NRC NORWEGIAN REFUGEE COUNCIL

Securing Tenure in Shelter Operations

Guidance for Humanitarian Response

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Cover photo: Destroyed property in Ukraine (Ingrid Prestetun/NRC)

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List of acronyms

CAR	Central African Republic; Commission d'Accueil de Réinsertion (Home Reinsertion Commission)
CBO	Community-based organisation
CDR	Collaborative Dispute Resolution; Community Dispute Resolution
CLRC	Customary Land Registration Committee
CLT	Community land trust
DRC	Democratic Republic of the Congo
ECHO	European Commission's Humanitarian Aid and Civil Protection department
FGD	Focus Group Discussion
FS	Food security
GPS	Global Positioning System
HLP	Housing, land and property
HoH	Head of Household
ICLA	Information, counselling and legal assistance
IDP	Internally displaced person
IFRC	International Federation of Red Cross and Red Crescent Societies
ITS	Informal tented settlements
LCD	Legal civil documentation
M&E	Monitoring and Evaluation
MoU	Memorandum of Understanding
NFI	Non-food items
NGO	Non-governmental organisation
NRC	Norwegian Refugee Council
OFC	Occupancy free of charge
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
OVI	Objectively Verifiable Indicators
PAD	Person affected by displacement
SSU	Small Shelter Unit
SWOT	Strengths, weaknesses, opportunities, threats
ToR	Terms of Reference
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
WASH	Water, sanitation and hygiene

1. Introduction

In a number of regions and contexts where humanitarian shelter programs are implemented, the use of and access to land and housing by individuals and communities – including persons affected by displacement – is of a different character and subject to a different type of governance than in the Global North context of formal ownership evidenced by written documents and official records.

Despite this operational reality, until recently, both donors and shelter agencies have largely adhered to traditional notions of providing shelter solutions based on individual property ownership, given the view that this was the only sufficiently secure form of tenure. As a result, people lacking individual ownership – often among the most vulnerable – were excluded from shelter solutions.

This guidance is part of NRC's efforts to develop *an operational definition of security of tenure applicable in humanitarian settings*,[1] which will enable the organisation to effectively address the shelter needs of its beneficiaries. It incorporates learning from field operations as they apply basic concepts of tenure security together with knowledge of the local context to devise shelter solutions based on the legal realities and the diversity of tenure systems and tenure forms in place.

In this way, NRC strives to promote the design of flexible solutions with tenure that is *secure enough*, namely provides the greatest degree of protection for beneficiaries that is feasible in the context. On the one hand is the ideal of formal tenure with a high degree of security evidenced by official documents. On the other, the immediate need of beneficiaries for some security in a situation where formal documented tenure is difficult to obtain.

This document presents operational efforts in a range of contexts to find the *right balance*, using tenure options for beneficiaries short of private ownership, with emphasis on how tenure can be secured and documented in the absence of rules or documentation issued by formal authorities. Going forward, one goal is to continue to explore options for the use of additional forms of tenure.

1.1 Structure and use of this guidance

Chapter 2:	Provides a brief summary of four types of tenure systems as well as four forms of land tenure and four forms of housing tenure.
Chapter 3:	Details four approaches to tenure that are commonly used in humanitarian shelter programs, three of them are related to statutory tenure systems: right of use, rental, and ownership – and the fourth describes customary tenure systems.
Chapter 4:	Presents lessons and models from ten selected countries where NRC have shelter and ICLA programmes, and support shelter beneficiaries or the shelter sector with security of tenure. The chapter starts with a matrix of the forms of tenure used by the ten profiled programmes and three additional programmes.
Chapter 5:	Contains a discussion about use of monitoring and evaluation tools and indicators to assess the effectiveness of shelter interventions in securing tenure over time, as well as a brief discussion of cross-cutting issues such as tenure security for women, linkages between providing shelter and obtaining identity documents, and the importance of land tenure to food security.

[1] Security of Tenure in Shelter Operations, NRC-IFRC, June 2013 (NRC-IFRC report).

2. Overview of Tenure

Tenure refers to the rights, rules, authorities, and institutions that govern access to and control over housing and land and its related resources. In other words, tenure determines who can use housing and land resources, for how long and under what circumstances.

Security of tenure refers to the certainty that a person's rights to housing, land, and property will be protected. Security of tenure guarantees legal protection against forced eviction, harassment, and other threats.

2.1 Tenure Systems

In many countries, different land tenure systems (statutory, customary and religious) co-exist and may overlap. Each of these systems has legitimate authorities who define rights and resolve disputes. This is known as legal pluralism in land rights.

Statutory ► 3.1 - 3.3	Statutory land tenure systems are regimes where State legislation and institutions govern land and natural resource rights within the State's boundaries. Freehold ownership and rental are common forms of housing tenure commonly used in statutory systems.
Customary ► 3.4	Customary land tenure systems regulate people's right to the use of land arising from customary practice, rather than through written or codified law. Customary land tenure is often characterized by lack of written documentation or formal registries, significance of collective ownership and other collective rights and special procedures for allocation.
Religious	Religious forms of tenure are regulated by religious institutions. In some contexts, religious law dominates and religious leaders deal with all issues related to land tenure, including registration and dispute settlement. This is particularly the case in countries with Islamic land tenure systems.
Hybrid	Combination of two or more tenure systems, including those referred to as *informal* or *extralegal* (not sanctioned or regulated by law), e.g. customary and religious.

2.2 Forms of Land Tenure

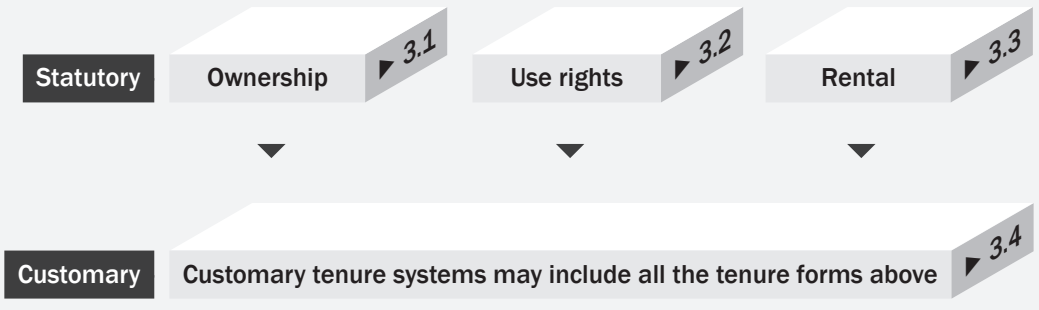
Private	Rights are assigned to a private party (e.g. an individual, a group, a company or a non-profit organization), and usually controlled through statutory law schemes.
Communal or collective	Rights held jointly by a group of people generally on the basis of ongoing use such as cultivation, clearance or access (i.e. each member of the community may use the land and resources of the community). Members from other communities may be excluded. This land tenure form is commonly found in customary systems.

Open access	Specific rights are not assigned to any individual or group and no one can be excluded. Forests may be under open-access tenure.
State/public	Rights are assigned to a public sector State entity (e.g. a public hospital or airport) and in some instances to a private company.

2.3 Forms of Housing Tenure

Ownership ► 3.1	Individual ownership provides the holder with full control over housing and land with the rights to use, control, and transfer, subject to law and local regulations, as well as adverse possession rights and the State's expropriation powers.
Use rights ► 3.2	The right of people to use public or private property for their housing needs under certain conditions; right of use can apply without payment of rent or exchange of other valuable consideration, or satisfaction of formal rental requirements.
Rental ► 3.3	A form of the right to use either housing or land, which includes additional rights and responsibilities. Rental provides the right to use housing or land for a specified period of time at a given price, without transfer of ownership, on the basis of a written or verbal contract with a private or public owner.
Collective tenure	Ownership, rental or use rights over land and housing are shared under joint governance structures. Rights are allocated to individuals according to rules established by statute or in customary tenure systems, by the group or local custom. Collective tenure forms include: *Housing cooperatives* - established by a group of persons who form a legal entity to develop and maintain a housing project for the collective benefit of its members. *Community land trusts (CLTs)* - held by non-profit community-controlled organizations that acquire land for the purpose of providing affordable housing. *Hybrid collective tenure models* - combine cooperatives and CLTs. Multi-residential buildings are owned and managed by a housing cooperative and the underlying land is owned by the CLT.

Diagram illustrating the linkages between statutory and customary tenure forms described in Chapter 3:



3. Tenure in the Humanitarian Shelter Context

This chapter goes into further detail on approaches to tenure commonly used in connection with humanitarian shelter activities. These include ownership ▸3.1, use rights ▸3.2, rental ▸3.3, as well as a dedicated section on customary tenure ▸3.4.

Implications of each tenure option is presented in the form of a SWOT[1] analysis. In this case, our objective is the timely provision of adequate (emergency) shelter with secure tenure. The SWOT analysis examines four elements:

Strengths	*Internal attributes of this tenure approach that support the objective.*
Weaknesses	*Internal attributes of this tenure approach that work against the objective.*
Opportunities	*External factors that could represent an advantage using this tenure approach.*
Threats	*External factors that could jeopardise your project using this tenure approach.*

A separate page offers guidance on documentation to secure tenure for each of the four selected forms, including essential terms that should be incorporated into written agreements.

Finding the most suitable approach will depend on the existing legal framework, displacement patterns and the current tenure situation of beneficiaries, as well as the available housing stock. However, some basic trends can be identified based on the programmes profiled in Chapter 4. Customary tenure frequently comes into play when providing durable solutions for returnees, while most of the programmes targeting IDPs and refugees have opted for statutory tenure solutions.

	Displacement situations	**Durable solutions**
Statutory tenure	Iraq/Kurdistan ▸4.4 use rights Jordan ▸4.5 rental Lebanon ▸4.6 use rights Palestine/Gaza ▸4.9 ownership/ use rights/rental	*Statutory tenure in non-displacement settings is an established and widely documented approach. It has not been prioritised for inclusion in this guidance, but you will find relevant information under* **▸3.1 Ownership** *as well as the checklist in chapter* **▸5.3**.
Customary tenure	Mali ▸4.7 rental *Customary tenure systems are often unique to the place and community in which they operate, based on traditions and use over time. In displacement situations, statutory approaches tend to be more effective than customary options for providing security of tenure.*	Afghanistan ▸4.1 ownership CAR ▸4.2 use rights DRC ▸4.3 use rights Mali ▸4.7 use rights/rental Pakistan ▸4.8 ownership/use rights Somalia ▸4.10 ownership/use rights

[1] SWOT analysis (strengths, weaknesses, opportunities, threats) is a framework for identifying and analysing the internal and external factors that can have an impact on the viability of a project, product, or intiative.

	Program interventions using this tenure form
Ownership ▸3.1	Iraq/Kurdistan ▸4.4 Jordan ▸4.5 Lebanon ▸4.6 ▸ Assist beneficiaries to regain lost ownership documents. ▸ Contract with private owners to provide shelter for PADs.
Use rights ▸3.2	Lebanon ▸4.6 ▸ Cash grant to owner to upgrade sub-standard/incomplete private property conditioned on use by refugees for shelter with time-limited rent-free right of use agreement. ▸ Negotiation and template assistance to financially able shelter beneficiaries (refugees) to continue right of use arrangements after beneficiary period. Iraq/Kurdistan ▸4.4 ▸ NRC-financed contractors upgrade sub-standard private property conditioned on continued use by IDPs for limited rent-free period without separate right of use agreement.
Rental ▸3.3	Jordan ▸4.5 ▸ Cash grant to owner to upgrade sub-standard/incomplete private property conditioned on use for shelter by refugees with time-limited lease. ▸ Negotiation, and template assistance to financially able shelter beneficiaries (refugees) to continue rental arrangements post-beneficiary period. ▸ Capacity building with the humanitarian/shelter sector on guidelines for lease contracts. Iraq/Kurdistan ▸4.4 ▸ NRC-financed contractors upgrade sub-standard private property conditioned on refugees remaining in existing housing in which they are paying rent for limited rent-stabilized period without separate written agreement.
Customary ▸3.4	Mali ▸4.7 ▸ Cash for rent to IDPs with ICLA counseling on tenant's rights and oral "lease" – right of use. CAR ▸4.2 DRC ▸4.3 Mali ▸4.7 ▸ Assistance to returnees with access to land to rebuild/rehabilitate homes with community tenure rights validation process and issuance of customary certificate. Somalia ▸4.10 ▸ T-shelters with time-limited right of use certificate in IDP/local integration settlements. Afghanistan ▸4.1 Pakistan ▸4.8 ▸ Core (1-2 room) shelter for returnees with access to land based on local customary tenure documents.

3.1 Ownership

This tenure solution is relevant in situations of non-displacement or return, and an important activity is support with obtaining new ownership documentation if papers have been lost. It is also relevant in displacement situations, when agreements are reached with private owners to provide shelter for PADs. See country snapshots ▶**4.4 Iraq/Kurdistan**, ▶**4.5 Jordan** and ▶**4.6 Lebanon**.

Freehold ownership provides the holder with full control over housing and land in perpetuity with the rights to use, control, and transfer, subject to law and local regulations as well as adverse possession rights and the State's expropriation powers.

Contextual applicability: Statutory tenure system and formal government, judicial, administrative institutions in place and operational, land records intact, documentation of private land/housing tenure available and where private ownership of land permitted, cf. systems where government owns all land and/or access to resources including minerals, etc.

SWOT Analysis:

Strengths	▶ Provides high degree of tenure security for indefinite period with full rights and maximum control over property and land subject to local rules and regulations; enforceable remedies available. ▶ Provides collateral for credit.
Weaknesses	▶ Requires formal documentation and administrative/judicial processes to function to enforce security of tenure; in conflict/disaster, formal records can be missing/ destroyed or individuals may lose title documents; processes for documentation and confirmation and resolution of disputes can be time consuming and costly. ▶ Costs of access to property can be high; requires either finances sufficient to purchase land or housing outright or a financial system willing to make funds available on acceptable terms and conditions to enable households to repay a loan over time. ▶ Ownership may be forfeit and residents made homeless with the loss of all payments made if repayments are not made as required. ▶ May expose owners to property taxes and other charges. ▶ Requires owners to take full individual responsibility for property maintenance. ▶ Places a heavy burden on land administration agencies responsible for surveying, registering and allocating titles. ▶ If ownership is in the man's name only, rather than in joint names, this can lead to loss of home for the wife if her husband dies or after divorce.
Opportunities	▶ Full rights and control over property provides opportunity to use both housing and land to generate income, increase value, provide family security through transfer to heirs. ▶ Ensuring women's secure tenure through joint ownership increases protection for women and their families.
Threats	▶ Value of property may go down as well as up, resulting in negative equity.

Refer to the checklist in chapter ▶**5.3** for steps to identify beneficiaries' tenure situation and obtain the necessary documentation.

Documentation to secure tenure (3.1)

Certificate of Title; Deed (transfer/sale of property)

- In general, a *certificate of title* is a document issued by a formal land registration/cadastre office, which is responsible for land administration, as evidence of ownership. These offices maintain permanent land records.
- The formal requirements for registering land and obtaining such official documentation of title are determined by the law and custom where the housing/land is located, including form, contents, fees as well as other requirements.
- Deeds document transfer of private property from the *grantor* (seller) to the *grantee* (buyer).

The following are examples of elements included in documentation to prove ownership:

Who?

Title must identify the owner(s) of property; deeds transferring ownership must identify the grantor and grantee. Ideally, both wife and husband of a family should be named in ownership documents.

What?

Specific description of the property including boundaries, GPS, street address, cadastre reference number (if any), survey or sketch, location of structures/housing.

Value

May include value of the property.

What are the rules?

Title would indicate any limit on ownership or rights/claims by third parties, such as mortgages, liens, easements, rights-of-way, etc.

Depending upon local rules, title may include information related to taxes.

Term

Title/land records will indicate date ownership began.

Tenure options for beneficiaries in shelter interventions that involve private property are:

Become first-time individual or collective owner	NRC would not usually generate documents to prove formal private ownership. Instead, Shelter and ICLA would need to know what official documents establish ownership and how and where they are obtained.
Regain or confirm individual or collective ownership	Take possession/move occupiers: what are the mechanisms for resolving dispute? Obtain documents to establish claim/title? Is this realistic based on your context and timeframe? Consider the risk for further displacement.
Become user with legal owner's permission	Indentify owners and their willingness to comply with formalities for right of use or rental agreements (see ▶**3.2 & 3.3**). How much time is involved to meet requirements? Is it realistic based on context, budget, and timeframe?
User/occupier without legal owner's permission	If empty properties with absent owners is available or already occupied by the target population (through self-help or guided by authorities): find out if the law recognises *adverse possession*, and what the requirements are.

3.2 Use rights

The right of people to use public or private property for their housing needs under certain conditions; right of use can apply without payment of rent or exchange of other valuable consideration, or satisfaction of formal rental requirements.

Contextual applicability: Formal requirements for rental cannot be satisfied for logistical, cost, practical reasons

SWOT Analysis:

Strengths	▶ Specification/acknowledgment of specific rights and obligations with or without contract can enhance tenure security. ▶ Can facilitate security of tenure for defined and potentially renewable periods to match period of displacement/need. ▶ Perception of tenure security enhanced with or without contracts meeting all formal legal requirements, depending upon national law written contracts on right of use considered legally binding/enforceable.
Weaknesses	▶ Tenure security limited by time and conditions. ▶ Right of use rent-free agreements in Lebanon that are part of model with upgrades in private property indicate no consideration given despite NRC investment. ▶ Use of single contract between NRC and owners for Iraq model for shelter for IDPs risks reducing tenure security as IDPs have no agreement with owner of premises in which they reside. ▶ Increased rate of eviction in Lebanon rent-free model where or upgrades to private property for refugees already living and paying rent due to owner's loss of income. ▶ If documentation is in the man's name only, rather than in joint names, this can lead to eviction of the wife and children if the husband dies or after divorce.
Opportunities	▶ Flexibility can facilitate willingness of property holders/owners to provide this form of tenure security and expand range/number of holders/owners who can participate in such arrangements including those who may lack full legal documentation of ownership. ▶ Including women's names in documents can protect women from being evicted and reduce risk of homelessness if the family breaks down.
Threats	▶ Lebanon model contracts emphasize that no consideration given in exchange for shelter (despite NRC investment) risks reducing tenure security. ▶ Lack of tenure documents for IDPs in Iraq model risks reducing tenure security.

Right of use agreements are relevant for shelter interventions which:

- Invest in private property in exchange for rent-free shelter and/or
- Do not satisfy formal legal requirements of rental/lease agreements

A right of use agreement between the property owner/holder and the user provides the right to use either housing or land subject to specified conditions and limitations usually in exchange for something of value, usually money. It can be oral or written. Local law and custom may determine the validity and/or enforceability of such agreements.

Documentation to secure tenure (3.2)

Right of Use Agreement

The following are examples of elements to be included in order to provide security of tenure for parties to a right of use agreement and aid in avoiding misunderstandings/disputes.

Who? *The agreement should name all parties who are bound by it.*

Ideally to secure tenure for all members of the beneficiary family/group, all household members (including women and children) should be named (including children who might be born/adopted). As a minimum standard, both wife and husband should be identified by name on the document.

What? *Specifically identify the premises/land*

E.g. street address, plot, GPS, metes/bounds.

Value *Is exchange of consideration (payment) a requirement for rental under local custom/law?*

If consideration is required, are there limits under local law or custom on the type (e.g. cash, lump sum, in-kind, percentage of harvest) or amount of consideration (e.g. market rate vs. symbolic)?

What are the rules? *Agreement should specify rights and obligations of parties such as:*

For housing:

- Owner's right of entry and inspection including time, notice, etc., consistent with user's right against intrusions.
- Whether users permitted to "sub-let," make alterations, have guests (time limited to distinguish from de facto new/additional occupants); have pets; run a business from the premises with/without permission of the landlord.
- Assign clear responsibility for payment of utility costs and type and costs of repairs
- Owner's responsibility for condition of premises at handover
- User's responsibility for damages, and for maintaining condition of premises as handed over
- Specify access to/right to use either common areas or common facilities
- If consideration to be given, specify the date or period within which it must be provided and how (e.g., lump sum, in-kind, every month)
- Penalties for breaking terms of agreement
- Conditions or events that permit landlord or user to terminate
- Specify how disputes between owner and user will be resolved

For land:

Specify any limits of what can be done with the land or resources on the land, e.g., grow only certain types of crops, only grow food for personal consumption, not dam streams, not cut down trees.

For how long? *The term may be fixed, periodic or of indefinite duration*

Fixed term	*Periodic*	*Tenancy at will*	*Renewal*
Indicate start and end dates and the duration of the agreement.	E.g. month-to-month.	Lasts only as long as the parties wish it to (termination by either party without penalty).	Can specify conditions for renewing the agreement.

3.3 Rental

Rental provides the right to use housing or land for a specified period of time at either a given price or exchange of other valuable consideration, without transfer of ownership, on the basis of a written or verbal contract with a private or public owner. The right to use may be limited to specified individuals (e.g. only immediate family members), and/or specified purposes (e.g. residence, self-sustaining agriculture).

In terms of humanitarian shelter, this form of tenure is primarily available in urban areas. Formal requirements for a lease are determined by the law and custom where the housing/land is located, including form and content as well as registration of leases with authorities.

SWOT Analysis:

Strengths	▶ Good tenure security if protected by a legally or socially enforceable contract *and* if legal or other remedies are actually available. ▶ Option for those who cannot afford to buy housing or mobile households. ▶ Provides income influx into host community. ▶ Investment in host community builds confidence as benefitting from aid for PADs. ▶ When combined with upgrades of rental stock, relatively quick completion of shelter for PADs through use of existing housing. ▶ Process for discussion, negotiation, acknowledgement of rights and obligations key to perception and adherence to tenure security.
Weaknesses	▶ Requires legal recognition. ▶ Supply may not be able to meet demand. ▶ When rent covered by donor (including when shelter provided in exchange for housing upgrades), time-limited shelter likely to result in PADs lacking shelter again, particularly in circumstances of protracted conflict. ▶ Either requires continued project budgets to finance rental costs, limiting beneficiary period, and/or number of beneficiaries, with possible result that beneficiaries are left uncovered although no durable solution found. ▶ No guarantee that expanded rental stock will be made available to PADs. ▶ If contracts state that no consideration given in exchange for shelter (despite investment in upgrades), this may reduce beneficiaries' tenure security. ▶ If documentation is in the man's name only, rather than in joint names, this can lead to eviction of the wife and children if the husband dies or after divorce.
Opportunities	▶ Where incomplete/partially completed buildings available, shelter programs funding owners to complete/upgrade buildings can increase rental stock. ▶ Upgrade investment can be exchanged for time-limited “rent-free” shelter for PADs, which can permit PADs to stabilize. ▶ If displacement continues and if funds for rent are available, the beneficiary can negotiate a lease in upgraded property. ▶ Where PADs are already renting sub-standard accommodations, there is a possibility to increase standard as well sd tenure security with information/ counseling/legal assistance and/or lease contracts. ▶ Including women's names in documents can protect women from being evicted and reduce risk of homelessness if the family breaks down.
Threats	▶ If displacement continues or increases, the ability to provide rented shelter – including through increasing rental stock – will level out or end and rents rise as market pressure increases with increased demand.

Documentation to secure tenure (3.3)

Rental Contract/Lease Agreement

In general, a lease agreement is a legally enforceable contract between two parties:

- Lessor (owner, landlord): legal owner of either the housing or land
- Lessee (renter, tenant) obtains the right to use housing or land (usually in exchange for money)

The following are examples of elements to be included in a lease in order to provide security of tenure for both the tenant and landlord and aid in avoiding misunderstandings/disputes. Specific context and program conditions should also be reflected.

Who? *Identify all lessors and lessees who are bound by the agreement*

Ideally all household members (including women and children) should be identified by name and other relevant identifiers as well as providing for additional children who might be born/adopted. As a minimum standard, both wife and husband should be identified by name on the document.

What? *Description of the property (as precise as possible)*

Identify the context the leased premises/land, e.g., street address, plot, GPS, metes/bounds.

Value *Is exchange of consideration (payment) a requirement for rental under local custom/law?*

If consideration is required, the amount of rent and when it is owed should be specified as well as the requirement that a receipt or other acknowledgement of payment be provided by the lessor. Are there limits under local law or custom on the type (e.g. cash, lump sum, in-kind, paid by third party, e.g. donor) or amount (e.g. market rate vs. nominal/symbolic)?

What are the rules? *Rights and obligations as well as any limits of lessor and lessee*

- Owner's right of entry and inspection including time, notice, etc., consistent with renter's right against intrusions by the landlord (or other tenants).
- Whether renter permitted to *sub-let*; make alterations; have guests (time limited to distinguish from de facto new/additional occupants); have pets; run a business from the premises with or without permission of landlord.
- Assign clear responsibility for payment of utility costs and for type and cost of repairs.
- Owner's responsibility for condition of premises at handover, as well as renter's responsibility for maintaining condition of premises and responsibility for damages.
- Specify renter's access to/right to use either common areas or common facilities.
- If rent is to be paid, specify the date or period within which rent must be paid and how and that a written receipt or other acknowledgement of payment is provided by the lessor to the lessee
- Conditions or events that permit either landlord or renter to terminate the lease (e.g. nonpayment or damage), as well as any notice period involved.
- If registration of rental agreements is required by law or custom, specify who will fulfil this obligation and pay associated costs. Specify penalties for breaking terms of agreement, and how disputes between the owner and the renter will be resolved.

For how long? *The term of the lease may be fixed, periodic or of indefinite duration*

Fixed term	*Periodic*	*Tenancy at will*	*Renewal*
Indicate start and end dates and the duration of the agreement.	Month-to-month is the general rule if the period is not specified.	May be terminated by either party without penalty.	Conditions for renewing the agreement for an additional term.

3.4 Customary tenure

Customary land tenure systems derive from authorities such as a community, ethnic group or family. Decisions regarding land allocation, use and transfer are the responsibility of traditional authorities (usually male elders) and regulation often takes the form of negotiated interaction between community members and leaders. Disputes are managed through negotiation, mediation or arbitration. Women's land rights are often, but not necessarily, embedded in family and community land rights.

In a number of countries, particularly in Africa, customary land rights also enjoy statutory recognition. Elsewhere, customary rights may not be recognised in law, but enjoy widespread social legitimacy (e.g. Liberia). Customary tenures usually include some forms of community land rights, pastoralist rights, access to resources and use rights. Customary tenure systems can give rise to categories of tenure rights similar to many of those seen in statutory systems, e.g., right of use, rental, right to transfer to heirs.

Contextual applicability: Applicable in customary and legally pluralistic contexts where formal government institutions are either weak or not present and customary authorities are the de facto decision-makers and dispute resolvers.

SWOT Analysis:

Strengths	▶ Where formal government institutions and procedures are non-existent, inefficient, time-consuming, and costly, customary tenure can be less costly, more time efficient, and easier to administer. ▶ In many regions, local people including PADs are familiar with decision-making according to customary rules and in customary decision-making bodies. ▶ Can be seen as supporting social cohesion.
Weaknesses	▶ Poor customary leadership may weaken legitimacy and enforcement ▶ Frequently there are no written and/or standard rules of decision or procedures for allocating or documenting tenure rights, increasing potential for arbitrary decisions. Community validation process resource intensive and time consuming. ▶ Rights of more vulnerable groups may not be adequately protected. ▶ Tenure insecurity for women can be common as customary rules and decision-making often disadvantage women and children in disputes within and among family members for rights to housing and land, with significant risk of women being evicted or otherwise dispossessed after death of husband, addition of new wife into polygamous household, etc. ▶ As a result of conflict, customary land tenure systems may be weakened, sometimes fatally. Knowledge can be lost when customary leaders are killed, displaced or lose respect and legitimacy. In addition, natural features used to demarcate property may have been lost or damaged by conflict.
Opportunities	▶ Can build capacity of communities/leaders to standardize and document customary ownership/rights rules and decisions to secure tenure including greater tenure security for women. ▶ Can introduce new custom of tenure documentation where not previously used and upgrade/standardize documentation where it already exists.
Threats	▶ Sustainability/enforceability of tenure rights beyond shelter project engagement/ support unverified and uncertain.

Documentation to secure tenure (3.4)

Customary Certificate/Agreement for Allocation of Land

The following are examples of elements to be included in a customary use document in order to provide security of tenure and aid in avoiding disputes. The specific purpose of the document as well as context and programme conditions should also be reflected in these documents. Attach any other documents the PAD has that provide evidence of the right set out in the certificate including the continued exercise of the right over time.

Who? *Identify by name and other relevant identifiers all who are bound by the agreement.*

Customary certificate

- Identify authority/person/body issuing the certificate (with official signature/stamp).
- Identify by name and other relevant identifiers (e.g. ID card, date of birth, father's name) person(s) to whom certificate issued, including both male and female heads of household with signatures/thumbprint.
- If consent by neighbours part of process, list by name and other relevant identifiers each neighbour who agreed to issuance of certificate including signature/thumbprint.

Customary agreement for allocation of land
(Donation of land by customary rights holder)

- Identify by name and other relevant identifiers the customary land rights holder who donates land.
- Identify customary authority that is receiving donation of land.

What? *Identify the premises/land (as precisely as possible).*

Street address, plot drawing, GPS/metres/bounds, cadastre reference number (if any), landmarks.

Value *Is exchange of consideration (payment) a requirement under local custom/law?*

If consideration is required, are there any limits under local law or custom on the type or amount?

What are the rules?

Customary certificate

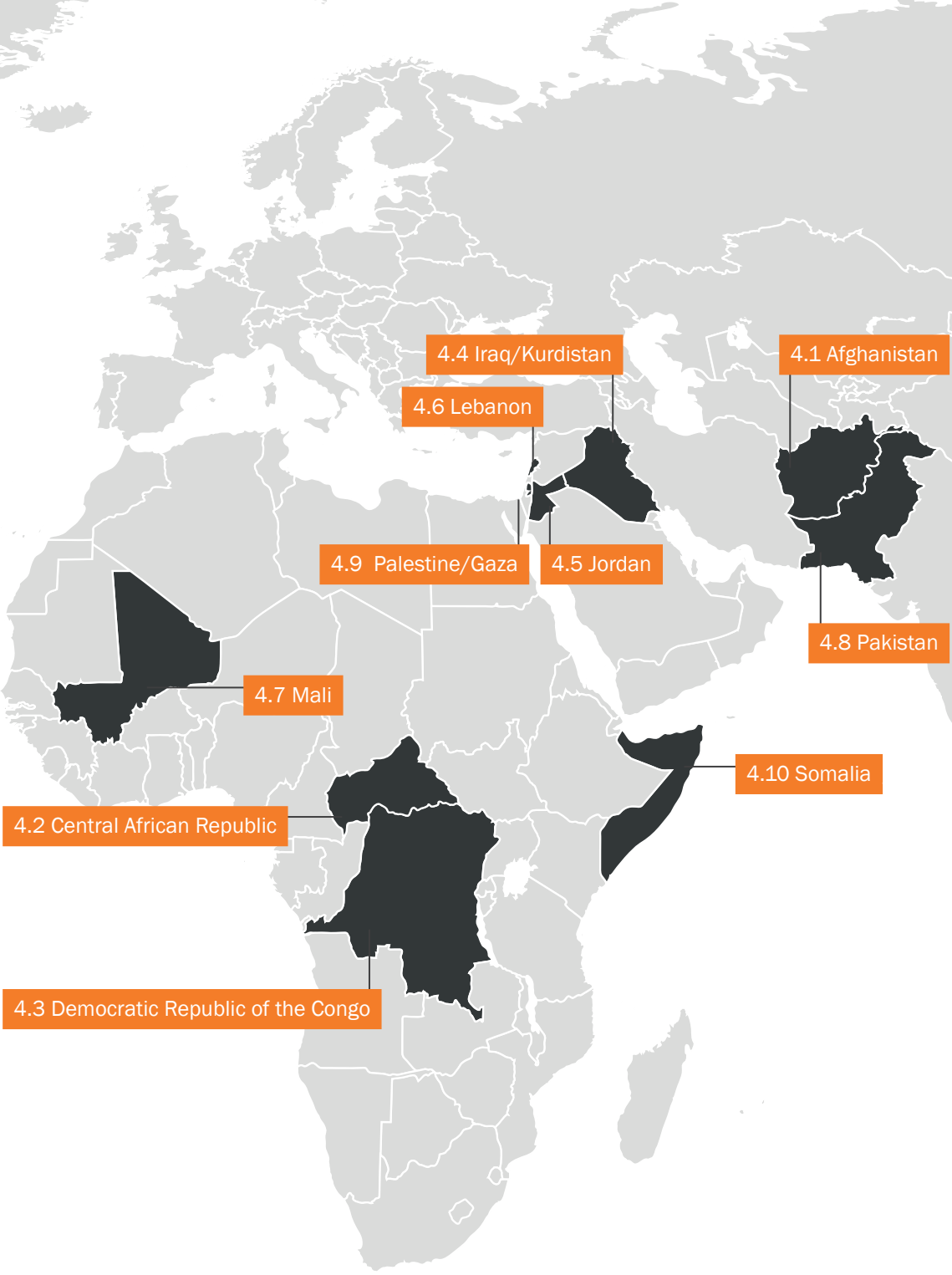
- Specify the nature of the rights to which the holder of the certificate is entitled including any limits (e.g. use/duration) on those rights.
- Specify obligations that must be met to continue to enjoy the right (e.g. pay taxes, renew the certificate every year to demonstrate continued use, not to dam water, not to cut down trees).

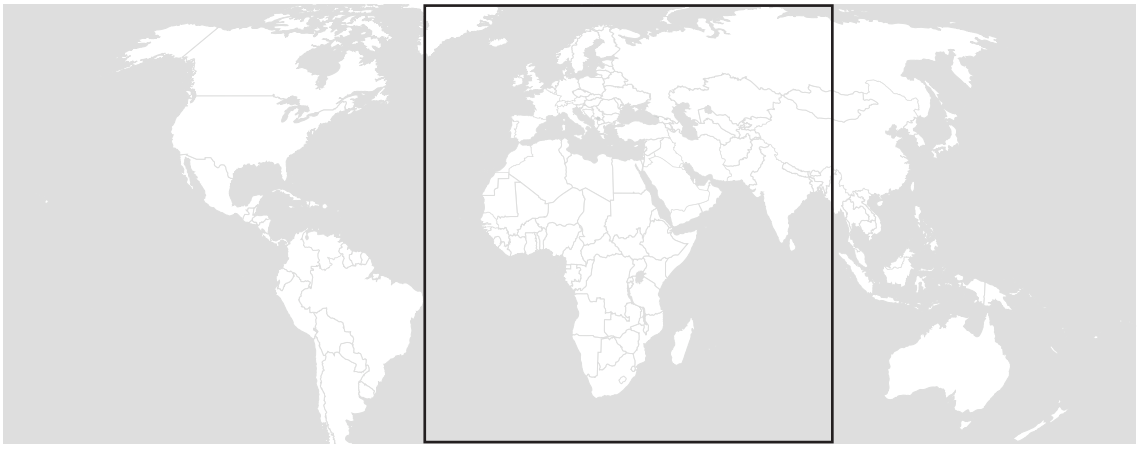
Customary agreement for allocation of land

- Specify the purpose of the donation, and the rights the PAD may have on the land and to shelter/materials well as any limits.
- The rights and obligations the customary owner retains during the donation period (if any), e.g. not interfere with PAD's use during the donation period, not to levy fees, rent.
- How disputes are resolved.

For how long? *Document should include:*

- Date of issuance of document.
- Whether the rights and validity of the document extend for indefinite time or have a time limit.
- For rights and documents of limited time, the date on which the document's validity and rights end including any conditions that will terminate validity, as well as options to renew.


4.4 Iraq/Kurdistan
4.1 Afghanistan
4.6 Lebanon
4.9 Palestine/Gaza
4.5 Jordan
4.8 Pakistan
4.7 Mali
4.10 Somalia
4.2 Central African Republic
4.3 Democratic Republic of the Congo



4. Country Programme Profiles

The following pages give an overview of how tenure has been documented in the context of NRC shelter response in ten different country programmes.

Each snapshot includes a basic descrpition of the country's legal system and goes on to describe the shelter intervention, including its context, beneficiaries and forms of tenure used. Snapshots include a mixture of durable solutions and shelter in displacement, in both urban and rural situations.

		Afghanistan ▸4.1	CAR ▸4.2	DRC ▸4.3	Iraq/Kurdistan ▸4.4	Jordan ▸4.5	Lebanon ▸4.6	Mali ▸4.7	Pakistan ▸4.8	Palestine/Gaza ▸4.9	Somalia ▸4.10
Context	Urban		●		●	●	●	●		●	●
	Rural	●	●	●				●	●		●
Beneficiaries	Refugees				●	●	●				
	IDPs				●			●		●	●
	Returnees	●	●	●				●	●		●
System	Statutory				×	×	×	×		×	
	Customary	×	×	×				×	×		×
Land tenure form	Private				S,I	S,I	S,I	I,F		S,I	S,I
	Communal	×	×	×	I			I,F	×	I	S,I
	Open access										
	State/public				I						S,I
Housing tenure form	Ownership	S,I			I			S,I		S,I	×
	Right of use	×	×		S,I		×	S,I	×	S,I	×
	Rental				S,I	S,I	I	S,I		S,I	×
	Collective				I					I	
	Page number	20	21	22	23	24	25	26	27	28	29

× *NRC engages with this form of tenure*

S *Shelter engages with this form of tenure*

I *ICLA engages with this form of tenure*

F *Food security engages with this form of tenure*

4.1 Afghanistan

Afghanistan has a mixed legal system of civil, customary, and Islamic law.

Context: urban rural

Beneficiaries: refugees IDPs returnees

Shelter assistance was mostly provided for returnees in rural areas.

Form of tenure: customary

ownership right of use

Use of customary agreements for establishing land tenure.

Shelter response: A – Contractor rebuilds two-room shelter

- In its initial shelter response, NRC hired contractors to construct two-room shelters for returnees.

Shelter response: B – Cash grants to returnees for materials and labour to rebuild basic shelter

- Model changed from direct-implementation contractor-delivery model to quasi-market-based beneficiary-centered/owner-driven model.
- Support provided only to returnees who can prove customary ownership.
- Provides conditional cash payments in instalments to beneficiary for materials and skilled labour.
- Size of the shelter provided varies depending upon the ability of the beneficiary to match NRC's assistance through contributing their own resources.

2 scenarios depending upon the extent of beneficiary's resources:

- For beneficiaries able to provide unskilled labour and materials valued at 30-40% of NRC's contribution, assistance provided rebuilds/reconstructs a two-room shelter. This is NRC's primary response and most beneficiaries fall into this category.
- For those who cannot afford to contribute as much or who have small land plots, NRC will provide sufficient cash support for a one-room shelter.

How tenure was documented:

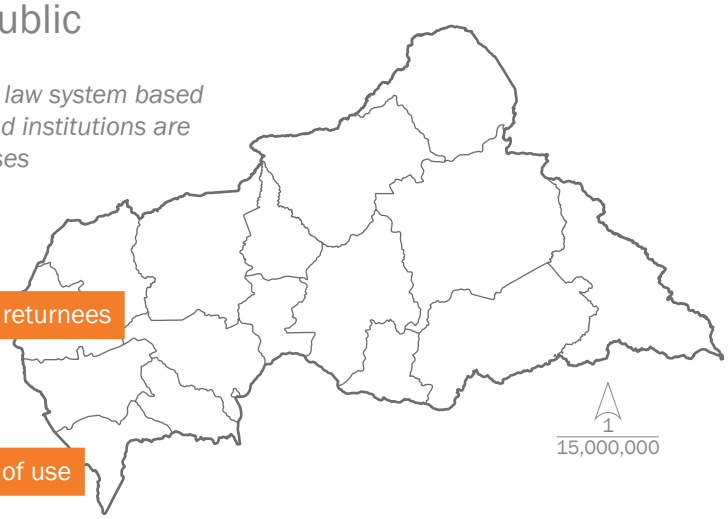
The shelter programme relied on customary tenure agreements, which varied from field office to field office. Ensuring adequate documentation of tenure was a consistent problem.

Cross-cutting issues:

Following local tradition, NRC contracting for shelter assistance and delivery of materials and cash transfers for shelter are primarily (if not universally) done only with men, either husbands or other male relatives as representatives of the family/head of household. NRC informs that it is "culturally unacceptable" to even get women's names to include in the contracting documents and reports anecdotally that men have said documents that provide rights to women are not "legal". NRC acknowledges that this approach leaves women vulnerable to dispossession by male relatives.

4.2 Central African Republic

The Central African Republic has a civil law system based on the French model, but formal law and institutions are not functional for most practical purposes and customary practices prevail.



Context: urban | rural

Beneficiaries: refugees | IDPs | returnees

Most beneficiaries are returnees whose homes had been destroyed.

Form of tenure: customary | right of use

Shelter response: Materials to returnees to reconstruct homes

- The shelter programme provides materials to returnees to rebuild or rehabilitate destroyed/ damaged houses through a community-based mechanism.
- Access to land is a precondition for receiving shelter assistance.

How tenure was documented:

Community Validation of Tenure Process and Document *(Attestation de témoignage)*

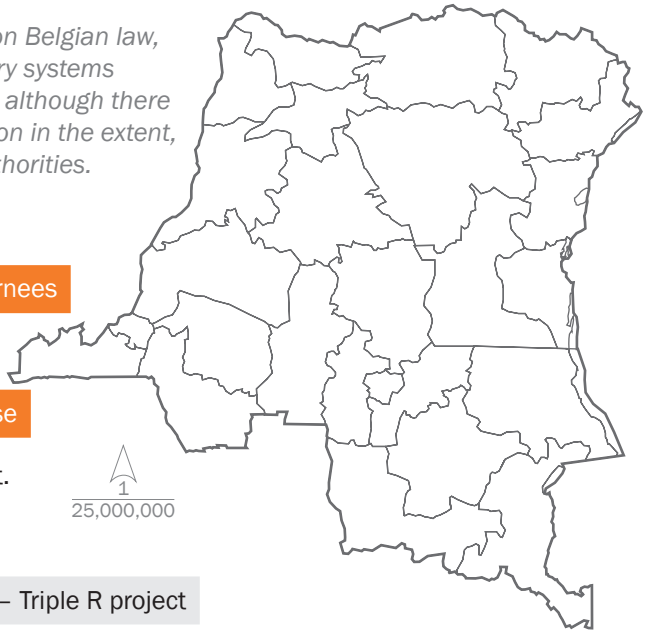
- Because few beneficiaries have an official title/tenure document, and because getting such documents is time consuming and costly, ICLA developed a community consultation process, including a "witness/testimony certificate" modeled on official forms issued by land offices and practices used in communities.
- ICLA together with Shelter (in urban areas/Bangui) and with implementing partners (in rural areas) consult with community members, neighbours, heads of districts/villages (up to 8-10 persons per beneficiary) whose agreement or support is key to securing tenure.
- Through consultations for each beneficiary, ICLA (or an implementing partner) obtains each consulted person's confirmation of the beneficiary's prior use/residence, absence of disputes, and agreement to beneficiary's return.
- Certificate signed by all consulted as well as beneficiary and witnesses provides written record of consultation and confirmation of tenure.
- Shelter provides each beneficiary, local authorities, and community leaders with copies of final signed document.
- Includes GPS coordinates for identified property.
- Lists types of documents that support beneficiary's tenure, copies of which can be attached to bolster tenure claims.
- Executed in the name of the head of household.

Cross-cutting issues:

There is resistance among NRC local staff, other shelter/humanitarian providers, and implementing partners that are involved in implementation in rural areas to advancing women's tenure security. Staff provided the example that NRC's proposal to the Shelter Cluster to add woman/wife's name to the community validation of tenure document was met with laughter from international and national organisation representatives. Shelter does not take measures during implementation to address women's access to property or tenure, including challenges in polygamous families.

4.3 Democratic Republic of the Congo

DRC has a civil law system primarily based on Belgian law, but also customary, and tribal law. Customary systems prevail in all regions in which NRC operates, although there are significant variations from region to region in the extent, formality, and organization of customary authorities.



Context: urban **rural**

Beneficiaries: refugees IDPs **returnees**

Work started with IDPs in displacement.

Form of tenure: **customary** **right of use**

Right of use in perpetuity with right to inherit.

Shelter response:

Integrated Shelter assistance to returnees – Triple R project

- NRC targeted communities in displacement, evaluated community needs, and provided integrated assistance – shelter, infrastructure, schools, and clinics – to enable community members to return as a group. Key to this integrated approach was the preliminary analysis that identified obstacles to return for IDPs living in camps.
- For 1150 returnee households with undisputed access to land, shelter provided assistance to rebuild or rehabilitate destroyed/damaged houses including family latrines and NFI kits.
- Access to land is a precondition for receiving shelter assistance. NRC worked with communities in collabouration with village committees composed of community members, which NRC established early in the project to facilitate a participatory approach.

How tenure was documented: Community Validation of Tenure Process and Document

- Few if any of the potential shelter beneficiaries had official/formal documentation of tenure. ICLA clarified and confirmed the tenure status of each potential shelter beneficiary household prior to the provision of shelter assistance.
- If there was no problem or dispute about access to land/security of tenure of a household, ICLA worked in collabouration with the village committees to carry out a broad-based community consultation, which included authorities, community leaders, community members, and neighbours to confirm/validate the prior residence/use of housing/property by each beneficiary.
- The end result of the process was the issuance of a document, *témoignage*, signed by representatives of those consulted, confirming that community members validated the household's tenure. The household and local authorities received a copy of the *témoignage*.
- Where there was a problem related to a beneficiary's tenure, ICLA referred the case for resolution to the local *Commission d'Accueil de Réinsertion* (Home Reinsertion Commission – CAR). Once the problem was resolved, tenure was confirmed through the community validation process.

Cross-cutting issues:

In customary land tenure systems applicable in all of DRC, male heads of households are generally identified as holding property ownership. In the Triple R project, NRC did not have either procedures or strategies to safeguard women's tenure apart from special attention given during the beneficiary selection process and the involvement of women in committees set up by the project. Separate from the Triple R project, ICLA piloted an effort – in some areas where customary authorities had a practice of issuing tenure documentation – to include both husband/man and wife/woman's name on tenure documents that were issued following a community consultation and validation process.

4.4 Iraq/Kurdistan

Iraq has a mixed legal system of civil and Islamic law.

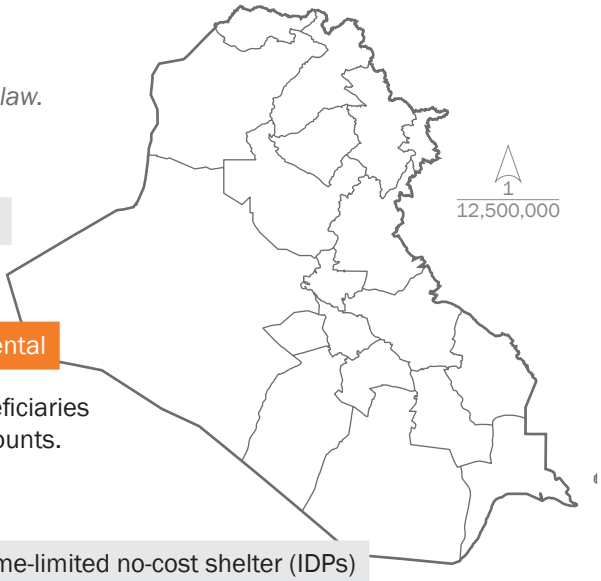
Context: urban rural

Beneficiaries: refugees IDPs returnees

IDPs and refugees from Syria.

Form of tenure: statutory right of use rental

Right of use in no-cost shelter. Rental where beneficiaries in rent-controlled arrangement pay stabilised amounts.



Shelter response:

Upgrades to private property as a condition to time-limited no-cost shelter (IDPs)

- 9 months of no-cost shelter in upgraded private properties of Iraqi/Kurdistani owners where IDPs have previously been residing in sub-standard conditions for no rent without written agreements.
- NRC invests in upgrades to private property, conditioned on the owner agreeing that IDPs continue to reside in same upgraded accommodation rent-free for 9 months.
- NRC hires contractors to do upgrades.

Upgrades to private property as condition of time-limited rent-controlled shelter (refugees & IDPs)

- Rent-stabilised shelter in upgraded properties of Iraqi/Kurdistani owners where refugees have previously resided in sub-standard conditions, paying rent without benefit of written agreements.

Upgrades to collective centres (private property) as condition of time-limited no-cost shelter (IDPs)

- Rehabilitation of 14 collective centers in Baghdad, with an average of 4-8 households per centre, in exchange for rent-free accommodation for up to 12 months.

How tenure was documented:

Upgrades to private property as condition of time-limited no-cost shelter (IDPs)

NRC *Cooperation Agreement* structures the relationship between NRC and the beneficiary owner, NRC and the beneficiary tenant, and between the owner and tenant.

Upgrades to private property as condition of time-limited rent-controlled shelter (refugees & IDPs)

ICLA developed two documents (*Right of Use Contract* and *Rent-Conrolled Lease Agreement*) to structure relationships between NRC, owner, and refugee household using templates from the Jordan shelter project with adaptations to the Iraqi context.

Upgrades to collective centres (private property) as condition of time-limited no-cost shelter (IDPs)

Memorandum of Understanding developed between NRC, building owners and local authorities, supplemented by an *Occupant Undertaking* highlighting the occupants' rights and responsibilities.

Cross-cutting issues:

- Women of households listed and sign the lease in addition to male representative.
- Differences on the basis of ethnicity/sect in requirements to obtaining required residency permit affects security of tenure.

4.5 Jordan

Jordan has a mixed legal system of civil law and Islamic religious law.

Context: urban | rural

Continued refugee influx builds market pressure with rising rents, reduced shelter quality available at same amount of rent, and lack of unoccupied, unfinished buildings to upgrade in order to expand the housing stock. Refugees pay rent for sub-standard shelter.

Beneficiaries: refugees | IDPs | returnees

Refugees from Syria, newly arrived or in extended displacement with inadequate or no housing due to the inability to cover rental costs.

Form of tenure: statutory | rental

Shelter response: A – Integrated Urban Shelter Project

(Increases not currently occupied housing units in unfinished buildings)

- Cash grant for construction to be carried out by owner on unoccupied, unfinished buildings that is conditioned on refugees being provided rent-free accommodation, as well as formal proof of ownership and building permits.
- Refugees provided 12-18 months of no-cost shelter in the private property of Jordanian owners with a rights-protective contract.

Shelter response: B – Renovation and innovation project *Complements Response A.*

- Cash grants (50-50) for upgrades to be carried out by owner and tenants on units already occupied by refugees, conditioned on the refugees being provided 12 months of reduced rent.
- The rent amount is determined by reference to a formula that considers the amount of rent paid in comparison to the value of NRC's investment for upgrades.

How tenure was documented: *Two contracts structure NRC/owner/beneficiary relationships:*

NRC contract with private owner:

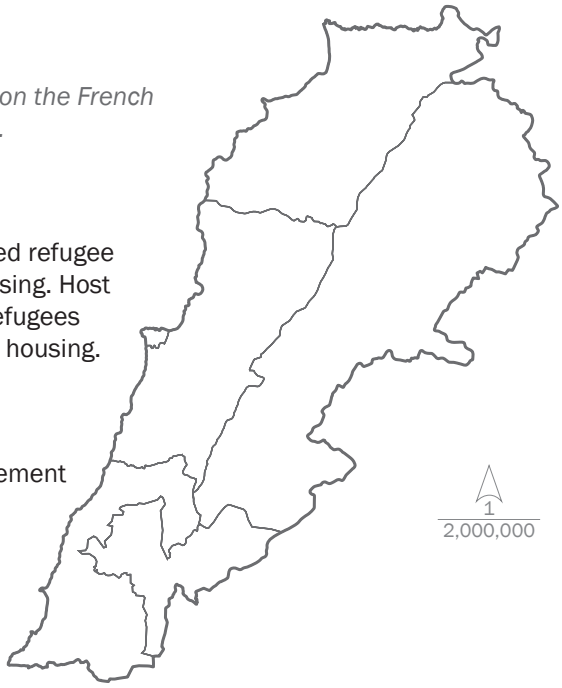
- Provides that NRC gives owner cash grant (determined by estimated cost of completing units and period owner is willing to house refugees) for specified upgrades to be done within 8 weeks in exchange for owner providing rent-free shelter for refugees.
- Obligates owner to sign separate contract with refugees, a copy of which is to be attached as an annex to this contract.
- Indicates number of refugee families to be accommodated, does not include either names or number of members per family.
- Owner's obligations toward NRC in terms of access to premises and notice if refugees move out as well as obligations to refugees.

Contract between owner and multiple refugee households:

- Agreement between owner and named heads of household ("beneficiary") for multiple refugee families.
- Indicates that owner participated in NRC's programme and made upgrades.
- Specifies that residence will be rent free and "without any consideration". Provides space to indicate time period of contract, which is referred to as a "lease period".
- Lists the number of persons per household to be accommodated.
- Provides for continuing obligations of parties to NRC and role of NRC in disputes.

4.6 Lebanon

Lebanon has a mixed legal system of civil law based on the French civil code, Ottoman legal tradition, and religious laws.



Context: urban | rural

Villages, town, and cities. Housing shortage pre-existed refugee influx. Refugees are paying rent for sub-standard housing. Host community tensions high from impact of absorbing refugees and competition for resources and services including housing.

Beneficiaries: refugees | IDPs | returnees

Syrian refugees, newly arrived or in extended displacement but not residing in informal tented settlements (ITS).

Form of tenure: statutory | right of use

Right of use created by contractual arrangements between NRC, owner, and refugee household.

Shelter response: *Small Shelter Unit (SSU) Rehabilitation. Same model used for 2 scenarios:*

A – Finalize buildings into which refugees move for first time after upgrades completed

B – Upgrade buildings that refugees already occupying and paying rent

NRC invests (average $1500 cash transfer) in upgrades to property held in ownership, conditioned on owner providing in exchange for 12 months rent-free shelter ("hosting") for refugees.

How tenure was documented: *Two contracts structure relationships between the three parties:*

NRC contract with owner *(Cooperation Agreement)*

- Provides that NRC gives specified amount to owner for upgrades to be done within 6 weeks in exchange for owner providing shelter for 12 months to refugees selected by NRC.
- Obligates owner to sign *Occupancy Free of Charge (OFC) Agreement*, defined as "separate agreement signed between the Owner and each Household that allows the Household to live in the allocated Housing Unit(s) without paying rent (in money, services or goods) during the Hosting Period." The OFC Agreement is then attached to the agreement between NRC and owner.

OFC Agreement between owner and refugee household

- Names all members of household to be sheltered.
- Allows for writing in the length of the shelter period (usual period is 12 months) and for specifying occupant's responsibility for utilities.
- States that no rent is paid by beneficiary. OFC Agreement is a contract *sui generis* and is considered a legally binding contract under Lebanese law; agreements not registered with authorities are not considered lease agreements, for which specific provisions apply.
- Parties have to give notice to NRC of disputes including if either owner or occupant wants to end the agreement. NRC suggested as mediator of disputes between parties. If disputes remain unresolved, Lebanese law applies.
- Parties have to give NRC a copy of the signed OFC.
- In summer 2015, the contract is being revised to add an obligation for owner/landlord to provide beneficiary with all required documents to evidence that s/he is residing in the property, which is necessary for refugees to renew their legal stay.

4.7 Mali

Mali has a civil law system based on the French civil law model and influenced by customary law.

Context: urban rural

Cash for rent in urban context. Materials for rehabilitation in urban and rural contexts.

Beneficiaries: refugees IDPs returnees

Form of tenure: customary right of use

Customary right of use/occupation, or right of temporary occupation as a renter on private property without written contracts.

Shelter response:

Cash for rent with ICLA counseling on tenant rights/responsibilities (urban IDPs and returnees)

- Cash for rent for IDPs and returnees to remain in current rental premises. Subset of beneficiaries provided with either training or income generating start-up funds to enable them to cover rent independently in future. Some beneficiaries receive food vouchers during "lean months" instead of income-generating activity support to ensure that cash intended for rent is not used for food.

Materials to rehabilitate homes with right of use/occupation (urban and rural returnees)

- Materials, tools, construction skills training, and funds to pay for labour to do construction for returnees. In Gao, the most vulnerable households also receive food vouchers during construction to reduce chance that materials are sold to meet urgent needs; in Timbuktu, all beneficiaries receive assistance to re-establish livelihoods.
- A local committee set up with NRC facilitation serves as a consultative forum for project implementation including vetting of tenure of beneficiaries and any tenure concerns/disputes.

How tenure was documented:

- Counselling about renter's rights and responsibilities including the option of having written lease. Rental tenure established through oral agreement between landlord and tenant. Consistent with local practice, the prevailing trend among beneficiaries is not to have written lease.
- ICLA has judged that informal undocumented arrangements have benefits as well as risks and informs beneficiaries of these benefits and risks. ICLA assists beneficiaries based on their choice.

Materials to returnees:

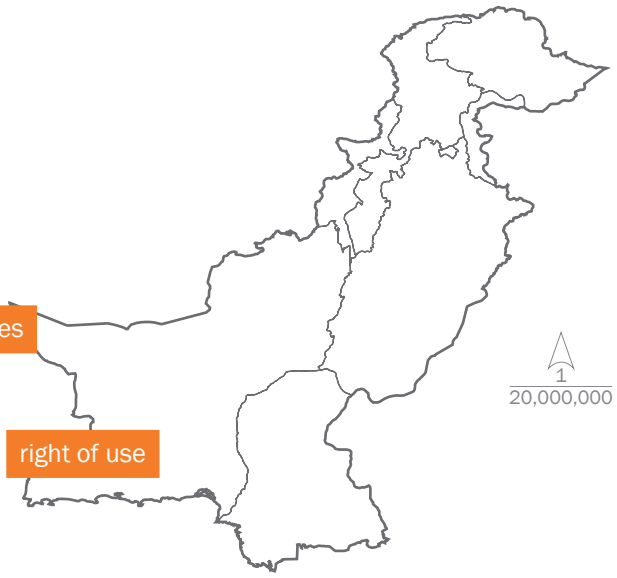
- Written documentation of tenure is not required to receive assistance. Because most beneficiaries lack tenure documentation, ICLA consults with neighbours, local authorities, and NRC-facilitated committee about each beneficiary prior to delivery of assistance, and provides wide notice in community to allow anyone with conflicting claim to come forward. As of summer 2015, no documents were generated through the community consultation process.
- If neighbours and authorities agree, NRC provides assistance. If there were disputes about tenure, parties had to resolve disputes themselves prior to shelter assistance being provided.

Cross-cutting issues:

Official government documents do not permit names of both man/husbland and woman/wife in a family to be recorded, even though not explicitly prohibited in law.

4.8 Pakistan

Pakistan has a common law system with Islamic law influence.



Context: urban **rural**

Displacement due to conflict (in advance of military operations) and floods.

Beneficiaries: refugees IDPs **returnees**

Work started with IDPs in displacement.

Form of tenure: **customary** **ownership** **right of use**

70% of beneficiaries self-identified as owners, and the rest as "tenants".

Shelter response: Core one-room shelter for returnees

- Contractor led: The original and primary shelter response consisted of NRC engaging contractors to rebuild/reconstruct one-room shelters for returnees identified by the local *jirga* as the most vulnerable.
- Owner-led/self-build: To increase participation of beneficiaries in decision-making, NRC piloted an approach that provided materials and cash for labour to small groups of beneficiaries (approx. 5 persons) who would together rebuild/reconstruct the shelters of all beneficiaries in the group.
- Access to land required to be eligible for participation in the programme.

How tenure was documented:

A household survey found that among those identified as owners, some had "permanent land ownership documents" and a small group had "temporary land ownership documents." One third of the beneficiary households "were only tenants."

Customary tenure agreements

Each field office independently developed its approach to securing tenure. Starting in 2012, ICLA in each field office developed customary agreements in affidavit form to document land tenure.

Cross-cutting issues:

Women's access to land and housing was not actively addressed as part of shelter delivery; A household survey found that "99% of the shelter-recipients households were headed by male[s]," and a final evaluation noted a lack of "gender sensitivity" and recommended that NRC "[d]evelop gender-sensitivity plans to show how the project will address the different needs of men and women to the extent possible in the conservative culture and ensure that gender aggregated information is collected during assessments". While acknowledging challenges to working with women (including difficulty to have female staff in some shelter programme areas and have access to female members of beneficiary families), the evaluation concluded that the projects did not follow NRC's gender guidelines and that project documents provided no indication that NRC factored in gender concerns, provided gender training, and participated in gender networks. The evaluation found that "[t]he impact of this neglect is clear in the field as the programmes seem to have been less suitable for women on a wide range of dimensions in comparison with men."

4.9 Palestine/Gaza

Following the establishment of the Palestinian National Authority (PNA) in 1994, land-related laws, decisions and instructions were adopted. However, the PNA has not yet succeeded in unifying the different legal systems applying to land in Palestine, partly due to the political and geographical division between Gaza and the West Bank. It therefore continues to rely on legislation that applied during earlier periods (Ottoman law, British Mandate legislation, as well as Egyptian and Jordanian administration).[1]

Context: urban | rural

Dense urban and semi-urban setting – most dwellings with multiple occupancy of various tenure types. Cyclical conflict/destruction/displacement. Extensive restrictions on access to construction materials results in steady deterioration of housing stock. Restrictive zoning and planning regime as part of occupation. ICLA well established and well grounded in local law/HLP at outset of Shelter programme, on hand to advise on plans for Shelter implementation to factor in security of tenure/HLP considerations from Day 1.

Beneficiaries: refugees | IDPs | returnees

Direct beneficiaries of NRC's cluster coordination: members of the Shelter and NFI Cluster, which are organizational and institutional actors with a wide range of capacities, interests, target groups and shelter response modalities, as well as local authorities.

Direct beneficiaries – shelter programme: vulnerable households living in below standard units, either displaced or those at risk of displacement across the spectrum of tenure.

Direct beneficiaries – ICLA programme: IDPs and persons at risk of displacement with attention to vulnerable beneficiary groups, including female-headed households and widowed women, households with special children's needs and elderly beneficiaries.

Form of tenure: statutory | ownership | right of use | rental

Shelter uses a range of tenure forms, in particular ownership, rental, and right of use (statutory).

Shelter response:

- Upgrading of sub-standard housing for owners/users.
- 12-month lease agreements through upgrading of sub-standard hosted or rented units for IDPs.

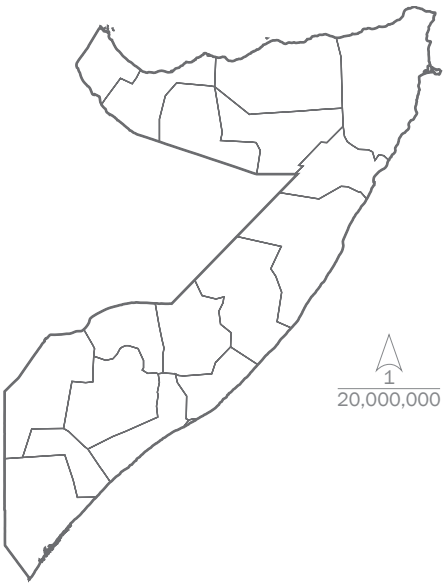
How tenure was documented:

- Right of use documents
- Ownership documents
- Lease agreements

[1] Arafat, et.al. (2015) *A Guide to Housing, Land and Property Law in the Gaza Strip*, NRC. http://www.nrc.no/arch/_img/9209332.pdf

4.10 Somalia

Somalia has a mixed legal system of civil law, Islamic law, and customary law (referred to as Xeer).



Context: urban | rural

Three regions with varying legal/rights contexts.

Beneficiaries: refugees | IDPs | returnees

IDPs locally integrating after protracted displacement. Have right to use land – either permanently or for defined time.

Form of tenure: customary | ownership | right of use

Form of tenure varies from region to region and between returnees and integrating IDPs. Includes customary right of use for time certain or indefinite, as well as ownership.

Shelter response:

Cash grants to returnees for self-rehabilitation/reconstruction

Shelter assistance to returnees takes the form of cash grants to rehabilitate/reconstruct their home to which they have previous history/proof of ownership rights and shelter in that location. In Somaliland, returnees apply for shelter assistance with title deeds.

Cash support for obtaining permanent and time limited title deeds or other tenure documents

In one or more regions including where there are formal land tenure records, NRC supports beneficiaries with funds to obtain/replace tenure documentation to establish proof of tenure rights.

T-shelters in IDP settlements subject to NRC-facilitated land agreements (time-limited use right)

NRC's shelter programme plans or in some instances re-plans existing informal settlements accompanied by agreements with local authorities for the time-limited allocation of land together with the construction of the individual shelters for IDP households.

How tenure was documented: *Documentation developed by NRC for locally integrating IDPs*

To structure the relations between parties and establish rights and obligations, ICLA regional projects developed a series of agreements and documents as well as a system for issuance of tenure documentation by local officials (financed by ICLA – at least sometimes) to shelter beneficiaries.

Initially, a single communal right of occupancy document was issued for an entire IDP settlement. ICLA (in some regions) changed this to provide each household with a right of use certificate, with at least some regional offices using 3 separate agreements.

In 2015, the country programme is working to harmonise documentation to include two agreements:

Agreement for land donation

- *Owner donates land to the authorities, who in turn donate to IDPs for shelter construction. States that during term of agreement, IDPs/ households have right to use land and enjoy possession without interference from owner or authorities and without paying any fees.*

Shelter Handover and Occupancy Certificate

- *States that certificate is proof that household represented by beneficiary occupies shelter according to terms and conditions of land donation agreement. Issued to named head of household, who signs along with local authority, IDP settlement leader, and NRC.*

5. Tools and Recommendations for Implementation

Under ▸5.1 is a description of how to monitor tenure security, and how to track the effectiveness, sustainability, and impact of tenure security efforts and inter-team collabouration. Cross-cutting issues such as women's access to tenure security, food security and tenure security, and tenure security for landless are covered in ▸5.2. At the end of the chapter, in ▸5.3, is a checklist/tool to guide your shelter and tenure inquiry when planning a new intervention.

5.1 Monitoring and Evaluation

Development and field implementation of standardised monitoring and evaluation indicators (OVIs) that can be incorporated into new programme designs will aid NRC to:

a. Document the extent of its types of tenure security activities/efforts.
b. Measure the effectiveness, sustainability, and impact of efforts over time including individual assistance, sector strengthening, and capacity building of beneficiaries.
c. Document and measure how Shelter and ICLA teams work together to accomplish tenure security.

Several country programmes are already using OVIs in project proposals or strategies that appear intended to measure security of tenure. See ▸**Annex 1** for examples of indicators from several country programmes, extracted from shelter strategy log frames and specific project objectives.

Terms of reference for upcoming project evaluations should include inquiries that examine with specificity the efforts of Shelter and ICLA to secure tenure in shelter assistance and steering committees established by evaluation ToRs should include ICLA representatives either from HQ or field. New programme designs should include project evaluations that specifically include either as a separate study or as part of a larger project evaluation a case study/documentation of the tenure security efforts, the effectiveness/sustainability of the models used, and inter-team collabouration toward securing tenure.

Examples of indicators used in selected country programmes (from Annex 1):

	Specific objective	Sample indicators
Lebanon	*Vulnerable households affected by displacement have adequate shelter, with a secure period of tenure, within the host community.*	▸ % of households occupying rehabilitated housing units assigned to them after 9 months of the occupancy free of charge agreement ▸ % of households occupying rehabilitated housing units assigned to them after 12 months of the occupancy free of charge agreement.
Jordan	*Beneficiaries enjoy a security of tenure.*	▸ % of beneficiary households who report possessing a document for house/land/property.
Mali	*ICLA/Shelter collaboration.*	▸ % of targeted households receiving both ICLA & shelter services (successful referrals). ▸ % of HLP disputes resolved according to CDR best practices.

5.2 Cross-cutting issues

Many if not most of the profiled shelter programmes take place in contexts characterised by structural discrimination against women in access to secure tenure. However, few of the programmes have found it feasible to implement safeguards for women's tenure security in shelter assistance to families, citing prevailing custom and resistance from various sectors including implementing partners, staff, and other shelter sector providers. On the next page is a list of examples of measures taken or proposed.

Possession of identity documents is a key prerequisite to facilitating beneficiaries' access to services in displacement including shelter assistance services that secure tenure and tenure documentation. Applicable to at least one country programme, national authorities have tightened registration and identity document issuance to require that those nationals hosting refugees sign a "housing pledge," which may require documentation of the housing arrangement as well as notification as to when the arrangement ends. Recent changes to the registration process in Lebanon for registration of Syrian refugees may have implications for the shelter response that relies on agreements NRC does not consider leases. In Iraq, differences on the basis of ethnicity/sect in requirements to obtaining required residency permit affects security of tenure.

Several country programmes incorporate assistance to shelter beneficiaries on obtaining identity documents as a component of integrated ICLA/shelter programmes. For example, in Mali, identity documents facilitate beneficiaries of rent subsidy assistance to obtain rent funds from banks and obtain tenure documents from either formal or customary authorities. For women, who suffer structural discrimination, possession of an identity document is viewed as buttressing potential assertion of rights.

Several sub-Saharan country programmes (particularly those operating in rural areas) have highlighted the importance of reliable access to land by IDPs/refugees who rely on agriculture for sustenance and income, hence the need to incorporate tenure security into food security programmeming together with inter-team collabouration. In DRC, for example, ICLA and Food Security work together to help displaced families meet food and livelihood needs, and increase resilience. ICLA negotiates access to land (for 4-24 months) on which families in displacement can cultivate, while Food Security provides seeds, tools, and technical agricultural assistance. Where IDPs wish to integrate, ICLA and Food Security collabourate to gain permanent access to land and livelihoods. Land access is secured through written agreements developed by ICLA between beneficiaries, land owners or local chiefs.

In Pakistan, an HLP advisor suggests to approach the tenure issue with community WASH projects as a means for community buy-in. He believed Pakistan could provide an example where community-based WASH interventions could become a vehicle for sustainable support to communities, despite individual families lacking tenure documents for shelter. In such instances, ICLA could work toward the necessary agreements for the use of land for WASH infrastructure, and produce documentation for the use of those wells, water points, or other forms of community WASH infrastructure. No indication was found that this avenue was pursued in the field implementation.

Country shelter programmes identified the problem of providing durable solutions for persons with no access to land. Few of the shelter programmes have found it feasible to develop durable solutions for those who have no access to land. Many if not most refer to the requirement of documentation of prior use or access to land and the lack of such evidence is the basis for a finding of ineligibility for assistance, e.g. Pakistan. For those with no access to land, some programmes provide emergency or temporary shelter often on public land, which may be complemented by advocacy with officials for site allocation. More frequently, Shelter has not found a way of supporting, or has found only limited ways of supporting – due in the main to lack of permission from the authorities – those who are effectively squatting in informal settlements within cities like Kabul, Afghanistan. In Somalia, there were efforts to obtain land – at least on a time-limited basis – for those who are otherwise landless for purposes of providing shelter assistance. In addition, at least one programme has assisted landless IDPs obtain temporary access to land for purposes of agriculture/sustenance (DRC).

5.3 Tenure Security Inquiry in Shelter Intervention Planning

The following questions are intended to assist staff in gathering information relevant to tenure security as part of the shelter programme planning at project start-up. There are three main aspects to consider when determining which options and approaches are best suited to your context: 1) the current tenure situation of the beneficiaries, 2) the available housing stock, and 3) the local legal framework for tenure and housing. Consult ▶**Chapter 3** for more details on typical tenure forms used in displacement situations, and read the case study snapshots in ▶**Chapter 4** to get a better understanding of what the context factors may look like in different countries.

Context factor 1: Tenure situation of the target population

Question 1.1 Do the target population have pre-existing or current access/rights to housing/land?

If YES, does beneficiary:

- *Have documentation of rights/tenure?*
- *Need access to land in order to access shelter?*
- *Need to regain access/rights to previous shelter/residence and/or land, which is available/unoccupied?*
- *Need to regain access/rights to previous shelter/residence and/or land now occupied by someone else?*
- *Need to retain access/rights to current shelter/residence and/or land, which they currently occupy with permission?*
- *Need to retain access/rights to current shelter/residence and/or land, which they occupy without permission?*

If NO:

- *How can target population gain access to shelter rights in the first instance within the host/integration/return communities' system for structuring housing and land?*
- *Is access to land (i.e., individual assignment/allocation/right to use for members of the target population/shelter beneficiaries) required to fulfill the need for shelter?*
- *If yes, is it feasible to design a shelter intervention that includes first-time land allocation/assignment either on a temporary or longer term basis?*

Question 1.2 What type of access/rights did/does PAD have (i.e. what form of tenure)?

Statutory or customary? *Ownership?* *Use rights?* *Rental?* *Collective?*

Question 1.3 If beneficiaries of the shelter intervention need land as part of the solution to their housing (regardless of displacement status or prior rights), do they need it for:

Shelter only? *Shelter + sustenance/food security/livelihood?* *WASH/other?*

Question 1.4 In what displacement context is intervention for intended shelter beneficiaries (target population) proposed to take place?

- Durable solution (*Return & resettlement/local integration)*
- In displacement (*Short-term vs. protracted)*

The displacement status affects the analysis of the degree of tenure security that is "secure enough" for the context including time frame.

Question 1.5 Is the intention to design shelter interventions for:

Individual members of the target population? *Group/community?*

Context factor 2: Available shelter / housing stock

Question 2.1 What housing stock is already available in the host community that could be used or made usable for shelter to benefit populations/persons in displacement?

- *None*
- *Abandoned housing/shelter (due to absence of original residents, including through displacement)*
- *Completed/empty or other available housing*
- *Incomplete/sub-standard/enlargeable housing*

Question 2.1 Who controls access to/use of any identified available housing/shelter stock?

Context factor 3: Local legal framework for land and housing tenure

Question 3.1 What Legal System, Decision-Makers, and Rules are in practice at the specific location and time of the shelter intervention that control use and allocation of housing and land, and resolution of disputes?

Relevant information should be available from:

- *Local lawyers with knowledge on property relations (can include local ICLA staff)*
- *Officials and institutions charged with regulating or resolving disputes related to housing/shelter/land?*

NRC frequently operates where either:

- *Multiple legal systems are present at the same time – legal pluralism, e.g., formal laws and regulations are on the books, but in practice local customs, which may vary from region to region, apply.*
- *The legal system has been disrupted by either conflict or disaster and either there is a vacuum with no apparent authorities or interim authorities have taken over the pre-disruption system or put in a new place a system.*

It is important to identify:

- What system of rules and decision-making applies in fact (not just formally) to the proposed shelter intervention in different locations?
- Do the same rules apply to housing/shelter and to land when it comes to access, use, control, and transfer?
- *What rules structure shelter/housing and land tenure arrangements between individuals, and between individuals and authorities (of whatever kind)?*

Question 3.2 Identify type of tenure system: Is housing and land actually and currently managed and allocated in this location according to:

- *Written laws/regulations issued by formal authorities, and implemented by formal government institutions that keep records and issue documents to individuals that evidence their right to shelter and land, and provide remedies for disputes? (Statutory)*
- *Informal community leaders according to rules (written or not) developed by the community with or without records or documents evidencing rights with disputes resolved by community leaders using local methods? (Customary)*

For statutory tenure systems:

Identify laws that regulate access, use, control, and transfer of housing & land.

- Can both private individuals and the state own housing & land?
- Where private individuals can own housing & land, are there restrictions on which individuals can acquire ownership or other legal access (e.g. based on gender or citizenship)?
- What are the rules about women's access to/control of housing & land in particular within their families?
- Where private individuals can own housing & land, are there limits on the owner's uses?
- Who do you need to deal with to arrange for using private or state property for target populations? Who is authorised to grant use?

Identify formal institutions that in fact manage land & housing arrangements, maintain records, issue documentation and resolve disputes.

What are the formal documents (title) that demonstrate ownership?

- In the context, do most owners have formal title documents and/ or comply with the requirements to have these documents? Are there other documents that in context are accepted as providing "second best evidence of ownership"? What are they (e.g. tax or utilities bills, investments, lengthy residence)?
- What documents evidence right of use and rental arrangements?
- What are the legal mechanisms/ remedies for resolving disputes?

Additional lines of inquiry might be necessary depending on your specific context (e.g. in case of abandoned property or squatting on state land).

For more detail regarding statutory tenure options, refer to ▸**Chapter 3**.

► 3.1 **Ownership** *p.10*

► 3.2 **Use rights** *p.12*

► 3.3 **Rental** *p.14*

For customary tenure systems:

Identify the rules, written or not, that determine who in the community has access to, use and control of housing & land and what those rules provide.

- Is it local custom to have written rules about land & housing access and/or documents that evidence the extent and kind of individual, family, or group access to/rights to land & housing?
- If no, who knows/decides/implements local rules on housing & land tenure?
- What are the rules? What is the system of keeping records? What are the local documents used to evidence land & housing access rights?
- If there is no local custom of using written documents to evidence individual access rights, what is the process for assigning/recognising land & housing access rights?
- Are there any obligations linked to use/access, or restrictions (e.g. based on gender or citizenship)?

What types of access/use rights are recognized for individuals, families, or groups (tenure options)?

- Rights holder has broad use rights for indefinite time and can transfer land/ housing to heirs?
- Rights holder has limited use rights, including restrictions on type and duration of use?
- What are the rules about women's access to/control of housing and land within the community and family?

Identify who are the decision-makers/ arbitrators that in fact manage rights, access, and disputes for land and housing arrangements?

- Who is authorised to grant use of community property?
- What are the community mechanisms/ remedies for resolving disputes?
- If there are no documents used, is it feasible to introduce documentation process that would be accepted and respected over time?

For more info on customary systems, see

► 3.4 **Customary tenure** *p.16*

ANNEX 1. Example Monitoring and Evaluation Indicators

Several country programs already use monitoring and evaluation indicators in project proposals or annual strategies that appear intended to measure or provide an indication of security of tenure.

DRC **Shelter strategy log frame 2014:**

- % of shelters handed over with a secure tenure that are occupied 1 month after completion.
- % of permanent shelters handed over and occupied 1 month after completion of construction
- % of household (m/f) who report using cash for house rents
- # of beneficiaries with legal acquisition of land plots
- Source of verification (for outputs): legal secure tenure documentation delivered

Jordan **Shelter strategy log frame 2014:**

For specific objectives including: beneficiaries enjoy a security of tenure

- % of shelter units handed over that are occupied by target beneficiaries after 1, 3 and 6 months.
- % beneficiary HH who report possessing a document for house/land/property
- Source of verification: household survey

For specific objective: Beneficiaries receive a rent contract for a defined period

- # of rental contracts signed
- # of rental free months provided

Lebanon **Shelter strategy log frame 2014:**

As indicators for the specific objective of: Vulnerable households affected by displacement have adequate shelter, with a secure period of tenure, within the host community:

- % of households occupying rehabilitated housing units assigned to them after 3-months of the occupancy free of charge agreement.
- % of households occupying rehabilitated housing units assigned to them after 9-months of the occupancy free of charge agreement % of households occupying rehabilitated housing units assigned to them after 12-months of the occupancy free of charge agreement.

Mali **Shelter strategy log frame 2014:**

- % of shelters that are occupied after 6 months
- % of targeted households supported by ICLA to receive a document for housing/land/property
- % of targeted households issued civil documentations/legal identity documents with ICLA support (given link between tenure and ID docs)
- # of females and males who declare receiving land property document

SIDA proposal - Shelter competence:

- % of rehabilitated homes occupied by returning owners after the completion of the project

SIDA proposal - ICLA competence:

- % of targeted households receiving both ICLA & shelter services (successful referrals)
- % of joint shelter/ICLA beneficiary households who report possessing a document for HLP after receiving legal assistance
- % of HLP disputes resolved according to CDR best practices
- # of males and females who received training services on HLP rights and documentation
- # of training services on HLP rights and documentation delivered
- # of males and females who received training services on CDR.
- # of training services on CDR delivered
- # of CDR services delivered

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