

# HOUSING, LAND AND PROPERTY RIGHTS IN SHELTER DUE DILIGENCE GUIDELINES



**Shelter/NFI Cluster**  
**X-Border Operation - Turkey**

ShelterCluster.org

Coordinating Humanitarian Shelter

# HOUSING, LAND AND PROPERTY RIGHTS IN SHELTER DUE DILIGENCE GUIDELINES

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These guidelines are an adaptation of the Global Shelter Cluster “Land Rights and Shelter: The Due Diligence Standard” (2013) to the operational context of the Turkey x-border Shelter/NFI Cluster. The objective of the Due Diligence Guidelines is to support shelter actors in ensuring that **Housing, Land and Property (HLP)** rights of both shelter beneficiaries and land/property owners in Northern Syria are protected to the greatest extent possible throughout the shelter program cycle. A Due Diligence process also ensures accountability to beneficiaries and donors.

This adaptation is the outcome of a field assessment carried out by the International Organization for Migration (IOM) with the Technical Working Group (TWIG)<sup>1</sup> of the Turkey hub x-border Shelter/NFI Cluster in December 2016.

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## Definition

HLP rights include the full spectrum of rights to housing, land and property held according to statutory or customary law or informally; both public and private housing, land and/or property assets.<sup>2</sup> They include:

- Right to adequate housing,
- Right to access to natural resources,
- Right to security of tenure and protection against forced eviction, and
- Right to non-discrimination in accessing HLP rights.

## What does it mean to apply a Due Diligence Standard in Shelter Programming?

Due Diligence is a process of research, analysis and monitoring to ensure the protection of HLP rights throughout the shelter program cycle. This requires a double focus: 1) to identify and obtain the agreement of respective owner(s) of land and properties used for shelter interventions prior to any intervention, and 2) to provide the greatest degree of tenure security to beneficiaries feasible in the given context. A Due Diligence approach also ensures that vulnerable groups, especially women, are taken into consideration throughout. Failure to conduct Due Diligence not only risks significant HLP rights violations and the breach of humanitarian principles, but can also derail entire shelter interventions. The uncertain security context in Northern Syria makes

it extremely difficult to legally verify HLP ownership claims, a situation further complicated by the fact that many Syrians did not possess formal HLP documentation even before the beginning of the conflict. Much of the existing documentation has since been either lost, altered or damaged. Likewise, many property and land owners may not be present in the target community due to displacement, imprisonment or loss of life. Therefore, proof of registered HLP ownership may not be available.

Recognising these challenges, the Due Diligence Guidelines aim to support x-border shelter actors to:

- Achieve as much legal certainty about HLP rights as is reasonable in the x-border context, taking into account existing constraints on access, resources and time;
- Reduce, as much as possible, the risk that x-border shelter programming causes or contributes to HLP disputes;
- Ensure that donor assistance is utilized in a way that protects rights and complies with Do No Harm principles.

## Scope and Structure

These Guidelines are intended for all Cluster actors engaged in the x-border shelter provision from Turkey, and are also relevant for all other interventions that raise HLP issues (e.g. in CCCM and WASH). The Guidelines focus on the following types of shelter interventions:

1. **Shelter construction**, covering both transitional (lifespan between 1-3 years) and permanent construction interventions;
2. **Shelter repairs** (private housing);
3. **Shelter repairs** (collective centres);
4. **Shelter rehabilitation of unfinished buildings** (private and public buildings);
5. **Household rental support**.

**Section A** lists General Considerations to be taken into account throughout all shelter programming.

**Section B** provides step by step guidance by type of shelter intervention, organized around implementation phase: 1) Preparedness and Planning, 2) Before Implementation, 3) During Implementation and 4) Evaluation, including general checklists.

**Section C** outlines the specific steps to be taken by shelter intervention type.

**Section D** provides guidance for when valid operational constraints do not allow for an application of Due Diligence, or specific concerns caution against the implementation of the planned shelter intervention.

Background information on the main HLP dynamics in pre-2011 Syria and on key conflict-induced HLP issues are provided in **Annex I** and **Annex II** respectively.



The guidelines are divided into four sections:

## SECTION A

### General requirements

Guidance to be considered when implementing any shelter intervention type, across all phases of implementation

## SECTION B

### Phase-specific requirements

Guidance to be considered by implementation stage, applicable to any shelter intervention type

## SECTION C

### Intervention-specific requirements

Specific considerations to take into account by type of shelter intervention, **and** stage of implementation

## SECTION D

### When Due Diligence cannot be conducted

Basic shelter assistance that can be provided when full due diligence is not possible.

## Types of Shelter Interventions



### Shelter construction:

- Permanent
- Transitional



### Shelter repairs:

- Private housing
- Collective centres



### Rehabilitation of unfinished buildings



### Household rental support

## Phases of Implementation

### PHASE 1

#### *Preparedness & Planning*

Provides guidance on how to obtain an understanding of the HLP rights in the area of operations.

### PHASE 3

#### *During implementation*

Offers guidance on how to address HLP issues as they arise during the implementation of the shelter activity.

### PHASE 2

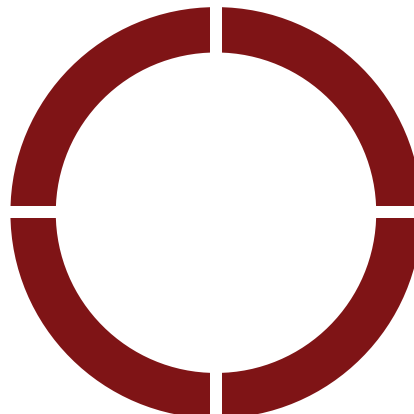
#### *Before implementation*

Detailed steps to help achieve the highest possible level of certainty concerning HLP rights prior to any implementation, and provides guidance regarding shelter beneficiary agreements.

### PHASE 4

#### *Evaluation*

Provides information on how to protect beneficiaries' land rights even after the completion of shelter activities.





The key considerations below are integral to ensuring a Due Diligence approach, and should be integrated throughout the shelter program cycle.



### 1 Ensure awareness about inter-linkages between HLP rights and shelter among your team

Create awareness and understanding among key staff and partners on the links between HLP rights and shelter assistance. Staff knowledge about HLP issues in areas of operations is a critical resource which should be fully utilized and shared with the wider shelter team. Ensure that outreach teams include women to facilitate outreach and accessibility to and for female beneficiaries.

### 2 Understand and map key HLP actors

An understanding of the local HLP context is an integral part of conducting Due Diligence. Engage in a stakeholder analysis to identify the main actors engaged in HLP administration and management. This includes *de facto* local authorities, Sharia courts, *mukthar*, host community representatives, IDP representatives, and other humanitarian organizations active in the area. Assess how these actors relate to each other and if/how you may want to engage with them. You should also come to an understanding of existing property dispute resolution mechanisms, and whether these are accessible for vulnerable groups.

### 3 Be aware of local conflict dynamics

Shelter provision can easily be co-opted to strengthen ownership claims on the part of an incoming group. It is therefore very important that you obtain information about the conflict-induced changes to population composition in your target area. **If it is clear that local demographics have considerably changed since the beginning of the conflict - such as the displacement of entire population groups - do not engage in shelter activities beyond the distribution of emergency shelter kits and basic minimum repairs in this specific locality (see section D).** Otherwise, the risk of unintentionally contributing to conflict-induced demographic change is very high.

### 4 Identify heightened risk of HLP rights violations for vulnerable groups / individuals

Certain power brokers in the target community may not recognize and/or jeopardize the HLP rights of women and other marginalized groups. Identify local practices that might threaten rights to access to and use of HLP for marginalized and vulnerable groups prior to any intervention, and take these into account when designing and implementing your shelter activities. Prioritise the identification of local inheritance laws to understand their effect on (displaced) female headed households, divorcees and widows.

### 5 Integrate HLP rights verification and monitoring into all shelter activities

Before any implementation, you must verify who the real owner of the land/property in question is in order to ensure that the HLP rights of beneficiaries and respective land/property owners are protected. In doing so, shelter actors **cannot** rely on available HLP documentation alone, which – if it is available - is often incomplete and can be easily falsified. Therefore, it is key to **always** consult with community representatives knowledgeable about the local context (e.g. *mukthar*, immediate neighbours and community elders) to verify ownership claims. For accountability purposes, all answers provided during community verification consultations need to be documented in writing. **Note that community verification is necessary even if the beneficiary and/or respective land or property owner is in possession of HLP documentation.** In Syria, such HLP documentation can be the *tabou* ('green paper'), land registry statements, court documents, building permit contracts, rental agreements, lease agreements and housing association membership documents.

### 6 Seek clear agreements in supporting beneficiaries' rights to shelter

A written agreement between the involved stakeholders, outlining respective roles and responsibilities, the scope of the intervention and dispute resolution mechanisms, is a prerequisite before implementation can begin (refer to sections B and C for details). Such shelter beneficiary agreements are important written evidence in upholding the HLP rights of beneficiaries and owners of land/property on which the shelter intervention is conducted. Note that such agreements do not legally confirm HLP ownership but are important written evidence to ensure accountability to both beneficiaries and donors, and to deter agreement breaches. Ensure that all parties understand their obligations under the agreement by taking time to explain the terms clearly. All parties to the agreement should also receive a (carbon) copy of the agreement.

### 7 Participate in sharing experiences and lessons learned regarding HLP and shelter

Bring any HLP issues arising during shelter activities to the attention of relevant Cluster coordination mechanisms, i.e. the Shelter/NFI Cluster and the HLP Technical Working Group of the Protection Cluster. In this way, lessons learnt and best practices regarding HLP rights and shelter can be comprehensively discussed, documented and shared among all members. Before sharing case-specific information, assess each instance separately to determine what level of information you can provide without the disclosure posing potential risks to beneficiaries or partners on the ground. In sensitive cases, the need to protect information may override the prerogative to share it.



## PREPAREDNESS AND PLANNING



### 1 Identify and map local HLP actors

Collect this information from a broad variety of locally knowledgeable and influential actors (*de facto* local authorities, local courts, *mukhtar*, *imam*, community elders, etc.), which in turn will provide you with a network of people that can help you with HLP issues as they arise. Do not solely rely on the information provided by *de facto* local authorities but engage with a variety of actors to triangulate information.

- Use knowledge of local staff, the Shelter/NFI Cluster, the HLP Technical Work Group and other shelter and protection actors to map HLP actors in the target area.
- Establish which *de facto* authorities (including local councils, Shari'a or local courts) are in charge of land and property administration. Establish whether the local Land Registry is still functional. *Note that land and property registration might have been suspended as a result of Legislative Decree 11/2016 regarding the suspension of real estate registration in land registries that were closed due to an emergency security situation.*
- Reach out to local host and IDP community leaders to understand who they see as the key actors of land and property administration. Understand how these interact with each other.
- If possible, record contact information of the identified key HLP actors and share the list among your team.

### 2 Identify potential HLP-related concerns in the community

Identify potential HLP-related concerns in the community before any intervention, through pre-intervention risk analysis/assessments. Refer to your identified network of local HLP actors to obtain this information. Questions should include:

- What laws determine who has rights over land in the target area? Is Syrian state law still applied?
- Is the community still serviced by a Land Registry? If not, when did it stop functioning?
- Which HLP ownership documents were available among community members before the conflict, and how do community members prove ownership of their HLP today?
- What has happened to the private properties left behind by those displaced from the community? Who has taken over the management of public properties?
- Are conflicts or disagreements over HLP ownership

common? Has the number of HLP disputes increased since the beginning of conflict?

- Do local inheritance or other practices threaten rights to access and use of HLP for marginalized groups, such as female-headed households?
- What are the HLP dispute resolution mechanisms in place at the moment, and are these deemed effective? Are they accessible to all, including female-headed households?
- Has the demographic context considerably changed since the beginning of the conflict?

Based on the feedback, **assess whether this is a situation where you should be providing the envisaged type of shelter assistance at all.** Consider lighter shelter assistance (see Section D) or working elsewhere if current dispute resolution mechanisms are largely perceived as ineffective and/or inaccessible, land-related disputes seem to be running high and/or the community has experience large-scale population changes.

### 3 Keep community members informed about the intervention to promote transparency and trust

Keep local community members informed to obtain the support of relevant community leaders, as they need to see shelter activities as legitimate. **Keep this relationship as transparent as possible.**

- Explain your planned activities in the area. Ensure that local community members understand the 1) type of planned shelter activity, 2) beneficiary eligibility criteria and 3) expected duration of shelter activities.
- Provide contact details of your team to enable follow-up in case of any concerns/queries by community members.

#### Milestones Checklist

- Local HLP actors identified
- Feasibility of intervention in local HLP context established
- Relationship with community members and relevant stakeholders established



## BEFORE IMPLEMENTATION



### 1 Clearly establish HLP eligibility criteria

Establish clear HLP-relevant criteria in relation to ownership over the shelter in question. These need to be fully met in order for the shelter intervention to go forward. These criteria should be reflected in relevant questions during the beneficiary selection/verification process, for example:

- Does the beneficiary rent or own the land/property? What ownership or rental documents are available?
- If owner, was the land/property purchased after the start of the conflict in this area?
- If tenant, is the owner present in the community? What is the duration of the lease agreement and does the owner grant permission for the intervention?

### 2 Carry out HLP Ownership Community verification

The HLP ownership situation over the property or land in question needs to be clear **before** any work can begin. Local *de facto* authorities, established community representatives (e.g. *mukhtar*, religious leaders and community elders) and neighbours are often best placed to verify ownership claims.

- Ask the land or property owner to provide ID and available ownership documentation (e.g. *tabou*, land registry statement, court document, building permit contract, rental agreements, lease agreements, and housing association membership document). If the owner does not have an ID, their legal identity should be confirmed by at least two community representatives.
- In parallel, consult the *de facto* local authority and at least three community representatives to verify property ownership claims (refer to mapping exercise outlined in Section A). **All answers need to be documented in writing to ensure accountability, including details of who provided the information and the date it was provided.** Questions should include:
  - Who owns the land/property in question? Is the beneficiary the rightful owner/tenant?
  - Is the ownership/tenancy status of the land/property in question currently disputed?
  - What is the history of the land/property in question? Has the ownership over the land/property been subject to dispute(s) before? If yes, how was it solved?
  - How does the wider community feel about the planned shelter intervention? If there are strong objections, why is this the case?

### 3 Sign Beneficiary Shelter Agreements

Sign beneficiary shelter agreements in order to confirm the shelter arrangements in writing, and to deter unlawful breaches of the agreement by individual and armed actors. Compliance with Syrian law should be ensured to the extent possible. The agreements should, at a minimum, contain the following provisions:

- Identification of land/property (including location/boundaries).
- Parties to the agreement and confirmation of their identity.
- Acknowledgement of ownership status of land/property.
- Provision that shelter intervention does not legitimize and/or confer ownership rights over the shelter in question.
- Roles and responsibilities of each signed party (owner, beneficiary, shelter organization).
- Process in event of breach of agreement - *should reflect what is most suitable to the parties in the local context. It could be the de facto local authorities, mukhtar, sharia court or other actor trusted by both parties to facilitate a final resolution.*
- Conditions and process for termination of agreement.

**Recommended signatories** for shelter beneficiary agreements are listed below, but also depend on type of intervention. **Many shelter actors ensure that a *de facto* local authority representative signs as a witness.**

- Head(s) of beneficiary household (both female and male head of household, if applicable).
- Owner or representative of owner who can authorize the intervention (i.e. authorized in writing). *In cases of public ownership, this is likely the de facto local authority.*
- Minimum of two (2) community representatives.
- Representative of shelter organisation.

#### Milestones Checklist

- HLP eligibility and exclusion criteria established
- Ownership verification completed
- Beneficiary shelter agreements signed by all relevant parties



## DURING IMPLEMENTATION



### 1 Monitor possible HLP issues by instituting clear reporting lines

Your team needs to be fully accessible to both female and male beneficiaries in reporting HLP-related issues they are confronted with during implementation, allowing you to capture and respond to grievances before HLP issues escalate:

- Nominate (a) member(s) of your team as focal point(s) (FPs) responsible for HLP-related concerns that emerge. The FPs have to be trained in HLP and know how to address the HLP issues they are confronted with. The FP position has to remain in place throughout the entire shelter project. FPs should also include women.
- Identify local community representatives and *de facto* local authority representative(s) responsible for reporting shelter-related HLP issues to the FPs, if and when they arise.

### 2 Address HLP issues as they arise during implementation

For HLP issues arising during shelter implementation that you cannot deal with yourself, it is important to have a referral system in place. To avoid the creation of a parallel referral system, link up with existing conflict resolution structures. All instances of HLP issues have to be documented and shared with relevant Cluster coordination mechanisms (Shelter/NFI Cluster, HLP Technical Working Group).

- If possible, ensure conflict mediation capacity among your team.
- Know where to refer beneficiaries to if dispute cannot be solved – e.g. local authorities, local court, and community representatives.

#### Milestones Checklist

- Monitoring system for HLP issues put in place
- Have a referral system in place for when HLP issues arise



## EVALUATION



### 1 Ensure that beneficiary complaint/feedback mechanisms are accessible

Ensure that beneficiary complaint/feedback mechanisms are accessible beyond the implementation period, to the extent possible in the given context (e.g. complaint hotline, regular site visits, feedback books).

### 2 Integrate HLP-relevant questions into post-implementation monitoring

Once shelter actors stop their engagement regarding a shelter site, HLP issues may of course still arise and adversely affect the beneficiaries.

Integrating questions related to HLP in existing post-distribution monitoring tools is one important way in which to continue obtaining knowledge about shelter-related land issues as they arise, and allows your team to either address or refer those issues to the relevant actors.

Pertinent questions include:

- Has the shelter intervention been completed to your satisfaction?
- Are there any disputes over ownership of shelter?
- Has the shelter agreement been breached in any way?
- If yes, was/is access to adequate mediation and dispute-resolution support available to you?

#### Milestones Checklist

- Establishment of feedback mechanisms that lasts beyond implementation period
- HLP-relevant questions integrated into post-implementation monitoring





		Transitional shelter construction	Permanent shelter construction
<b>Definition</b>		A shelter with a lifespan of up to three years.	Construction of permanent shelter (lifespan of more than three years) on beneficiary-owned plot of land.
<b>Phase 1</b> Preparedness and Planning		Include relevant questions in pre-intervention assessment (in addition to the general questions outlined in sections A and B above), for example: <ul style="list-style-type: none"> <li>• Are any past or present ownership disputes over the land reported?</li> <li>• Does a Land Use Plan exist in the area?</li> <li>• Are any special permits required to carry out construction activities in the area?</li> </ul>	
<b>Phase 2:</b> Before Implementation	<b>HLP-relevant eligibility criteria</b>	<p><b>If beneficiary household is owner:</b></p> <ul style="list-style-type: none"> <li>• Land ownership is verified by community verification and documentation if available,</li> </ul> <p><b>If beneficiary household is leasing the land:</b></p> <ul style="list-style-type: none"> <li>• Beneficiary household has a verifiable land lease agreement for <b>at least three years</b>, and</li> <li>• Landowner (or authorized representative) provides written consent for construction.</li> </ul>	<ul style="list-style-type: none"> <li>• Beneficiary household is the verified owner of land on which shelter is to be constructed through community verification and documentation, if available. In case of multi-ownership, all other owners need to be identified and provide written consent for construction.</li> </ul> <p><i>Note: If the beneficiary household has no ownership documents, registered owners' consent and transaction confirmation (with contract attached AND owner verified through community verification) is also accepted.</i></p> <p><i>The registered owner may also be deceased, and Land Registry records not updated accordingly. In this case, the inheritors need to be identified and consent obtained.</i></p>
	<b>HLP-relevant exclusion criteria</b>	<p><b>If beneficiary household is the owner:</b></p> <ul style="list-style-type: none"> <li>• Ownership claim is strongly disputed during community verification.</li> </ul> <p><b>If beneficiary household is leasing the land:</b></p> <ul style="list-style-type: none"> <li>• Beneficiary household is living on land without written agreement with landowner, and landowner is unwilling to enter into written agreement prior to implementation.</li> <li>• Landowner does not grant permission for construction of transitional shelter.</li> <li>• Landowner is not present and has not formally (in writing) designated a representative to authorize the shelter construction.</li> <li>• Boundaries of the land are disputed by immediate neighbours.</li> </ul>	<ul style="list-style-type: none"> <li>• Ownership is strongly disputed during community verification.</li> <li>• Beneficiary has no documentation to prove ownership, OR consent/ownership of landowner who handed land over to the beneficiary cannot be confirmed.</li> <li>• Boundaries of the land are disputed by immediate neighbours.</li> </ul>
	<b>Shelter Beneficiary Agreement*</b> <i>[ * In addition to provisions listed in Section B.3]</i>	<ul style="list-style-type: none"> <li>• Ownership over transitional/permanent shelter.</li> <li>• Extent of construction work, including warranty rights.</li> </ul> <p><b>If beneficiary household is leasing the land (transitional shelter only):</b></p> <ul style="list-style-type: none"> <li>• Landowners' guarantee of non-eviction for at least <b>three years</b>.</li> <li>• How and in what state the land should be returned after use,</li> <li>• Clause identifying who is liable if the land is not returned in agreed-upon state.</li> </ul>	
<b>Phase 3</b> During Implementation		1) Monitor for possible HLP issues by instituting clear reporting lines. 2) Address HLP issues as they arise during shelter construction. 3) Ensure regular information-sharing on HLP issues with the Shelter/NFI Cluster and HLP Technical Working Group.	
<b>Phase 4</b> Evaluation		1) Beneficiary complaint/feedback mechanisms are accessible beyond the immediate implementation period. 2) Integrate HLP-relevant questions into post-implementation monitoring: <ul style="list-style-type: none"> <li>• Has construction been completed to your satisfaction?</li> <li>• Is the shelter structurally safe?</li> <li>• Are there any disputes over ownership of shelter?</li> <li>• Do you feel confident that you can continue to stay in the shelter constructed?</li> <li>• Has there been any attempt to evict you and your household, or do you feel there is such a threat?</li> <li>• Has any payment been demanded from you, in breach of the shelter beneficiary agreement?</li> <li>• Have there been any other breaches of the shelter beneficiary agreement?</li> <li>• If yes, was/is access to adequate mediation and dispute-resolution support available to you?</li> </ul>	



### Shelter repairs: Private housing

<b>Definition</b>		<b>Repairs of light to medium damage</b> (broken windows or doors, holes in roof or walls, installation of WASH facilities) of privately-owned houses. Main structural support of the house is reported safe and stable.
<b>Phase 1</b> Preparedness and Planning		<p>Include relevant questions in pre-intervention assessment (in addition to the general questions outlined in sections A and B above), for example:</p> <ul style="list-style-type: none"> <li>• Who owns the property?</li> <li>• Is the owner present in person?</li> <li>• Are any past or present ownership disputes reported?</li> </ul>
<b>Phase 2:</b> Before Implementation	<b>HLP-relevant eligibility criteria</b>	<p><b>If beneficiary household is owner:</b></p> <ul style="list-style-type: none"> <li>• Ownership is verified by community verification and documentation if available.</li> </ul> <p><b>If beneficiary household is tenant/hosted:</b></p> <ul style="list-style-type: none"> <li>• Beneficiary household is rightful tenant with rental contract or written hosting agreement,</li> <li>• Landlord's ownership claim is verified by community verification and documentation if available,</li> <li>• Landlord provides written consent for repairs and tenancy duration of at least six (6) months from completion of repairs</li> </ul>
	<b>HLP-relevant exclusion criteria</b>	<p><b>If beneficiary household is owner:</b></p> <ul style="list-style-type: none"> <li>• Ownership claim is strongly disputed during community verification.</li> </ul> <p><b>If beneficiary household is tenant/hosted:</b></p> <ul style="list-style-type: none"> <li>• Landlords' ownership claim is strongly disputed during community verification.</li> <li>• Beneficiary household is living in the property without clear rental agreement/written hosting agreement with landlord, and landlord is unwilling to enter into written agreement prior to implementation.</li> <li>• Landlord is absent and has not formally (in writing) designated a representative to authorize the shelter intervention.</li> <li>• Landlord refuses permission for shelter repairs.</li> </ul>
	<b>Shelter Beneficiary Agreement*</b> <i>[ * In addition to provisions listed in Section B.3]</i>	<p><b>If beneficiary household is owner:</b></p> <ul style="list-style-type: none"> <li>• Ownership of any repair work.</li> <li>• Extent of proposed repairs, including warranty rights.</li> </ul> <p><b>If beneficiary household is tenant/hosted:</b></p> <ul style="list-style-type: none"> <li>• Owner and tenant obligations.</li> <li>• Anti-eviction clause (suggested minimum tenancy period of six (6) months).</li> <li>• Safeguard against rent increase upon repairs for specified period (suggested period of 6 months).</li> <li>• Provision on notice period to end tenancy.</li> </ul>
<b>Phase 3</b> During Implementation		<ol style="list-style-type: none"> <li>1) Monitor for possible HLP issues by instituting clear reporting lines.</li> <li>2) Address HLP Issues as they arise during shelter construction.</li> <li>3) Ensure regular information-sharing on HLP issues with the Shelter/NFI Cluster and HLP Technical Working Group.</li> </ol>
<b>Phase 4</b> Evaluation		<ol style="list-style-type: none"> <li>1) Beneficiary complaint/feedback mechanisms are accessible beyond the immediate implementation period.</li> <li>2) Integrate HLP-relevant questions into post-implementation monitoring: <ul style="list-style-type: none"> <li>• Have the repairs been completed to your satisfaction?</li> <li>• Is the shelter structurally safe?</li> <li>• Are there any disputes over ownership of shelter?</li> </ul> </li> </ol> <p><b>If beneficiary household is tenant:</b></p> <ul style="list-style-type: none"> <li>• Did the shelter repairs cause any disagreements with the landlord?</li> <li>• Has there been any attempt to evict you and your household since completion of repairs, or do you feel there is such a threat?</li> <li>• Are there any problems concerning payment of rent (e.g. sudden increase in rent)?</li> <li>• Have there been any other breaches of the shelter beneficiary agreement?</li> <li>• If yes, was/is access to adequate mediation and dispute-resolution support available to you?</li> </ul>



**Shelter repairs: Collective centres**

<b>Definition</b>		<i>Repairs of light to medium damage</i> (broken windows or doors, holes in roof or walls, installation of WASH facilities) to make private or public buildings safe for habitation. Main structural support of the collective centre is reported safe and stable.	
<b>Phase 1</b> Preparedness and Planning		<p>Include relevant questions in pre-intervention assessment (in addition to the general questions outlined in sections A and B above), for example:</p> <ul style="list-style-type: none"> <li>• Is the building privately or publicly owned?</li> <li>• What is its history of use?</li> <li>• For how long is it available?</li> <li>• What works are required to make the building habitable?</li> <li>• In what condition should it be returned?</li> </ul>	
<b>Phase 2:</b> Before Implementation	<b>HLP-relevant eligibility criteria</b>	<p><b>Public property:</b></p> <ul style="list-style-type: none"> <li>• Public status of property is confirmed by <i>de facto</i> local authorities and community members.</li> <li>• Property is available for at least six (6) months from completion of repairs.</li> </ul>	<p><b>Private property:</b></p> <ul style="list-style-type: none"> <li>• Owner is verified through community verification and documentation if available.</li> <li>• Property is available for at least six (6) months from completion of repairs.</li> </ul>
	<b>HLP-relevant exclusion criteria</b>	<p><b>Public property:</b></p> <ul style="list-style-type: none"> <li>• Public status of building is strongly disputed during community verification.</li> <li>• Property is not available for minimum period of six (6) months from completion of repairs.</li> </ul>	<p><b>Private property:</b></p> <ul style="list-style-type: none"> <li>• Ownership claim is strongly disputed during community verification.</li> <li>• Owner is not present and has not formally (in writing) designated a representative to authorize repairs.</li> <li>• Property is not available for minimum period of six (6) months from completion of repairs.</li> </ul>
	<b>Shelter Beneficiary Agreement*</b> <i>[ * In addition to provisions listed in Section B.3]</i>	<ul style="list-style-type: none"> <li>• Ownership of any repair work,</li> <li>• Extent of proposed repairs, including warranty rights,</li> <li>• Deadlines, if any, for the beginning and end of occupancy of beneficiaries,</li> <li>• Anti-eviction clause (suggested minimum tenancy period of six (6) months),</li> <li>• Guarantee of rent-free tenancy during agreed tenancy duration,</li> <li>• Conditions and process for termination of agreement,</li> <li>• How and in what state the structure should be returned after use,</li> <li>• Clause identifying who is liable if the building is not returned in agreed-upon state.</li> </ul> <p><b>A separate shelter beneficiary agreement should be drawn up between each beneficiary household and owner(s) (for private buildings) or de facto local authority (for public buildings).</b></p>	
<b>Phase 3</b> During Implementation		<ol style="list-style-type: none"> <li>1) Monitor for possible HLP issues by instituting clear reporting lines.</li> <li>2) Address HLP Issues as they arise during shelter construction.</li> <li>3) Ensure regular information-sharing on HLP issues with the Shelter/NFI Cluster and HLP Technical Working Group.</li> </ol>	
<b>Phase 4</b> Evaluation		<ol style="list-style-type: none"> <li>1) Beneficiary complaint/feedback mechanisms are accessible beyond the immediate implementation period.</li> <li>2) Integrate HLP-relevant questions into post-implementation monitoring: <ul style="list-style-type: none"> <li>• Have repairs been completed to satisfaction?</li> <li>• Are there any disputes over ownership of the collective centre?</li> <li>• Do all beneficiary households still stay at the collective centre? If not, why?</li> <li>• Has there been any attempt to evict beneficiaries, or is there a perception of such a threat?</li> <li>• Has any payment been demanded from beneficiaries?</li> <li>• Have there been any other breaches of the shelter beneficiary agreement?</li> <li>• If yes, was/is access to adequate mediation and dispute resolution support available to beneficiaries?</li> </ul> </li> </ol>	



## Shelter Rehabilitation of unfinished buildings

<b>Definition</b>		<b>Rehabilitation of unfinished/substandard buildings</b> to offer temporary shelter for IDPs (partitions, completing walls with sandwich panels or mud bricks, installation of window, doors, WASH facilities).	
<b>Phase 1</b> Preparedness and Planning		<p>Include relevant questions in pre-intervention assessment (in addition to the general questions outlined in table above), for example:</p> <ul style="list-style-type: none"> <li>• Is the building privately or publicly owned?</li> <li>• Does it have one or several owners?</li> <li>• What is its history of use?</li> <li>• For how long is it available?</li> <li>• What works are required to make the building habitable?</li> <li>• In what condition should it be returned?</li> </ul>	
<b>Phase 2: Before Implementation</b>	<b>HLP-relevant eligibility criteria</b>	<p><b>Public building:</b></p> <ul style="list-style-type: none"> <li>• Public status of property is confirmed by <i>de facto</i> local authorities and community representatives.</li> <li>• Building will be available for at least 12 months from completion of all works.</li> </ul>	<p><b>Private building:</b></p> <ul style="list-style-type: none"> <li>• It is <b>highly desirable</b> that owner(s) have ownership documentation</li> <li>• The owner(s) of the building is clearly established through community verification and documentation if available.</li> <li>• Building is available for at least 12 months from completion of all works.</li> </ul>
	<b>HLP-relevant exclusion criteria</b>	<p><b>Public building:</b></p> <ul style="list-style-type: none"> <li>• Public status of building is strongly disputed during community verification.</li> <li>• Building is not available for minimum period of 12 months from completion of all works.</li> </ul>	<p><b>Private building:</b></p> <ul style="list-style-type: none"> <li>• Ownership claim is strongly disputed during community verification.</li> <li>• Owner(s) is/are not present and has/have not formally (in writing) designated a representative to authorize the rehabilitation works.</li> <li>• Building is not available for minimum period of 12 months from completion of works.</li> </ul>
	<b>Shelter Beneficiary Agreement*</b> <i>[ * In addition to provisions listed in Section B.3]</i>	<ul style="list-style-type: none"> <li>• Ownership of any works,</li> <li>• Extent of proposed works, including warranty rights,</li> <li>• Deadlines, if any, for the beginning and end of occupancy of beneficiaries,</li> <li>• Anti-eviction clause (suggested minimum tenancy period of 12 months),</li> <li>• Guarantee of rent-free tenancy during agreed tenancy duration (suggested minimum period of 12 months).</li> <li>• Conditions and process for termination of agreement.</li> <li>• How and in what state the structure should be returned after use.</li> <li>• Clause identifying who is liable if the building is not returned in agreed-upon state.</li> </ul> <p><b>A separate shelter beneficiary agreement must be drawn up between each beneficiary household and owner(s) (for private buildings) or de facto local authority (for public buildings).</b></p>	
<b>Phase 3</b> During Implementation		<ol style="list-style-type: none"> <li>1) Monitor for possible HLP issues by instituting clear reporting lines.</li> <li>2) Address HLP Issues as they arise during shelter construction.</li> <li>3) Ensure regular information-sharing on HLP issues with the Shelter/NFI Cluster and HLP Technical Working Group.</li> </ol>	
<b>Phase 4</b> Evaluation		<ol style="list-style-type: none"> <li>1) Beneficiary complaint/feedback mechanisms are accessible beyond the immediate implementation period.</li> <li>2) Integrate HLP-relevant questions into post-implementation monitoring: <ul style="list-style-type: none"> <li>• Have all works been completed to satisfaction?</li> <li>• Are there any disputes over the ownership of the rehabilitated building?</li> <li>• Do all beneficiary households still stay in the rehabilitated building? If not, why?</li> <li>• Has there been any attempt to evict beneficiaries, or is there a perception of such a threat?</li> <li>• Has any payment been demanded from beneficiaries?</li> <li>• Have there been any other breaches of the shelter beneficiary agreement?</li> <li>• If yes, was/is access to adequate mediation and dispute resolution support available to beneficiaries?</li> </ul> </li> </ol>	

**Household rental support**

<b>Definition</b>		<b>Provision of temporary rental support to households choosing to live in a rental property. It is of critical importance to ensure that beneficiaries do not reside in sub-standard housing.</b>
<b>Phase 1</b> Preparedness and Planning		<p>Include relevant questions in pre-intervention assessment (in addition to the general questions outlined in sections A and B above), for example:</p> <ul style="list-style-type: none"> <li>• How are rental contracts currently registered?</li> <li>• Are forced evictions common in this community?</li> </ul>
<b>Phase 2:</b> Before Implementation	<b>HLP-relevant eligibility criteria</b>	<ul style="list-style-type: none"> <li>• Beneficiary household is a rightful tenant as verified through rental contract or written hosting agreement,</li> <li>• Landlord's ownership claim is verified by community verification and documentation if available, and s/he provides written consent for rental support,</li> <li>• Landlord commits to provide at least six (6) months of tenancy without any increase in rent.</li> </ul>
	<b>HLP-relevant exclusion criteria</b>	<ul style="list-style-type: none"> <li>• Landlords' ownership claim is strongly disputed during community verification,</li> <li>• Beneficiary has no rental agreement/written hosting agreement with landlord, and landlord is unwilling to enter into written rental agreement prior to implementation,</li> <li>• Landlord is not present and has not formally (in writing) designated a representative to authorize the rental support program,</li> <li>• Landlord does not guarantee a rent freeze throughout period of rental support (and ideally for a period thereafter).</li> </ul>
	<b>Shelter Beneficiary Agreement*</b> <i>[ * In addition to provisions listed in Section B.3]</i>	<ul style="list-style-type: none"> <li>• Anti-eviction clause (suggested minimum tenancy period of six (6) months),</li> <li>• Rental amount and payment schedule,</li> <li>• Safeguard against rent increase upon rental support for a suggested minimum period of six (6) months,</li> <li>• Right to renew rental contract,</li> <li>• Provision on notice period to end tenancy,</li> </ul> <p><b>Ensure that beneficiaries have fully understood the agreement, and that eventually they are supposed to pay their own rent.</b></p>
<b>Phase 3</b> During Implementation		<ol style="list-style-type: none"> <li>1) Monitor for possible HLP issues by instituting clear reporting lines.</li> <li>2) Address HLP Issues as they arise during shelter construction.</li> <li>3) Ensure regular information-sharing on HLP issues with the Shelter/NFI Cluster and HLP Technical Working Group.</li> </ol>
<b>Phase 4</b> Evaluation		<ol style="list-style-type: none"> <li>1) Beneficiary complaint/feedback mechanisms are accessible beyond the immediate implementation period.</li> <li>2) Integrate HLP-relevant questions into post-implementation monitoring: <ul style="list-style-type: none"> <li>• Has there been any attempt to evict you and your household, or do you feel there is such a threat?</li> <li>• Have there been any disputes between you and the owner regarding the payment of rent?</li> <li>• If yes, was/is access to adequate mediation and dispute resolution support available to beneficiaries?</li> <li>• When this rental program ends, how will you continue to pay for your rent?</li> </ul> </li> </ol> <p><i>Note: If no rental support can be provided beyond six (6) months, efforts must be made to assist the beneficiary in exploring other options, including referral.</i></p>



In some cases, Due Diligence cannot be conducted for a number of reasons:

In cases where:

Risks to the health, security, privacy and dignity caused by inadequate shelter outweigh the risks of not doing Due Diligence,

and/or

The property/land owner cannot be found or there is not authorized representative of the owner (i.e. authorized in writing),

and/or

The local context is characterized by a high level of HLP disputes and substantial demographic change since the beginning of the conflict.

...and this is clearly documented in writing and communicated to relevant Cluster coordination mechanisms - **there is still scope for basic minimum shelter assistance**. The interventions outlined below are exempt of dedicated Due Diligence given their very low level/temporary nature.

### Provision of emergency shelter / sealing-off kits

**Includes:** plastic sheeting, rope, duct tape, roof nails and washer, large nails, small nails, pliers, claw hammer, shovel, handsaw, woven sack (refer to [Guidance Note on Shelter and NFI kits response for Syria](#))

- Handover agreement to include clear provision that minimum basic repairs do not legitimize and/or confer ownership rights over the shelter in question.
- Handover agreement to be signed by both female and male head of household, if applicable.

### Minimum basic repairs

**Includes:** Repair with same type of window and/or door, closing holes in walls with similar material, and basic repairs of WASH facilities. **NO** structural repair or changes in any component of the shelter are permitted.

- Beneficiary Agreement to include clear provision that minimum basic repairs do not legitimize and/or confer ownership rights over the shelter in question. All repair materials should remain with the shelter, even if the beneficiary household decides to move on.
- Handover agreement to be signed by both female and male head of household, if applicable.

### Glossary

These definitions are intended to clarify the text in this document.

**Court registration:** Property or land ownership, sale or transfer recorded through a court registration.

**Land tenure:** Land tenure defines who can use what land resources, for how long, and under what conditions. Land tenure can be established in many ways, for example through statutory law or customary, informal or religious arrangements.

**Land registry:** State institution managing land transactions within the statutory system (i.e. not including customary and informal transactions).

**Security of tenure:** Degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land or property, or the benefits that stem from it.

**Tabou:** Formal land title deed issued by the General Directorate of Cadastral Affairs ("Land Registry") as proof of ownership over private land.

### Further readings

Global Protection Cluster, 2013. [Briefing Note: Emergency response to Housing Land and Property issues in Syria](#).

IASC, 2015. [Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action - Housing, Land and Property](#).

Norwegian Refugee Council, 2016. [Housing land and property \(HLP\) in The Syrian Arab Republic](#).

Norwegian Refugee Council, 2017. Technical Guidelines for Identifying and Addressing HLP Issues in Informal Settlements/Camps and Collective Centres in Northern Syria.

Norwegian Refugee Council, 2017. Guidance Note: HLP Issues in Informal Settlements and Collective Centres in Northern Syria.

Norwegian Refugee Council, 2017. Displacement, housing, land and property and access to civil documentation in the north west of Syria.



Prior to the war, the HLP rights situation in Syria had the following main characteristics:

### 1 Hybrid land tenure system

The legal system in Syria is based on French, Ottoman and Islamic law (Sharia).<sup>3</sup> Although officially land and property in Syria is comprised of the two categories of private land (38%) and state land (62%), in reality the tenure systems of the country comprise a range of Islamic, tribal, customary, informal, and statutory arrangements.<sup>4</sup> Land is often owned through multiple types of tenure involving various forms of documentation. In rural areas land is often held jointly through the extended family or lineage.<sup>5</sup>

### 2 Lack of formal property documentation

Many Syrians did not possess formal property documentation even prior to the conflict. This in turn led to a plethora of other ownership arrangements and an increased reliance on informal documentation, such as civil court contracts or unofficial contracts between buyer and seller. While HLP registries existed in all 14 Governorates prior to the war, these only covered HLP transacted within the statutory system, and there was no centralized, national register.<sup>5</sup> The digitalization of land and property records began just months before the beginning of the conflict and was fully suspended in 2012.

### 3 Dispute resolution mechanisms

Arbitration committees and courts for the resolution of land disputes existed at the central and governorate level throughout the country, formed by representatives of the Ministry of Agriculture and Agrarian Reform, the Ministry of Social Affairs and Labour as well as the Peasant's Union and Chambers of Agriculture.<sup>7</sup> Specifically designated Real Estate Courts also existed under the Ministry of Justice. However, due to governance and capacity challenges, land disputes were often informally dealt with at the village/community level (especially in rural contexts) even before the war.<sup>8</sup>

### 4 Gender / Inheritance laws

Women's inheritance rights in Syria are limited by law as well as in practice. In accordance with Shari'a – which for Muslims is applied in matters related to personal status including inheritance, marriage and divorce<sup>9</sup> - a woman receives only half of her brother's share of the parental property. Moreover, Syrian nationality/citizenship can only be passed on by men. Women married to non-Syrian men may retain their Syrian citizenship, but are not allowed to transfer it to their husband and children, who are thus prevented from property inheritance. Overall, women's land ownership remains very low: in 2006, just 5.3% of agricultural land was formally owned by women.<sup>10</sup>

### 5 Discriminatory legislation in accessing HLP

Discriminatory legislation against certain minorities or population groups in access to HLP dating back to the 1960s. Syrian Kurds were for long legally barred from official HLP ownership (e.g. Legislative Decree 193/1952, Law 41/2004, Presidential Decree 49/2008 and Legislative Decree 59/2008). Palestinian refugees in Syria were likewise prohibited from owning any property until the late 1960s.<sup>11</sup> While these restrictions have since been repealed, Syrian Kurds may not own more than one residential property per person nor are they permitted to own arable land.<sup>12</sup>

### 6 Grievances caused by past evictions that were perceived as unfair or illegitimate

The elite capture of land and plots by designating them as military zones was common. Such designations were not subject to civil land and property laws and caused numerous evictions without compensation.

### 7 Lack of access to affordable housing in the context of rapid urbanization

Lack of access to affordable housing in a context of rapid urbanization, resulting in sprawling informal neighbourhoods. Overall, approximately one-third of Syria's urban population (3.4 million people) lived in such settlements in 2011, including half of Aleppo's population (1.1 million people).<sup>13</sup>

### 8 Prohibition on HLP transfers / transactions along the Syrian-Turkish border

Land within a 50 kilometer strip of the border with Turkey (in the areas of Kobane and north of Afrin) have in place extraordinary security regulations in case of military threat from Turkey. By Syrian law it is still forbidden to purchase or sell land in this area.

### 9 Land degradation and desertification

2006 marked the beginning of a prolonged period of extreme drought which carried through into 2011, affecting Hassakeh, Deir ez Zor and Raqqqa Governorates the most. Before the onset of the drought, agriculture had contributed to one fourth of the national GDP and had employed one third of Syria's population.<sup>14</sup> The drought saw approximately 75 percent of agriculturally-based households suffer total or near total crop failure and caused large-scale population displacement from rural to urban areas. The ongoing war has further compromised the country's environmental health.



### **1 Widespread HLP destruction and damage, including essential infrastructure and services**

Violent conflict tends to result in large-scale damage and destruction of HLP. In some cases the damage is incidental to conflict, though in many cases, housing, land and property are explicitly targeted.

### **2 Commonplace HLP confiscations and secondary occupation**

In the context of insecurity and absence of state control, illegal confiscation and subsequent allocation of land, housing and property is also very common. Such HLP confiscations are often motivated by economic interests and or by military strategy, such to displace and demoralize the target population, to house fighters or supporters, or to sell the captured HLP onwards for profit.

### **3 Unauthorized sale and transfer of private property**

Facilitated by conflict-induced erosion of formal institutions and the widespread loss of, or damage to, property deeds, properties left behind or proactively captured are often sold on for profit. This often also includes the alteration of original ownership documents or manufacture of fraudulent HLP documentation.

### **4 Extensive damage to the property administration system**

Land registries are often damaged and/or destroyed as a result of violent conflict. Depending on the intensity of the conflict as well as the actors involved, official property documents are often altered without the consent of the legal rights holder and/or deliberately or accidentally dispersed, damaged or destroyed.

### **5 New forms of land administration in areas controlled by non-state groups**

Land and property transactions in areas under opposition control are often no longer registered through the formal state process, even if these were entered into by both parties out of their free will. The issuance of new documentation makes tracing such claims, or determining superiority where there are multiple competing claims to the same property, very difficult.

### **6 Widespread loss of HLP documentation among the displaced**

This makes it much more difficult to ascertain ownership rights, especially if in the meantime their property has become subject to secondary occupation. The loss of documents poses a specifically significant obstacle to vulnerable sub-groups of displaced populations, such as widows and members of minority groups.

### **7 Emergence of dispute resolution mechanisms outside the formal State court system**

In areas outside state control, HLP issues are often dealt with by informal institutions established by actors in control of those areas. These include both institutions with administrative responsibilities such as the regulation and management of property transactions, and entities with dispute resolution functions.

### **8 Exacerbated difficulties experienced by vulnerable groups in exercising their HLP rights**

Conflict and forced displacement heightens existing vulnerabilities faced by vulnerable groups in accessing HLP resources, such as female-headed households, widows or disabled and elderly persons.

### **9 Increase in HLP disputes**

In the context of conflict-induced displacement, disputes around property ownership and rental agreements, payment of utilities, etc. are very common. Disputes over rental agreements negatively affects the relationship between IDPs, contributing to tensions between IDPs and host communities. In addition, there are often multiple and overlapping claims over the use and occupancy of land and property by secondary occupants, illegal occupants, armed groups and others.

### **10 Changes to the ethno-demographic landscape of conflict-affected areas.**

Changes to the ethno-demographic landscape of conflict-affected areas with conflict situations often causing the formation of mono-ethnic blocks in areas that were multi-ethnic prior to the conflict. This can in turn prevent displaced populations from returning to their usual place of residence. This raises delicate questions for humanitarian actors providing assistance, especially shelter assistance, in areas where (ethnic) demographics have considerably changed since the beginning of the conflict.





- 1 The TWIG is a technical group established within the Shelter/NFI Cluster with the mandate to establish technical standards and guidelines and other technical tasks as requested of a majority of Working Group members.
- 2 The Global Protection Cluster's HLP Area of Responsibility (AoR).
- 3 Norwegian Refugee Council, 2016. "Housing, Land and Property (HLP) in The Syrian Arab Republic."
- 4 *ibid.*
- 5 Global Protection Cluster, 2013. "Emergency response to Housing, Land and Property Issues in Syria."
- 6 *ibid.*
- 7 Norwegian Refugee Council, 2016. "Housing, Land and Property (HLP) in The Syrian Arab Republic."
- 8 FAO, 2003, FAO Agricultural Policy and Economic Development Series No. 8: "Syrian agriculture at the crossroads," available at <http://bit.ly/2s3lVKq>
- 9 *ibid.*
- 10 For religious minorities (e.g. Christians, Druze and Jews) the communities' own laws are applied in many personal status matters, and inheritance rights and law differs accordingly. For example, under the 2006 Catholic personal status law, Catholic men and women were granted equal inheritance rights.
- 11 Japan International Cooperation Agency, 2006. "Gender Profile of the Syrian Arab Republic", Damascus, JICA.
- 12 Forced Migration Monitor, Undated. "Palestinian refugees in Syria", available at <http://bit.ly/2kxeaqt>
- 13 Research Centre for Palestinian Residency and Refugee Rights. Undated. "Profiles: Palestinian Refugees in Syria", available at <http://bit.ly/2suJezw>
- 14 Global Protection Cluster, 2013. "Emergency response to Housing, Land and Property Issues in Syria."
- 15 Dahi and Wind, 2011. "Syria's Agricultural Development. Current realities and historical roots", available at <http://bit.ly/2rT5a6a>

# HOUSING, LAND AND PROPERTY RIGHTS IN SHELTER DUE DILIGENCE GUIDELINES

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