

# GUIDANCE NOTE

## HLP and Natural Resource Due Diligence in NRC

### OVERVIEW

The target audience of this note are **CC & Thematic Specialists/PDMs** who design and write proposals, **PMs and coordinators** who implement projects, **global and regional staff who advise Specialists** and **HoPs**. The secondary audience includes **Grant Managers, Area Managers**, and **Country Directors**.

During conflicts and disasters, relationships and institutions tend to weaken and break down. Sometimes, the breakdown of trust in the relationships and systems that govern housing, land, property or natural resources are contributing factors to the conflict itself. Therefore, all humanitarian actors whose interventions rely on access to land, buildings, or natural resources must pay careful attention to these relationships – because failure to do so can add new layers of Housing, Land, Property (HLP) and natural resource disputes or re-ignite old ones, thereby harming communities. Ignoring these risks can have legal, financial, and reputational consequences for NRC. One of the ways to understand these relationships and the institutions that govern them is a process known as 'due diligence.' Done correctly, due diligence can become an entry point for a people-centred approach as well as a tool for risk management and mitigation.

While due diligence is now an explicit part of the [Sphere Standards for Shelter](#) (6.1) and is alluded to in the [Standards for Livelihoods](#) (7.1.3), ***due diligence is also required for all projects implemented by NRC which require access to buildings, land, property, or natural resources, as a concrete way to ensure that NRC's interventions "Do No Harm."*** (See [Annex](#) for typology of projects for which due diligence is required)

This document, therefore:

- Clarifies that due diligence is compulsory for all NRC programmes that require access to buildings, land, property, and/or natural resources.
- Establishes a common definition for due diligence for all programmes across NRC and aligns it with the Project Cycle Management framework to harmonise approaches, to facilitate communications, and to ensure that HLP and natural resource issues are addressed from the onset of projects.
- Clarifies who is responsible for due diligence and accountable within NRC.
- Provides a concrete example of what due diligence looks like in practice.

## WHAT IS DUE DILIGENCE?

Due diligence is a mandatory process that enables teams in the field to make informed decisions on how to proceed with a project and to ensure that they do no harm. Specifically due diligence:

- Helps establish a foundation of trust and long-lasting relationships between NRC and local communities and institutions.
- Identifies, with an acceptable degree of certainty,<sup>1</sup> who are the rights-holders to a building, parcel of land, property, or a specific resource that will be used by humanitarian actors to deliver assistance to conflict affected populations.
- Reduces, as much as possible, the risk that an intervention will harm displacement-affected peoples and their relationships. Harm can come from creating or inflaming disputes, violence, expulsion, and exploitation as well as exposing beneficiaries to risks of legal action, and/or by contributing to environmental degradation.
- Ensures compliance with national and international laws and regulations, where relevant. International human rights and humanitarian law are applicable in most contexts and may help interpret local regulations.<sup>2</sup>
- Reduces legal, reputational, and financial risks for NRC.



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<sup>1</sup> An acceptable degree of certainty must be defined based on the project type and the context where it will be implemented. It requires teams to make informed calculations about the risks involved and taking the necessary measures to reduce that risk. However, few risks can be 100% eliminated.

<sup>2</sup> Further technical details on the application of international human rights and humanitarian law in HLP due diligence is elaborated upon in an ICLA guidance note on due diligence.

## HOW DO THE DUE DILIGENCE STAGES FIT WITHIN THE PROJECT MANAGEMENT CYCLE?

In practice, due diligence takes place within the programming, identification, formulation, implementation, and evaluation phases of the project management cycle.

**Programming phase:** Due diligence should feature within core-competency strategies if the core competency in question intends to implement any projects for which due diligence is required.

**Identification phase – contextual due diligence:** During the identification phase of PCM, due diligence means taking the time to understand how the project in question fits into the social, environmental, and regulatory context for HLP and natural resource issues. This enables practitioners to adapt the project based on assessed risks, opportunities, and needs for regulatory compliance. This includes working with authorities and communities to identify what their needs are, what they identify as the main HLP risks to be and who are most vulnerable to these risks. These consultations can also be used to understand the different laws (formal, religious, and customary) that govern HLP and natural resource relationships.

**Formulation – collaboratively designing due diligence approach:** Using the information from the contextual due diligence, humanitarian actors can design or adapt pre-existing tools and checklists (see key resources below) to verify underlying rights to make sure that they are appropriate for the context(s) in which the project will be implemented. It may be necessary to vary the verification approaches for different areas of the same country or even different neighbourhoods. No verification in humanitarian settings can produce 100% certainty; however, by designing these processes and tools in collaboration with local communities and authorities (and ensuring that marginalised voices are included), humanitarian actors can conduct a verification process that is trusted by local communities and authorities. This process should be reflected in project proposals – which includes project timelines and allocating the necessary human and financial resources to ensure that it can be realistically implemented.

**Implementation – site-specific due diligence:** In the implementation phase, due diligence refers to the site-specific, careful review, and triangulated verification of evidence in support of HLP and natural resource rights and claims<sup>3</sup> before any assistance is delivered. It is also used to ensure that any relevant regulations (permits, approvals, etc.) are followed. If a conflict is identified or a claim cannot be sufficiently verified, every effort should be made to refer the case to a relevant and legitimate entity that can provide a fair resolution of the issue. Therefore, a clear referral mechanism should be identified during the design/formulation phase.<sup>4</sup> The site-specific due diligence must also examine potential environmental impacts of the project, since environmental degradation may create risks for the beneficiaries and their neighbours. This phase of due diligence ends with a “go” or “no-go” decision of whether to deliver assistance under a particular type of project.

**Monitoring and evaluation:** During the monitoring and evaluation of projects, some attention should be given to whether any conflicts, environmental or compliance issues erupted during or after project implementation to see if the verification process needs to be adapted in the future. Also, if monitoring found that none of these issues emerged, but that the verification process was unnecessarily burdensome, this learning should inform future project design.

<sup>3</sup> Evidence for HLP and natural resource claims may be in written form – contracts, titles, cadasters, maps, receipts, utility bills, etc.; verbal – oral testimony, stories; physical – property markers, trees, burial sites, etc.; or digital – photos, digital trails, etc.

<sup>4</sup> Projects should be planned to take account that a certain percentage of cases that may not meet the due diligence standard to advance with construction on the site.

## WHO IS RESPONSIBLE AND ACCOUNTABLE FOR DUE DILIGENCE WITHIN PROJECTS? WHO SHOULD BE CONSULTED AND INFORMED?

In NRC, responsibility for project outcomes lies with *the staff who are managing the project*.<sup>5</sup> Since due diligence is crucial to mitigating risks of harm and to produce positive project outcomes, **those who lead a project must take full responsibility for the HLP and natural resource due diligence process, in consultation with the relevant CC, technical thematic area of specialisation (access, advocacy), and/or support team (logistics).**

For example, if a borehole is being built, the WASH Specialist/PDM, PMs, and Coordinators are responsible for ensuring that adequate time and resources are allocated to due diligence at each stage of the project cycle. Same with CM, Education, ICLA, LFS, and Shelter Specialists/PDMs, PMs, and Coordinators for projects that require the use of and control over buildings, land, property, or natural resources.

It is essential that those who lead a project take full ownership of the HLP and natural resource due diligence process. This means taking the time to understand the context in which they are operating and taking responsibility for the due diligence processes. This does not mean that they must undertake the actual activities directly or have the technical expertise to do it themselves. However, as the project lead, they must take the responsibility for seeking guidance on how to do it well. They must also ensure that A) adequate time and resources are allocated for this step within the project's design, B) affected communities (especially vulnerable groups) are involved in the design, and C) these components of the project are implemented and monitored.

However, **senior management in countries (Area Managers, Heads of Programmes, and Country Directors) are ultimately accountable for ensuring that due diligence steps are adequately implemented** since the risks related to due diligence have legal, financial, and reputational risks for NRC. While it is neither possible nor desirable for senior management to be involved at each step of the process, accountable management can facilitate the establishment of SOPs for the country office to ensure that these practices are institutionalised. They can also verify that project proposals have adequate resources and time built into the projects. Lastly, management can spot-check during key moments during the project cycle, especially during grants opening meetings and quarterly reviews.

*Further guidance on division of tasks (especially 'basic' versus 'complex' HLP issues) between CCs is forthcoming.*

If the project managers do not have a robust technical understanding of the HLP context, they will **need to involve qualified institutions or actors who can provide the design and implementation services**, and/or invest in the development of those skills within their own teams. No matter who provides this service, adequate time and financial resources need to be allocated for this expertise. In some countries, ICLA programmes may be the institution that provides technical support to conduct a due diligence process, but their availability cannot be assumed - they must be consulted from the identification stage of project design and planning. Projects should also be designed from the onset to ensure a transfer of basic due diligence skills to the lead core competency so that ICLA's role in future iterations of the project can be reserved for more complex HLP issues. Once this transfer of basic skills takes place, ICLA teams may need to be informed during future projects to ensure that communication on HLP issues and approaches remain consistent across the organisation.

<sup>5</sup> For an integrated project, this may not reside with a sole CC, but may be an AM, Chief of Party, or another multi-cc managerial role.



## **DUE DILIGENCE IN PRACTICE – THE CASE OF COX’S BAZAAR, BANGLADESH**

**Context:** Since the late 1970s, there have been three major waves of refugees arriving in Bangladesh from Myanmar. In the interim years, some of the refugees from previous waves have integrated into the host community and acquired land from their hosts for their housing or livelihoods. But by the end of the latest wave, starting in 2017, more than 850,000 Rohingya refugees resided in Cox’s Bazaar. Settlement has been restricted by the government to 34 refugee camps. Humanitarian agencies have been prohibited from building infrastructure outside camp boundaries. Due to the rapid influx, the Government of Bangladesh allocated forestland for the establishment of camps. However, many host communities living adjacent to the camps had the rights to use these lands for their livelihoods and manage them under social forestry agreements. Beyond forestlands, the camps also overlap with the land where host communities continue to reside. Some of this land is formally documented and registered by the government, but most of it is not formally documented, as it is customarily managed and owned. The designation of these lands as camps by the Bangladeshi government does not extinguish the pre-existing rights of the host community, especially since due process was not followed nor has meaningful compensation been provided.

The mass settlement of refugees on these lands has deprived forestry and agriculture-dependent host communities of their livelihoods. Following the loss of their livelihoods, many from the host communities have begun to exercise their rights by requiring rental payments from refugee occupants, and from humanitarian agencies who build infrastructure for the displaced peoples. Refugees who are unable to pay rent are often forcibly evicted. Because most of the host communities’ land rights are formally unregistered and previous informal boundary markers destroyed by the sheer mass of displaced peoples, identifying the legitimate rights-holders has been a major challenge for NGOs and UN agencies. Moreover, the parcels of the land rarely had one specific rights-holder, since multiple parties often used the same parcels for different purposes. Now that those uses have been eliminated, there are disputes between host communities as to whom can legitimately collect rent.

However, agencies that have advanced with construction projects (for Shelter, WASH, Health, Education, etc.) without conducting proper due diligence to identify the legitimate rights-holders have encountered conflicts, legal challenges, substantial project delays, and cost overruns. In some cases, some NGOs have been compelled to dismantle the structure that they just built, at their own cost.

Environmental issues are also important factors here. Overcrowding has increased the risk of fire hazards. The rapid settlement and overcrowding of sites have also rapidly accelerated land degradation as steep slopes have been deforested. Erosion and landslides have since become major risks in and around the camps. Organisations must also incorporate these issues into their project planning to avoid further degrading the landscape, and if possible, reverse some of the damage.

**Design:** As a result, the HLP Technical Forum (HLP TF) designed a due diligence process to enable humanitarian actors to:

1. Assess the suitability of the land for the objectives of the project.
2. Identify and mitigate environmental risks.
3. Ensure that the correct regulations and permits are acquired from relevant government authorities (environmental and building).
4. Identify and verify rights-holders for specific parcels of land to be able to negotiate fair and clear agreements with them for the use of the land.

To do this the Coordinator of the HLP TF worked with a wide range of stakeholders including NGOs, UN agencies, government officials, representatives of the host community and refugees to design a process and checklist to address each of these concerns within a reasonable margin of certainty. The process identified a range of potential scenarios and follow-up actions based on:

- What kind of project is it and what are its total surface area needs?
- Under what kind of tenure(s) is the land held?
- Are claims of ownership or control over the parcel in question contested?

Depending on the answers to these questions, the project may be given a green light to proceed, may need to adapt the plan for their project on the site in question, or may need to find another site altogether.

**Implementation:** Several organisations – including NRC – now have dedicated teams to go through the due diligence process before any construction projects can begin. They have a checklist of questions and activities (verifying land documents, obtain permits, transect walks of the site in question, interviews with neighbours of the site, etc.) that they must do before construction begins on a particular site.

**Evaluation:** The current tools are only the latest iteration in a series, which have been carefully developed and adapted through learning and consultation with relevant actors through several project cycles.

In early 2021, HLP Due Diligence was officially included as one of the six required common indicators in the draft 2021 Joint Response Plan of the Rohingya Humanitarian Crisis. If it is accepted, this will mean that all organisations will be asked to implement due diligence and to track and report on their performance. The HLP TF has developed half and full-day HLP Due Diligence training programmes for interested organisations, as well as guidelines for monitoring and reporting on the indicator.

## **KEY RESOURCES:**

- [Generic Guidance for HLPNR Due Diligence for Humanitarian Interventions. \(“Living Documents”\) English Version / Version française](#)




Shelter-Specific Resources:

- [Technical Guidance Note: HLP due diligence and security of tenure in construction & rehabilitation projects \(2020\)](#)
- [Shelter Due Diligence Guidance \(2013\)](#)
- [Disaster Ready Short Online Course: Housing, Land, and Property in Shelter Programs \(2021\)](#)

Resources for other CCs are forthcoming

# ANNEX TO NRC'S DUE DILIGENCE GUIDELINES

## Typology of Projects for which HLP and Natural Resource Due Diligence is Required

 <b>CAMP MANAGEMENT</b>	 <b>EDUCATION</b>	 <b>ICLA</b>
Establishment or extension of new camps and settlement sites	Building new schools or learning centres	Building or rehabilitating the offices / pavilions for CDR structures or governmental authorities
Building or upgrading any infrastructure (e.g. schools, WASH, shelter, clinics, multi-purpose community centers etc).	Rehabilitation of schools or learning centres (including water and sanitation)	Rental of buildings and facilities for ICLA community outreach offices
Camp Closure	Establishing school gardens	
Distribution of high value household goods	Rental of buildings and facilities for learning centres	
Rental of buildings and facilities	For a youth education and training project that includes youth livelihoods (e.g. business start-up), see also the LFS column.	
Waste management and disposal		
Establishing burial sites		
Environmental restoration within and around sites		

 <b>LFS</b>	 <b>SHELTER</b>	 <b>WASH</b>
Negotiating for land for agriculture / grazing (urban and rural)	Construction of new homes	Building or rehabilitating community water points (e.g. boreholes & cisterns)
Building, renovating, and/or renting space for commercial or industrial livelihoods	Rehabilitation of damaged or substandard homes	Upgrading water and sanitation in infrastructure for schools and health facilities
Building, renting or renovating infrastructure for food storage / distribution / processing / transformation	Occupancy Free of Charge (OFC)	Water and sanitation infrastructure for permanent housing
Landscape / environment / rangeland restoration, soil & water conservation, tree planting / regeneration	Site planning, provision of emergency shelter (tents) in collective sites. Settlement interventions, some DRR, working with municipalities.	Water and Sanitation infrastructure for formal & informal camps
Building or upgrading irrigation infrastructure	Infrastructure works (a bridge, clinic, community center, or distribution site)	Public Works Projects
Establishing school gardens	*Some* cash-for rent	Establishing burial sites
Support to fishing livelihoods (fisheries and aquaculture)		Waste management and disposal
Rebuilding roads/access to markets		

If your project is not listed here, confer with your regional CC adviser or global manager to ensure that due diligence is not required before putting it in a proposal.