in question is not disputed, shelter actors should

subsequently request a written statement that confirms that rehabilitation do not serve as ownership document, but a right to occupy. In such case, shelter actors may issue an Occupancy Certificate or a similar document that states the above.

## 11. Shelter agreement

Signing an agreement between the beneficiary and the shelter actors is good practice for both parties involved. The agreement should include a minimum level of legal certainty for the property rights and the shelter beneficiaries.

The agreement should also contain the benefits, roles and responsibilities related to shelter rehabilitation or construction. It is also highly recommended that the template foresees the legal steps and possible consequences in case the agreement is breached by both parties.

Furthermore, all shelter actors should provide beneficiaries and local authorities a translated copy of the agreement into their respective language. Shelter actors are encouraged (if applicable) to have a standardized agreement template to simplify the process and avoid any future complications for partners and beneficiaries. Shelter actors are also encouraged to coordinate with the Shelter Cluster for the standardization of the template agreement.

The agreement should be signed by both parties, the shelter actor/organization and the beneficiary. It should also be signed by the household head and spouse, female-headed households or youth-headed households. Ideally, the agreement should also be signed by the local authority/local leaders/Mukhtars and the neighbours as witnesses. The signed agreement (by both parties) should be in original hard copy and given to both parties. A copy of the signed shelter agreement should be submitted to the municipal office, local community office, or Mokhtar's office for future reference. The signatures of all the above would strengthen the tenure security of the beneficiary and would also help avoid any possible disputes or future conflict within and between the communities.

The minimum level of legal certainty for the property rights and the shelter beneficiary's agreement should include:

- Proof of identity of the beneficiary;
- List of names of all family members of the beneficiary living in the shelter;
- Numbered identification code of the plot/land/property, location and plot boundaries;
- Verification of the ownership documents and

necessary information of the property before rehabilitation (geo-code the property map/photo, geo-coordinates, neighbors plot coordinates, satellite imagery boundaries and map);

- Verifications of the ownership status of the land/property;
- Obligations, roles and responsibilities of each signed party (beneficiary and shelter actor);
- Acknowledgement that both parties are aware of the compensation scheme;
- Clarification of the resolution mechanism/legal clarification measures in case the agreement is breached;
- Signatures of the shelter actors, beneficiary, local authorities or relevant stakeholders.

Shelter actors should also take into consideration rental arrangements during shelter rehabilitation where the owner of the property is not actually living in the property. It is very important to emphasize that there must be a written agreement between stakeholders, such as shelter actors, owner and current occupant, leaser-leasee/tenant. The agreement should outline the beneficiaries' HLP rights, owners' rights on property, conditions, and scope of all types of interventions. It should be outlined in the agreement that the arrangement does not in any way confirm property ownership. Resolution mechanisms must be in place in case of any dispute. All parties should clearly state that they understand their obligations and rights in relation to this arrangement, and a copy of the written agreement should be distributed to all parties involved. Moreover, shelter actors should keep for their own records all copies of the beneficiary arrangements for at least two years, and if possible submit a copy of the agreement to the municipal office, local community office or Mokhtar's office for future reference in case of any dispute.

Accordingly, the below checklist sets-out the main pointers that should be considered when entering an agreement:

- Owner's written permission to conduct the rehabilitation if the tenant lives in the property;
- Tenant and owners' agreement;
- If the property is rented, outline duration of rent and prevent unreasonable rent increase as well as responsibilities of each signing party;
- Disclaimer outlining that the agreement does not serve as an ownership document in any form;
- Conditions and process of termination of agreement;
- Outline responsibilities of all signing parties;
- Resolution mechanism/legal clarification in case the agreement is breached;

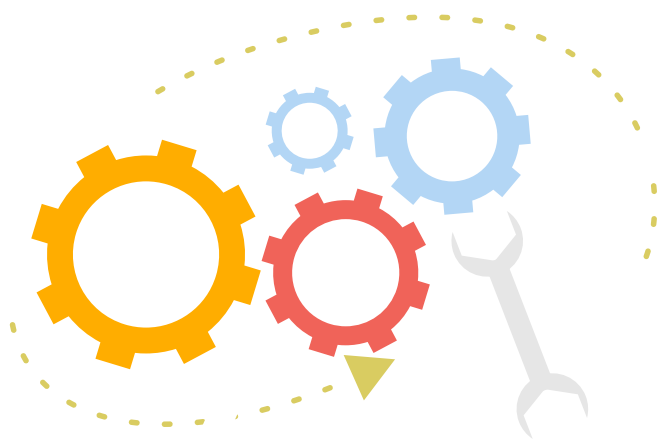
- Signatures of the shelter actor, beneficiary, local authorities or other relevant stakeholders.

## D) IMPLEMENTATION PHASE

Prior to implementation phase it is vital to ensure that the above due diligence guidelines are respected and that there are no gaps. Once all items have been checked off the above list it can be considered safe to proceed to the implementation phase. An implementation based on international humanitarian standards and principles while respecting all above-mentioned HLP principles represents a great success for all shelter actors.

During the implementation shelter actors should also ensure that all field teams have received basic training on HLP and its core principles. All partners working in the field should be ready to answer and respond to HLP related questions arising during implementation. In case there are queries that cannot be answered, shelter actors must make sure not to take any further action until a viable solution is found. Proceeding with activities without resolving underlying issues related to HLP may affect tenure security. In this regard, all shelter actors should reach out to the Shelter Cluster as it also gathers experiences and best practices from other stakeholders.

In case there are any HLP related disputes, may refer to current dispute resolution mechanisms and the local authority responsible for dispute resolution mechanisms. If there are no existing mechanisms, then shelter actors should consider using other resolution mechanisms such as mediation, negotiation or other Alternative Dispute Resolution (ADR). If the shelter actor does not have ADR capacity, the disputed case should be redirected to local authorities or local community leaders.



## E) EVALUATION AND FEEDBACK MECHANISM

Establishing an evaluation and feedback mechanism is vital for humanitarian actors to help shelter actors to receive the feedback they need on the quality of work, be held accountable, and ensure that beneficiaries' HLP legal rights were respected. Shelter actors should be aware that the mentioned mechanism would enable community participation and would work as a communication channel to raise any questions or complaints about the services of their organization during project implementation. Furthermore, it would be a very good indicator of full transparency and accountability in relation to shelter project activities.

During project implementation all shelter actors should establish formal channels for receiving feedback, complaints or questions through a complaint/suggestion box, phone hotline, SMS, social media, and any other relevant channels related to HLP and other shelter related issues. If there are any questions or complaints these should be addressed through official channels, or contact information disseminated during the awareness raising sessions with the community. Positive feedback and evaluation received would provide good evidence of beneficiaries' satisfaction and can be shared with donors and other stakeholders. Shelter actors should establish evaluation and feedback mechanisms during shelter project implementation and share with their donors, partners and other stakeholders all feedback, results and other important information. Transparency and accountability must be maintained by sharing the evaluation and feedback results with local authorities and local community leaders in order to keep them informed about the impact of the project in the area and community.

## GLOSSARY

**Land/property tenure:** defines who can use what land/property resources, for how long, and under what conditions. In Iraq the types of property tenure are: (1) Ameriya/Miri: state land owned by governorate (miri: land that is state owned but possessed by an individual); Miri land is technically owned by the state, and it can be possessed and used by individuals who retain what are known as tasarruf rights, which is the right to use/exploit and transfer the land; (2) Mulk: private, rights gained through the TAPU title allowing degrees of freedom of use; (3) Waqf: religious endowments; (4) Empty land: The dead land that is undeveloped and at a distance from any town or village (not applicable/Otoman era); (5) Land rights use for a fixed term: (rights of use and benefit for a fixed term of years during which the land and property is still owned to grantor; (7) Communal Lands: The term used at village level to demote common undivided land while or communal grazing land (8) Unit/Plot: user residence

ownership rights; (9) Leases: rights of use and benefit from specific amount and period; (10) Sell-Buy Process: long and complex transaction procedures. Source: USAID, Property Rights and Resource Governance/ Land Tenure Country Profile, Iraq.

**Ownership documents:** a proof of ownership over a land or property. In Iraq the property documents are: Tapu (Deed); private ownership documents; Right of Use (not privately owned, but right to use for certain period); Purchase Contracts (transfer/sale of property); Rental and Lease Agreement (is the owner present in the community, duration of rent); Inheritance documents/decisions and bona fide (use of the property in good faith).

**Restitution:** it refers to an equitable remedy (or a form of restorative justice) by which individuals or groups of persons who suffer loss or injury are returned as far as possible to their original pre-loss or pre-injury position. Source: The Handbook on Housing and Property Restitution for Refugees and Displaced Persons, Implementing the 'Pinheiro Principles, March 2007.

**Secondary occupants:** persons who take up residence in a home or on land after the legitimate owners or users have fled due to, inter alia, forced displacement, forced eviction, violence or threat of violence, natural or human-made disasters. Source: The Handbook on Housing and Property Restitution for Refugees and Displaced Persons, Implementing the 'Pinheiro Principles, March 2007.

## FURTHER READINGS

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