

## 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

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**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*
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**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

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**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?*
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*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.*
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*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)?*
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**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)*
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### 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