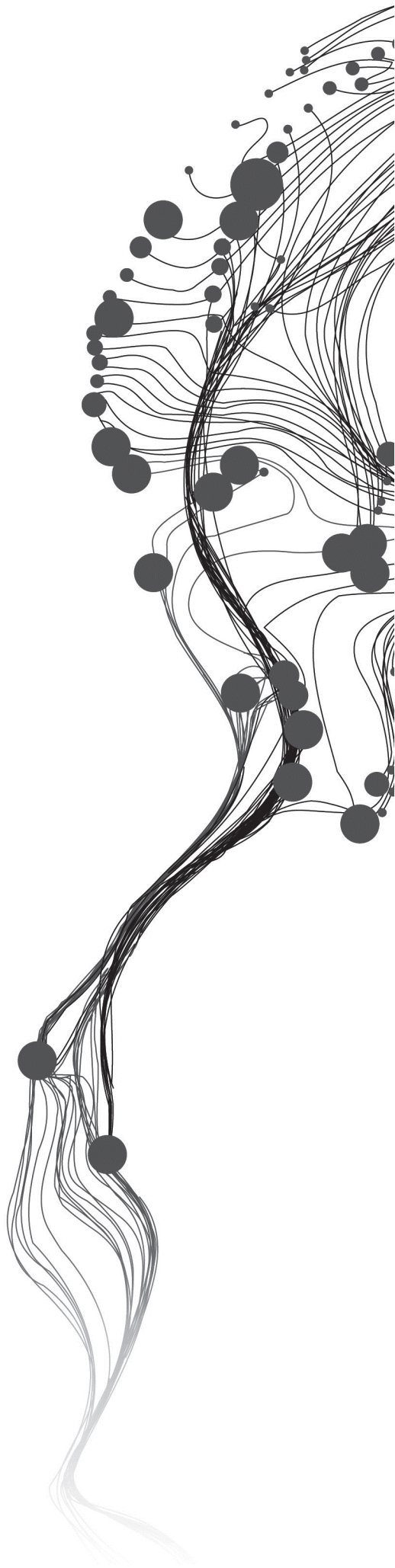


# **A Framework for Assessing Security of Tenure in Post- Conflict Contexts**

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March 2014

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Thesis submitted to the Faculty of Geo-Information Science and Earth Observation of the University of Twente in partial fulfilment of the requirements for the degree of Master of Science in Geo-information Science and Earth Observation.

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# ABSTRACT

Housing, land and property issues are increasingly being recognised as an important consideration in post-conflict contexts. A range of literature has been produced to provide guidance for actors responding in such contexts, however none of these specifically focus on assessment of tenure security. The present study aims to fill this gap.

The concept of tenure security is explored by reference to both academic literature and documents produced by international organisations (UN, donors and development banks). Existing perspectives and explanations of the concept are discussed in detail and the factors that influence tenure security are identified. A risk-based model of tenure security is developed and presented.

A review of academic papers and international assessment and monitoring initiatives identifies the methods and variables used to measure tenure security. The characteristics of the post-conflict environment are identified and discussed in terms of how they impact land management, tenure security and the constraints they pose in terms of conducting assessments.

It is concluded that although the concept of tenure security is fundamentally the same in both normal and post-conflict contexts, the range and complexity of issues found in the post-conflict period requires a more holistic approach to assessment. The post-conflict environment poses both challenges and opportunities for conducting assessments and therefore a flexible mixed-methods approach to data collection is suggested. The displacement of people from their homes during times of conflict creates further complexity such that some of the indicators of tenure security (e.g. perceptions) may not be easily transferable to the post-conflict context.

Finally, an assessment framework is proposed based on the risk-based model previously developed. This enables both an objective and subjective assessment of tenure security. A mixed methods approach to data collection is suggested including use of qualitative, quantitative and spatial data.

**Key Words:** *Assessment, Security of Tenure, Post-Conflict*

## ABBREVIATIONS

CESCR	Committee or Covenant on Economic, Social and Cultural Rights
CCPR	Committee or Covenant on Civil and Political Rights
IASC	Inter-Agency Standing Committee
IDMC	Internal Displacement Monitoring Centre
IHL	International Humanitarian Law
IHRL	International Human Rights Law
INGO	International Non-Governmental Organisation
HLP	Housing, Land and Property
HRC	Human Rights Council
HRBA	Human Rights-Based Approach
LADM	Land Administration Domain Model
LAS	Land Administration System
LIFI	Legal and Institutional Framework Index
LIS	Land Information System
LGAF	Land Governance Assessment Framework
MDGs	Millennium Development Goals
NGO	Non-Governmental Organisation
NRC	Norwegian Refugee Council
OCHA	Office for the Coordination of Humanitarian Affairs
PCNA	Post-Conflict Needs Assessment
PWG	IASC Protection Working Group
GIS	Geographic Information System
UNITAR	United Nations Institute for Training and Research
UNHCR	United Nations High Commission for Refugees
UIS	Urban Inequalities Survey
UXO	Unexploded Ordnance

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# 1. INTRODUCTION

## 1.1. Background and Justification

There were 32 on-going armed conflicts in 2012 (Themner & Wallensteen 2012), and like the majority of conflicts in the post cold war era, these were primarily intrastate in nature and largely involved developing countries (Ayooob 2001; Themner & Wallensteen 2012). One of the main characteristics of conflict is displacement and the United Nations estimates that there were approximately 42.5 million forcibly displaced people living worldwide in 2011 (UNHCR, 2012). This figure includes 15.2m refugees and 26.4m internally displaced persons (IDPs), with a further 14.8m living in displacement as a consequence of natural disasters (Yonetani 2012).

Given the different roles that land plays in people's lives it becomes an important consideration both during conflict and in the post-conflict period. Displaced communities require land for shelter either by spontaneous self settlement on state or private land, organised camps provided by humanitarian actors or integration into urban settings (Corsellis & Vitale 2005). In post-crisis contexts, as displaced communities seek durable solutions, land is also required for rebuilding damaged infrastructure and livelihoods. Issues of property restitution may come to the fore as people seek to return to their homes.

Conflicts can affect the operation of land administration systems in a variety of ways including loss of staff, physical infrastructure or documents. In the post-conflict period land administration systems may be stressed due to increased demand for services (Zevenbergen & Burns 2010). Conflict and displacement affect tenure security heightening the risk of forced eviction, confiscation, land grabs, abusive or fraudulent sales or occupation of land or housing (Rolnik 2012, para.92).

## 1.2. Research Problem

States and other actors are increasingly responding to complex emergencies where land matters and land conflicts need to be considered (Pons-Vignon & Lecomte 2004; USAID 2005), however many of those active in such contexts lack the required technical understanding of land issues. As noted recently by Pantuliano "despite increasing evidence that land is often a critical issue in conflict-affected emergencies and forced displacement and plays a key role in post-conflict reintegration and reconstruction processes, there is a perceived lack of humanitarian engagement on housing, land and property issues (2009, p.1)".

To fill this gap a series of guides have been developed to help support actors better understand land issues. These publications focus on a range of issues including land and conflict (Lewis 2004; Zevenbergen & Burns 2010; Pantuliano 2009), post-conflict and peace building in areas with land records (UN-Habitat 2007), land conflict and rural livelihoods (Unruh 2008), natural disasters (Fitzpatrick 2010) and disaster risk management (Mitchell 2012). These documents collectively provide a wealth of information to support humanitarian action and although most, if not all, make some reference to tenure security none specifically address the issue in depth. This study aims to fill this gap by reviewing the concept of tenure security, its relevance in post-conflict contexts and then proposing a framework to support better assessment and analysis.

### 1.3. Conceptual Framework and Definitions

#### 1.3.1. Land Administration and Security of Tenure

Land policies provide the overall framework to guide management of land in society. Land administration systems provide the infrastructure to implement the policies. Land administration can be defined as “the processes of recording and disseminating information about the ownership, value and use of land and its associated resources” (UNECE 1996, p.14). The importance of land administration systems to modern society suggests that they should be recognised as a ‘critical public good infrastructure’ in the same vein as transport and electricity networks (Bennett et al. 2013, p.92).

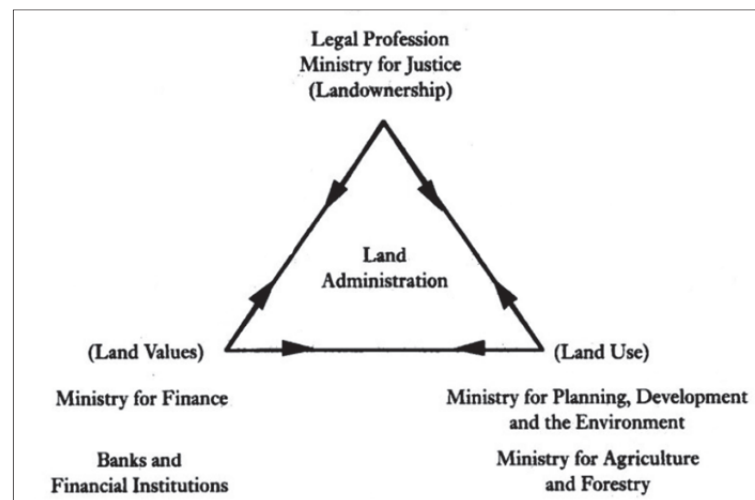


Figure 1: Land Administration (Dale and McLaughlin. 1999, p.9).

The administration and control of *Land Use* is implemented by planning, development and environmental regulation, typically through building regulations and zoning in urban areas. *Land Value* broadly covers issues related to land markets and taxation. Land and credit markets are usually regulated centrally whereas taxation of land and property is normally controlled by local government authorities.

The focus of this study is security of tenure, however before discussing and explaining security of tenure we must first define tenure itself. The working definition of tenure used in the research will be that provided by Palmer et al. being “the rules..[that]..define how property rights to land are to be allocated within societies. Tenure defines how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure determines who can use what resources for how long, and under what conditions” (2009, p.7).

Tenure security is defined as “the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it; the certainty that an individual’s rights to land will be recognized by others and protected in cases of specific challenges; more specifically, the right of all individuals and groups to effective government protection against forced evictions” (Payne & Quan 2008, p.5).

### 1.3.2. Conflict, Post-conflict and Early Recovery

There isn't a clear internationally agreed definition of the term 'armed conflict'. Upsala University defines it as "a contested incompatibility which concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths" (2011). The existence of an internal or international 'armed conflict' activates the application of International Humanitarian Law (e.g., the Geneva Conventions) and therefore considerable commentary exists and although the Geneva conventions and commentary by ICRC do not provide a specific definition, the recent *Tadic* case in the International Criminal Tribunal for the Former Yugoslavia (ICTY) currently offers the most widely recognised definition (International Law Association 2008). The Appeals Chamber in *Tadic* stated that an armed conflict "exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state" (ICTY 1995, sec.70). The 'legal' definition is consistent with a human rights-based perspective and therefore this is the preferred definition for the purposes of this study.

Different phases of conflict can be identified and Lund notes that these can be traced in two dimensions: intensity and duration (1996, p.40). Lund identifies three temporal categories: early stage, mid-conflict and late stage. The post-conflict period arises in the 'late-stage' as the intensity of the conflict reduces (see figure 9 in chapter 4). The start and end of the post-conflict period does not have clearly defined boundaries but can be characterised by a reduction in levels of violence, the return of displaced persons, re-establishment of civil institutions and in some cases the signing of a formal peace agreement (FAO 2005).

The UN has noted that the international humanitarian response to a conflict also has different phases making a continuum from emergency relief through rehabilitation and finally to development (UN General Assembly 1991). The term *early recovery* has been given to the period where emergency assistance starts to shift towards longer term rehabilitation and development perspectives (UNDP 2008). The early recovery period is therefore characterised by the simultaneous presence of both recovery and humanitarian needs.

### 1.3.3. Assessment and Monitoring

For the purposes of this study an assessment is defined as the "activities necessary to understand a given situation, [it] entails the collection..and analysis of data pertaining to the population of concern" (UNHCR 2006, p.4). The purpose of an assessment is therefore to gather data to improve situational analysis and understanding. Monitoring is the continuous and structured process of assessment *over time* and often tracks progress towards goals or against standards and benchmarks. Monitoring therefore entails a series of assessments overtime.

Assessments can vary in terms of their scope (the dimensions assessed), spatial extent (settlement, city, region, country, global etc) and temporal focus (past, present or future). The exact modalities that an assessment takes will depend on the objectives of the study, expected outputs and methodological issues related to data capture. Practical considerations such as cost and timing also play a major role in determining the extent of an assessment. Participatory assessments can be used to develop consensus, precipitate a dialogue or facilitate learning and exchange of best practices. Participatory monitoring can be used in governance programmes to improve accountability (Laksa & El-Mikawy 2009, p.8).

A framework is defined as “an underlying structure..outline, conceptual scheme” (Oxford University Press 2012). A tool is a “a practical method to achieve a defined objective in a particular context. More precisely, a tool facilitates decision processes based on knowledge to move from principles, policy and legislation to implementation” (GLTN 2012). An assessment framework is therefore defined as a tool providing structured guidance for undertaking assessments.

#### **1.4. Research Objective**

There is considerable literature and guidance pertaining to monitoring and assessment of tenure security. Guidance has been produced focusing on land matters in post-conflict contexts, however the current literature does not provide detail regarding assessment of tenure security. The research objective of this study is therefore:

*To propose a framework to guide assessment of tenure security in post-conflict contexts*

#### **1.5. Research Questions:**

- A. What are the characteristics of i) security of tenure, ii) post-conflict contexts and iii) security of tenure in post-conflict contexts?
- B. What methods are used to assess security of tenure?
- C. What constraints are faced in assessing security of tenure in post-conflict contexts?
- D. Which methods are most appropriate for assessing security of tenure in post-conflict contexts?

#### **1.6. Research Questions & Methodology**

The primary method used in this research is a synthesis of existing literature on security of tenure, post-conflict contexts and assessment of tenure security. Table 1 shows the methodology and expected outcomes for each of the research questions (below overleaf).

Research Question	Methodology and Outcomes
<i>A) What are the characteristics of</i> <i>i) security of tenure</i> <i>ii) post-conflict contexts</i> <i>iii) security of tenure in post-conflict contexts?</i>	Literature review - academic and international organisation papers  An understanding of: – the concept of tenure security and the characteristics and factors influencing it. – the characteristics of the post-conflict period. – the characteristics of tenure security in post-conflict contexts and common issues.
<i>B) What methods are used to assess security of tenure (from available literature and practice)?</i>	Literature review - academic papers and international organisation initiatives  Details of variables, tools, methods and approaches used to assess tenure security.
<i>C) What constraints are faced in assessing security of tenure in post-conflict contexts?</i>	Literature review of materials pertaining to assessment in humanitarian and post-conflict responses.  Constraints and opportunities from the post-conflict environment. Details of tools, methods and approaches used for assessment.
<i>D) Which methods are most appropriate for assessing security of tenure in post-conflict contexts?</i>	Synthesis of available literature Conclusions and Framework

Table 1: Research Questions and Methods

## 1.7. Structure of the Study and Research Framework

This study contains 7 chapters. The research framework is shown below in figure 2. After this introductory section, chapter 2 presents and reviews existing perspectives of tenure security including those available from academic literature and international organisations. The chapter concludes by presenting a summary of factors that influence tenure security, a working definition of the term that will be used in the assessment framework and a model to better understand the concept itself.

Chapter 3 reviews available literature pertaining to assessment and monitoring of tenure security, both from academic literature and attempts by international organisations to assess and monitor levels of tenure security. The proxy variables used to indicate the concept are identified along with a discussion of common tools and methods used to gather data.

Chapter 4 discusses the characteristics of the post-conflict period and how this impacts land administration and security of tenure. Chapter 5 then proceeds to review assessment in post-conflict contexts including a discussion of the constraints and opportunities of operating in such an environment.



Chapter 6 presents the proposed assessment framework and chapter 7 concludes the thesis by summarising the main findings of the preceding chapters.

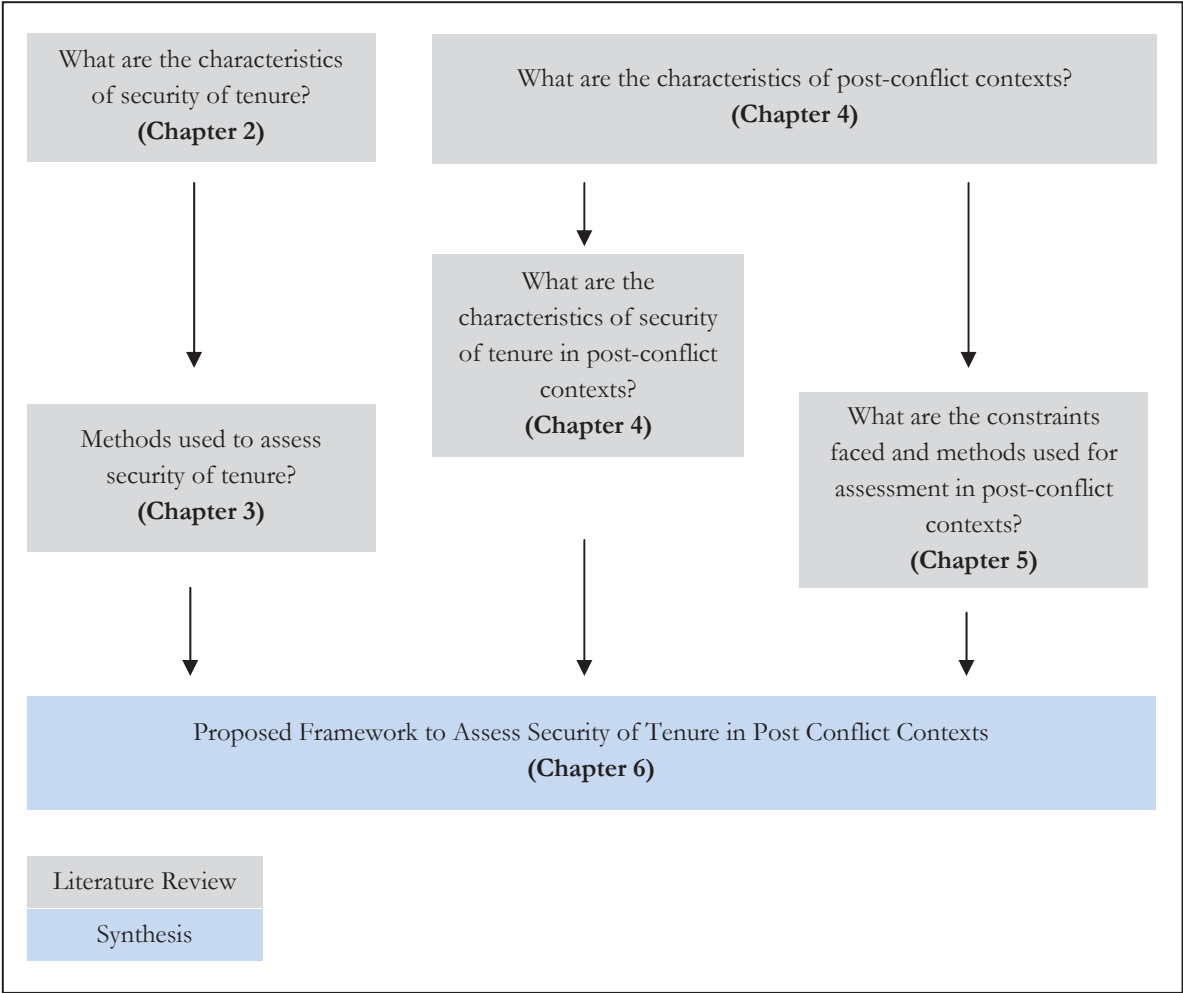


Figure 2 : Research Framework and Structure

## 2. SECURITY OF TENURE

This chapter seeks to answer research question A(i) (*What are the characteristics of security of tenure?*). The chapter begins with a brief discussion of the fundamental underlying concepts upon which security of tenure is founded, including property, land and tenure (section 2.1). The second section seeks to provide an overview of the broader institutional framework within which discussions of tenure security take place, including a review of the common challenges encountered in land administration (2.2). Section 2.3 describes and explores security of tenure in detail by examining a selection of definitions and perspectives drawn from a review of literature. Section 2.4 presents a new risk-based model of tenure security. Section 2.5 concludes the chapter by summarising the main characteristics of tenure security that have been identified in the literature review.

### 2.1. Land and Property - Origins, Distribution, Rights and Recognition

This preliminary section introduces a few underlying themes that commonly arise when discussing property. Debates regarding the nature of property date back many centuries, however as will be seen, many historic viewpoints remain relevant and some still continue to influence land policies, and consequently security of tenure, in the present day. These views often surface in debates regarding the distribution of property: To what extent is a person entitled to land? Should people be entitled to own large holdings that remain under-utilised? What role should the state play in allocating and managing land?

Two main historic schools of thought can be identified regarding the origins of private property. These are the *natural law* views of commentators such as Locke and Smith and the *positivist* views of those such as Hobbes, Hume and Bentham. Natural law proponents see the first origin of property as being related to personhood and something inherent in all human beings; tied to human dignity. Private property is derived from the application of one's of labour to the natural environment. Positivists tend to view property as a man-made construct developed to regulate the distribution of resources. Although, modern perspectives tend to be positivist in nature the natural law position still resonates with modern human rights discourse (see Cheneval 2006).

Modern discussions on the origins and meaning of property have tended to come from an economic perspective with authors suggesting that private property arises due to a scarcity of resources in the face of increasing population. Individual rights develop as they are the most efficient way of internalizing negative externalities and minimizing transaction costs (Demsetz 1967; Alchian & Demsetz 1973). This 'evolutionary' perspective sees private property rights as a vehicle to distribute scarce resources. This is a view echoed by North who defines property rights structures as the "underlying terms of exchange between rulers and constituents" (1981, p.206) .

Demetz emphasises that property rights arise as result of interaction with others, stating "in the world of Robinson Crusoe property rights play no role, property rights are an instrument of society and derive their significance from the fact that they help a man form those expectations which he can reasonably hold in his dealings with others" (1967, p.347). Private property simply does not exist unless there are different competing interests over a finite resource. This view highlights that property is a construct to facilitate dealings between individuals. It is a system of norms (and rights) recognised by society or in the language of North "humanly devised constraints that shape human interaction" (1981, p.1). Therefore, property institutions can only function effectively where there is a common understanding, recognition and

acceptance of the norms. Platteau notes that “if property has no social legitimacy, it is not property because it lacks the basic ingredient of property, *recognition by others*” (1996, p.46)[emphasis added]. As will be seen in later chapters these themes of recognition and legitimacy consistently recur in discussions related to security of tenure.

Another recurrent theme is the extent to which rights are respected and enforced. Bromley notes that “to have a right..is to have the capacity to compel some authority system to come to the defence of the specific interest associated with that right” (2009, p.21). Others note that one does not actually own property but rather “socially recognized rights of action” (Alchian & Demsetz 1973, p.17). Put simply, rights on paper are meaningless if in practice others do not respect them, and in case of challenges, one is unable to enforce them.

The state plays a fundamental role in enforcing property rights. Indeed for Locke this is the primary role of government “for the preservation of property being the end of government” ([1690] 2011 , sec.138). This view is also echoed by Smith who states that “where there is no property, or at least none that exceeds the value of two or three days labour, civil government is not so necessary” ([1776] 2012, bk.V, ptII, p.419). The existence of state-backed legal remedies and the threat of legitimate force are essential aspects of *legal* rights and therefore the state must have power, capacity and legitimacy in order to properly enforce rights.

One thing notably absent from the above discussion is reference to the term ‘land’. Land is a form of property and the terms are often used interchangeably. Economic literature in particular tends to use the term ‘property’, viewing land as an economic concept; as capital and a factor of production. Land does however possess characteristics which set it apart from other forms of property. Land is finite, cannot be destroyed and is immovable. As a consequence rights to land and usage are often shared, the metaphor of a “bundle of sticks” often being used to explain how rights can be shared among different individuals or groups over time (Simpson 1976).

The concept of land can be viewed from a number of different perspectives and these may vary from person to person and society to society. Razzaz notes how our perspective on a particular piece of land may change over time providing the example of low value rural areas that shift in use and value through urbanisation (1993, p.346). Land can also be seen, among others, as a commodity, factor of production, human right, deity, community/identity and as the environment (Williamson et al. 2010, p.40). Wachter provides six views of land from an economic perspective: space/situation, nature, property, factor of production, consumption good and capital (1992, p.5).

## **2.2. Common Challenges in Land Administration**

Tenure insecurity often arises due to a failure of land management policies and land administration systems, and therefore, as will be shown later, most assessments of tenure security require some understanding and analysis of the broader institutional environment. This often includes reference to the policy framework and functioning of the land administration system. This section discusses some of the most common challenges facing land administration systems, many of which influence tenure security. This section also introduces some themes that will arise in later analysis, including: plurality of regimes; performance and capacity; and corruption and institutional change.

UN-Habitat indicates that since 1950, the global urban population has jumped from 750m to more than 2.5bn, with 80% of the growth in the 1990s occurring in urban areas (2004a, p.13). Land administration systems struggle to cope with such demand and as a consequence there is a lack of enforcement and protection of rights and this has led to the development of slums in many cities (Durand-Lasserve & Selod 2007, p.6). One of the main consequences of a weak land administration system is an increased level of informality. Informality exists where assets or activities “lack legal recognition by the state, [or are] unrecognized by law or illegal in the sense of incurring civil or criminal sanctions” (Bruce et al. 2007, p.11). In plural systems “alternative formality” is perhaps a more appropriate term in recognition that there are alternative sources of recognising authority, such as customary institutions (van den Brink et al. 2006).

Only a minority of countries have fully operational land administration systems covering their entire territory and an even smaller number possess anything approaching the concept of the modern multi-purpose cadastre. It is estimated that most developing countries have less than 10% of parcels documented (Augustinus 2003, p.25)<sup>1</sup>. Land rights are also unevenly distributed, most notably by gender with estimates from census data suggesting that women own less than 20% of agricultural land (FAO 2010).

### **2.2.1. Plurality**

Many land administration systems are in a state of evolution and ‘formal’ regimes (common law / statutory) co-exist with customary regimes. The way the different regimes interact varies across jurisdictions and three policy approaches to plurality can be identified: *replacement*, *adaptation* and *dual-tenure* (Arko-Adjei 2011)<sup>2</sup>. *Replacement* models require that land held under customary tenure be formalised, with the intention to facilitate the creation of land markets and spur economic development. This usually involves replacement of customary tenures with those based on western concepts of freehold and leasehold. *Adaptation* models involve recognition of customary systems based on some degree of decentralised control. Such approaches are based on the premise that customary systems are able to evolve over time according to the prevailing context and will, given time, adapt sufficiently to be incorporated into the formal system. *Dual tenure* systems promote the co-existence of different regimes. Fitzpatrick (2005) identifies a range of approaches for dual-tenure systems from the minimal, involving recordation of group level rights (in order to protect the integrity of boundaries from outsiders) through to the full legal incorporation of groups.

In many contexts the interaction between the different regimes is not fully addressed in law or policy and this can lead to uncertainty, conflict and tenure insecurity (Alden Wily 2008; Toulmin 2009; Törhönen 2004).

### **2.2.2. Performance and Capacity**

Those states seeking to formalize rights face considerable challenges developing, implementing and operating appropriate land administration systems. Titling programmes can be very costly, take considerable time to implement and require continued political support and stability. For example, the successful titling programme in Thailand was planned over 20 years and had 3-5000 personnel deployed for long periods (Payne et al. 2007, p.27).

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<sup>1</sup> This data was reported in 2003 so the figure will have since increased.

<sup>2</sup> Arko-Adjei identifies four approaches differentiating between models that replace existing tenures with that of de Soto which simply formalizes the *de facto* position.

There are many examples of titling programmes that have failed to achieve the coverage expected at project outset. For example, challenges in administrative capacity meant that the titling programme in Indonesia had registered only 30% of plots after forty years of operation (Payne et al. 2007, p.27). Similar challenges were experienced in Uganda where the structures envisaged for administration of titles were not set up due to resource constraints (Deininger & Castagnini 2006, p.6). In many rural locations, particularly in Africa, titling programmes have faced challenges due to the rural population's desire to remain within customary systems (Toulmin & Quan 2000, chap.1).

Another common problem is the use of overly bureaucratic, complicated or inaccessible formal procedures. De Soto notes that adjudication of state land in Peru took on average 43 months involving 207 administrative steps and 48 different government offices (2002, p.136).

The legitimacy and uptake of formal land administration systems is undermined by corruption or inefficiency thus encouraging or forcing people to revert to, or remain in, situations of informality. Much recent emphasis has therefore been placed on improving the efficiency and governance of land administration systems and identifying low-cost scalable solutions for titling programmes.

### **2.2.3. Corruption and Institutional Change**

Reform and development of land institutions can be slow and difficult, not only due to the technical complexities involved, but also due to the range of stakeholders affected and the existence of vested interests. Historical accounts of the development of the English system and the introduction of the Torrens system in Australia demonstrate how the vested interests of land administration professionals, notably lawyers and surveyors, can delay the introduction of reforms (Simpson 1976 chaps 3&5; Dowson & Sheppard 1952 chap IV). More recent experience demonstrates that such interests continue to influence attempts to modernize land administration systems (Bloch et al. 2003; Bruce et al. 2007).

Corruption is a significant problem within many land administration systems, with Transparency International research finding that only the police and the judiciary have higher levels of bribery. 34% of people surveyed felt that corruption in land authorities was a 'serious problem' (2011). It should be noted that such issues are not confined to less developed contexts and also affect wealthy nations (Van de Molen & Tuladhar 2007). Corruption within land administration systems reduce effectiveness and push people towards situations of informality. These experiences have led to an increased focus on what is being termed 'land governance' with both the FAO and World Bank recently engaging in this area (see section 5.4 below).

## **2.3. Perspectives on Tenure Security**

This section presents the main 'models' or 'perspectives' of tenure security found in existing literature. The literature review was undertaken during a six week period in September and October 2012. Documents were selected using a 'backward spider' method searching relevant citations, the starting points for which were the World Bank report "*Land Policy for Growth and Poverty Reduction*" (Deininger 2003) and the UN-Habitat document "*Secure Land Rights for All*" (Payne & Quan 2008). Existing literature reviews by Payne et al. (2007) and Durand-Lasserve & Selod (2007) were also invaluable and are therefore often referenced. Major themes specifically *excluded* from this review are those related to 'land grabbing' and the climate change. This was necessary due to time limitations and the need to prioritise the themes felt most likely to be relevant for post-conflict contexts

The literature reviewed often focuses exclusively on one sector, either rural or urban (and agricultural development or slum upgrading respectively), and while recognising that there is considerable difference between these fields, there is also considerable overlap as regards tenure security. Furthermore, those operational in post-conflict contexts will find themselves working in urban, peri-urban and rural locations and hence, to be of most practical application, both rural and urban contexts are included in this review.

### 2.3.1. Securing Tenure through Title

An economic conceptual framework explaining the benefits that derive from secure title was developed by Feder based on a study of a rural titling programme in Thailand (1987, p.166; Feder & Feeny 1991; Feder & Nishio 1998). This study compared the position of farmers squatting on forest land with those that owned titled land<sup>3</sup>. The research showed that farmers with title were able to access more and cheaper credit than their untitled counterparts, that they invested more in their land and had higher capital-to-land ratios (1987, p.169). This conceptual framework, which focused solely on credit and investment effects of title, has been further developed and expanded to incorporate other effects of titling (Deininger & Feder 2009). These benefits have been classified as *Assurance*, *Collateralization* and *Realizability* effects (Brasselle et al. 2002, p.374). From review of the literature two further classifications can be added: *Social effects* and *governance effects*.

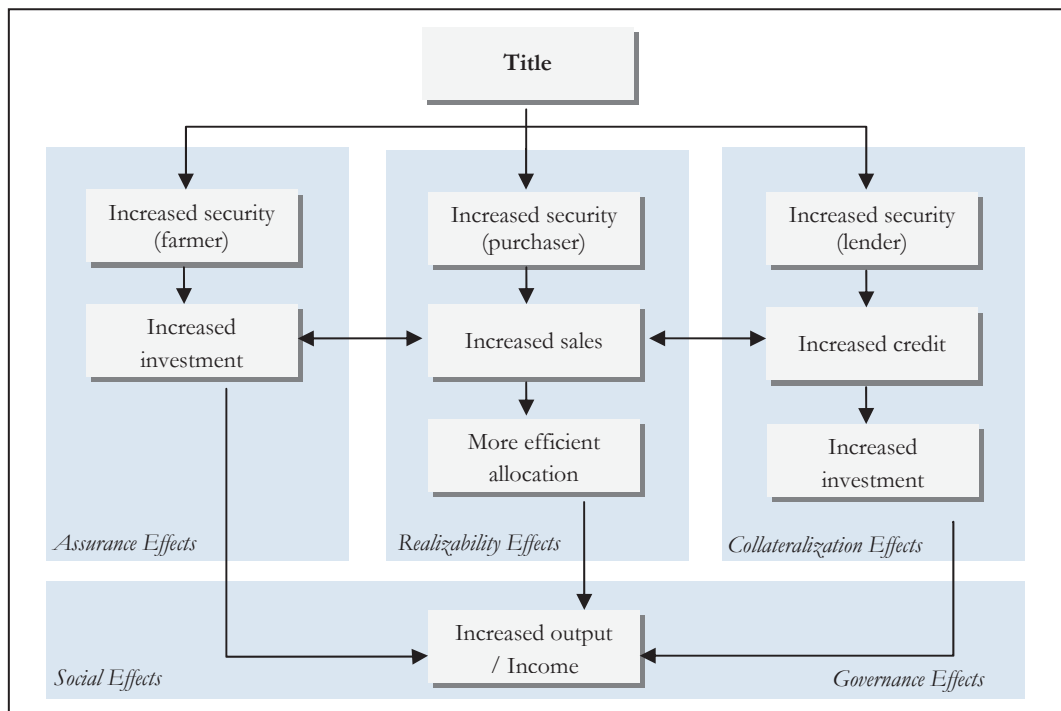


Figure 3: Conceptual Framework – benefits of security of tenure arising from titling (adapted from Feder (1987)).

*Assurance effects* refer to the additional investment a rights-holder will make when they *perceive* that they have secure rights. They will invest more because they know their investments are safe. Studies in rural areas have shown that title is correlated with increased agricultural inputs and investment in land (Feder 1987; Alston et al. 1996; Li et al. 1998). Jacoby et al. found increased long term investments in land were

<sup>3</sup> In this study only 12% of land not claimed by the state was covered by *full* title (P167). The study actually examined the position of farmers with lesser forms of recognition namely 'Certificates of Use' or 'Exploitation Testimonials'.



correlated with reduced risk of expropriation (2002, p.1434). Studies in urban areas also demonstrate a strong link between title and investment in housing (Cantuarias & Delgado 2004, p.9; Field 2005; Galiani & Schargrodsky 2006).

Although many studies confirm this effect, some have noted issues of causality whereby investment is made in order to improve tenure security (Besley 1995; Sjaastad, & Bromley 1997; Brasselle et al. 2002). This is particularly the case in some customary areas of Africa where trees are planted in order to demonstrate long term rights and increase the legitimacy of claims (Besley 1995). It has also been witnessed in urban areas, where planning controls restrict settlement on government land, squatters engage in rapid weekend construction to take advantage of rules that restrict clearance of completed buildings (Razzaz 1993; Balamir 2002).

*Collateralization effects* derive from increased access to formal credit. Land titles can be used as collateral against loans thereby reducing bank lending costs. Feder found that owners of titled land had increased access to formal credit (ranging from 52-521%) and further that this credit was much cheaper, with informal credit being three times more expensive (1987, p.169). Following titling programmes in Peru, Cantuarias & Delgado found that the number of mortgages increased by 106% between 2000 and 2003 and formal credit increased 47% in the same period (2004, p.10).

The majority of studies reviewed fail to find empirical evidence to confirm the credit effect (Bruce & Migot-Adholla 1993; Brasselle et al. 2002) and where an effect is identified the benefit often only accrues to larger and wealthier producers. It is felt that this is because banks evaluate loan requests according to the ability to meet repayments rather than solely considering the amount of collateral available (Carter & Olinto 2003; Place & Migot-Adholla 1998; Galiani & Schargrodsky 2006).

*Realizability effects* relate to the operation of land markets. Land titles reduce the transaction cost of impersonal exchanges between unknown buyers and sellers (purchasers can have more confidence that the seller owns what they are purporting to sell). This is because information asymmetry is reduced and both parties have reference to a commonly recognized set of formal norms and enforcement mechanisms. This means buyers and sellers can conduct business with strangers thereby increasing the number of possible actors in the marketplace. A more efficient market (due to reduced transaction costs and an increased number of actors) facilitates the transfer of property to those who use land most efficiently. The realizability effect is also linked with assurance and collateralization effects. Owners may invest more in land if there is an efficient market in which they can capitalize their gains. Lenders are also able to repossess property from defaulters and sell it to liquidate outstanding debts.

The empirical basis for this effect is mixed. In Uganda, the market was shown to provide land for those arriving into a new area from other districts (Baland et al. 2007, p.30), while Deininger & Jin found that the rental market in China redistributed land to those with higher agricultural ability (2005, p.257). Lanjouw & Levy, in a study in Paraguay, found that those without title transact within a more restricted group, usually within the community or family. They found that only 38% of property owners felt able to contract with an outside buyer (2002, p.1003), and further, the ability to transact was influenced by the relative vulnerability of the parties, for instance none of the sampled female headed households felt able to rent out property in absence of title (2002, p.1008).

Allocative effects may be muted in locations where there is residential immobility, for instance where people view property as a family home and investment for children (Varley 1987, p.458; Gilbert 1999; Gilbert 2002). This would also be the case in customary areas where sale of land to outsiders may be

prohibited (Bruce 1985, p.35). In many cases the property market leads to an increased concentration of holdings and this may put rural land in the hands of a few large farmers (Deininger et al. 2003, p.1394). Rural land may be bought by urban elites speculating for capital gains which takes land out of productive use (Adoko & Levine 2007; Benjaminsen et al. 2009). Concentration can occur as residents ‘cash-in’ on the windfall from rising land values choosing to move on to other informal settlements (Kagawa & Turkstra 2002, p.68) or they are forced to make ‘distress sales’ in order to meet family financial obligations such as for educational or health needs (Bruce 1985; Place et al. 1993; André & Platteau, 1998). This results in the ‘gentrification’ of poor neighbourhoods or informal settlements (Doebele 1987; Fernandes 2002; Cohen 2009). This process has also been referred to as market-driven displacement (Durand-Lasserve & Selod 2007, p.27).

Secondary *social effects* derive from the beneficial impacts the other effects have on income and well-being. This is thought to arise through the realisation of investments made from property sales and/or a reduction in time and expenditure spent defending rights or engaging in litigation. Better living conditions as a result of increased investment in housing may lead to improved health, education and consequently income. For instance, titles have been correlated with an increase in the number of hours worked, an increased probability of working outside of the home and a reduction in the probability of child labour (Field 2003a, pp.51–52). In China, titles were correlated with increased labour mobility allowing people to take jobs in cities (Mullan et al. 2008, p.19). Provision of title has been linked to improved education, reduced household size and improved weight-for-height scores in children (Field 2003b, p.23; Galiani & Schargrodsky 2004, p.19; Galiani & Schargrodsky 2006, pp.21/30).

*Governance effects* arise due to improvements in the operation of property institutions. Recognition of rights may result in increased tax revenues (Payne, et al. 2007, p.24, citing data from Burns[2006]), clarification of responsibility between stakeholders in plural regimes and an increased level of activity within the sphere of the ‘formal’ system where the rule of law operates. Some studies report increased perceptions of social inclusion and recognition among recipients of titles (Payne et al. 2007, p.9). The literature is generally supportive of social and governance effects, however the main challenge with these indirect effects is one of attribution (Payne et al. 2007; Durand-Lasserve & Selod 2007).

The original Feder research paper does not expressly define tenure security instead referring to ‘ownership security’ which, in the Thailand context, was certainty regarding the continued use of farm land by cultivators (1987, p.164). This definition therefore suggests that tenure security concerns the risk of losing of rights. Under the Feder model a farmer with secure rights will feel confident to invest in the land, potential purchasers and banks will be certain regarding ownership and rights will be recognised by the state.

In subsequent papers Feder expands the definition of tenure security beyond mere certainty regarding ownership and risk of loss (Feder & Noronha 1987; Feder & Nishio 1998). Feder and Noronha differentiate between security that “refers to the ability to use land for a certain period and for a defined purpose without disturbance” and security that refers to the “ability of an occupant to undertake land transactions that would best suit his interests - for example, to offer land as collateral for a loan” (1987, p.158). This definition of tenure security draws on economic perspectives of property whereby, in order to provide maximum utility, rights should be exclusive, transferable, specified clearly and completely enforced (Wachter 1992, p.9). Wachter makes a similar distinction to Feder and Noronha identifying three forms of tenure *insecurity*: “insecurity of tenure in the literal sense; lack of access to credit; [and] lack of behavioural incentives to work and to invest” (1992, p.21).



In conclusion, the Feder conceptual model provides a good vehicle to identify and explain some of the possible benefits of secure tenure. The definition of tenure security developed by proponents of this approach is expansive and aligns with economic perspectives of property to include the breadth of rights held, including factors such as control, transferability and exclusivity. Of the effects presented in the model, the investment effect is the one most supported by research. The collateralisation effect is perhaps the least empirically supported. There are mixed results for realizability and allocative effects. Some of the conflicting research results arise due to the varied definitions of tenure security and indicators used in subsequent research (Durand-Lasserve & Selod 2007, p.24; Payne et al. 2007, p.6; Place n.d.).

Although perhaps a slight simplification, a subtle underlying assumption of this perspective is that only those formal rights existing in law (*de jure*) are recognised and therefore secure. In other words, tenure security is synonymous with formal title. As will be seen in the next chapter, this perspective is apparent in studies and monitoring frameworks that use tenure or title as an indicator of secure tenure.

### **2.3.2. An Incremental Perspective of Secure Tenure**

The incremental perspective of tenure security was developed in response to the perceived negative consequences that can arise from titling programmes. This perspective posits that many of the hypothesized benefits that derive from title as presented in the Feder model can be attained in other ways short of acquiring full formal title. This approach is not against titling *per se*, but rather it emphasizes smaller intermediate steps in order to minimize the possible negative side-effects of titling. Taking gradual steps towards increasing formality is also reflective of the methods used by the poor to develop and improve their housing situation in many developing countries. Houses are built and improved as and when funds are available over many years (Turner 1967). This perspective is also complementary to evolutionary or adaptive approaches to customary tenure (see section 2.2.1 above).

The incremental perspective recognises the same benefits of tenure security provided in the Feder model, however it challenges the underlying assumption that informality is automatically equated with insecurity. This perspective recognises that informality can often provide a degree of tenure security and therefore, rather than there being a dichotomy between the secure/insecure, formal/informal, or legal/illegal, a continuum of security exists (Razzaz 1993; Payne 2001). Each tenure category provides some degree of security that will be “above zero and below full security”, Payne noting that even full freehold title is, to some extent insecure, as it is restricted by state powers of eminent domain (2004, p.172). Therefore a continuum of informality or ‘illegality’ is recognized considering the diversity of real-world situations<sup>4</sup>. The model still generally equates legality with security but recognises the various shades that this may take in practice.

This incremental perspective recognises that one can often possess *de facto* security even though one lacks legal (*de jure*) security. For example, squatters on state land may have lived in a location for a long time thereby attracting considerable legitimacy to their claims and reducing the risk that the state would seek to evict them. Conversely, it is also possible to have *de jure* rights that are unprotected resulting in a state of *de facto* insecurity. This may arise where the land administration system lacks the capacity to enforce rights, a

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<sup>4</sup> Terms such as ‘extra-legal’ have been coined to denote those circumstances where there is a lack of culpability or where an infringement is of a relatively minor nature. Consider the differences between a failure to update a title document after inheriting land; a failure to follow complex, inappropriate and bureaucratic building regulations; and an intentional seizure of private land by military personnel for private gain. The resultant tenure situation in all cases will technically be one of ‘illegality’.

good example would be where a bank is unable to repossess or sell the property of a defaulter due to widespread community dissent and protest.

Recognition of *de facto*, but informal, tenure security implies that state sanction is not the only source of security thereby emphasizing the role that social and community relationships play in the recognition of claims and rights. Tenure security therefore not only depends on well defined secure rights but also on “cultural, political and historical processes” (Van Gelder 2010, p.450). Rights and claims are built, legitimized and protected by social links, community and the broader society as a whole.

Payne has developed a typological framework<sup>5</sup> to aid the recording, presentation and analysis of the tenure situation within a given context (figure 4 below). Under Payne’s framework each available tenure category is noted and placed on a continuum of increasing tenure security with the property rights for each noted according to gender (property rights are not shown in figure 4. A full presentation of the model is presented in annex M).

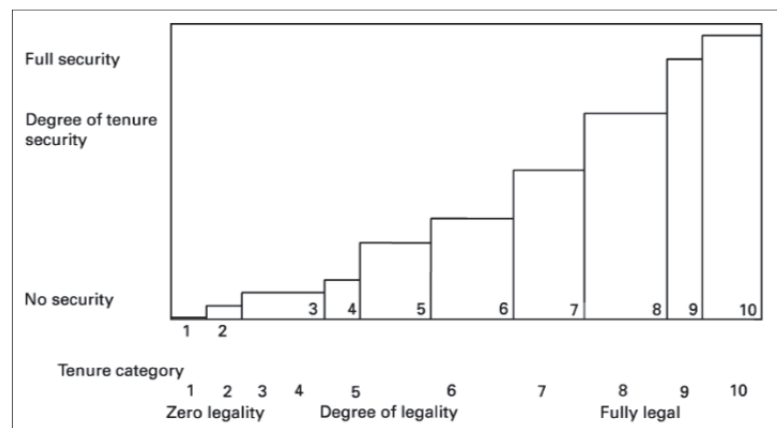


Figure 4: Tenure Security Continuum (Payne 2001, p.419).

This approach makes a distinction between “tenure status (the mode by which land or property is owned or held) and property rights<sup>6</sup> (what one is permitted to do with such land or property)” (Payne 2004, p.169). Property rights show the extent or breadth of specific rights, particularly useful in highlighting differences related to gender, whereas ‘tenures’ represent groups of real-life (*de facto*) circumstances as well as legal tenures (e.g. they include ‘homeless’ as well as ‘freehold’). The tenure categories used are those provided by UN-Habitat<sup>7</sup> and are in order of assumed increasing security, although Payne stresses that these should be determined by the local context and therefore the tool is intended to support detailed analysis of a given situation rather than cross comparison of different contexts.

<sup>5</sup> The UN-HABITAT representation of this model provides named tenures with freehold appearing as the most secure and customary tenure as less secure (Payne & Quan 2008, p8). This formulation of the model is rejected because it implies that formal tenures are automatically more secure than customary/informal tenures. This is not the case in every context.

<sup>6</sup> The range of property rights identified are: occupy/use/enjoy, restrict, dispose/buy/inherit, develop/improve, cultivate/produce, sublet, sublet and fix rent, pecuniary, to access services, to access formal credit and to enforce.

<sup>7</sup> These include, among others: homeless, documented and undocumented irregular tenures (*illegal subdivisions customary rights, tenancy at will*) and documented and undocumented formal rights (*registered-freehold, leasehold, unregistered-leases, group-customary, family, religious*).

While this perspective recognises the importance of perceptions of tenure security on behaviour this factor does not feature prominently in discussions of the continuum nor in its visual representations. The assessment of tenure security provided by the typology is therefore an ‘objective’ assessment of the context.

Payne and Quan define tenure security as “the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it; the certainty that an individual’s rights to land will be recognized by others and protected in cases of specific challenges; more specifically, the right of all individuals and groups to effective government protection against forced evictions” (2008, p.5). This definition has similarities with that of Feder, relating tenure security to confidence and certainty of rights and making reference to economic benefits, however it further clarifies the concept by bringing in themes of ‘recognition by others’ and effective ‘protection’ by the state in case of challenges.

In conclusion, this perspective highlights that informality can provide a degree of *de facto* security. This view also implies that recognition and security can be derived from multiple sources, and not solely from the state. The broader community plays a role in legitimizing and recognizing rights. This perspective also highlights that a variety of other factors, beyond ownership of title, influence tenure security. This includes things such as duration of occupation; social cohesion and socio-economic characteristics of the broader group; settlement or spatial characteristics; and the level of political affiliation and support (see figure 8 below for a full list of factors).

The caution advocated by this perspective is reminiscent of the ‘do no harm’ principle used by humanitarian actors and can be seen as a defensive strategy to try and limit possible negative side effects of titling with an emphasis on protection of existing rights. This incremental perspective is also consistent with a rights-based approach using a broad conceptualisation of HLP rights. Protecting whatever limited *de facto* rights may exist as a first step, emphasises the ‘progressive realisation’ of rights and places responsibility on the state to *respect* and *protect* rights (see section 2.3.4 below).

Finally, the analysis provided by Payne emphasises the heterogeneity of the poor and the differential effects that land policies can have on different groups, thereby highlighting the importance of undertaking detailed and targeted assessments.

### **2.3.3. A Tripartite View: de facto, de jure and perceived tenure security**

A number of authors have identified the importance of an individual’s subjective perception of their own tenure situation as this is what ultimately influences their behaviour (Doebele 1987; Payne 2001; Broegaard 2005). Van Gelder suggests that tenure security should be “viewed as a composite concept with three constituent elements: the perception of the dweller with regard to his situation, the legal status of his tenure and the *de facto* conditions” (2010, pp.452–453). He notes that it is the interplay and relative relationships between *perceived*, *de facto* and *de jure* tenure security that affect outcomes.

Van Gelder distinguishes one’s perception of the probability of eviction (or loss of rights) from the “objective likelihood of that risk” (2010, p.451). This recognizes that an individual’s subjective evaluation of risk may be objectively inaccurate, for instance, due to a lack of information. Van Gelder further differentiates between the *perception of risk of eviction* and the *fear of eviction*. He develops this distinction using research from the field of social psychology on decision making under uncertainty. He notes that decision

making is often not only based on a logical assessment of the pros and cons of alternatives, but rather we are also led by ‘gut feelings’ (2007, p.222). He refers to these as *thinking states* (objective decision making) and *feeling states* (gut feelings). Moreover, he notes that there can be a divergence in these positions citing the example of an irrational fear of flying or underestimating the dangers related to driving (2007, p.222).

Treating *perception of risk of eviction* as a separate variable from *fear of eviction* Van Gelder found that investment effects among squatters in Argentina were primarily driven by fears of eviction rather than from an objective assessment of the risks (2007,p.227). This is a very interesting perspective for the topic of this research as it bears directly on decision making in 'uncertain' situations, uncertainty being a characteristic of post-conflict contexts. This perspective is also complementary to the findings of Landjouw and Levy (2002), mentioned above in section 2.3.2, where personal characteristics were seen as factors determining relative perceptions of tenure security.

An emphasis on perceived security of tenure is valuable for three main reasons. Firstly, it introduces the element of subjectivity. It is therefore possible to make an *objective* and a *subjective* assessment of tenure security. Secondly, subjective perceptions can differ from an objective assessment. There may be issues of access to information or a person may hold perceptions based on fear. Thirdly, as Van Gelder and Broegard both note, tenure security is a “composite concept” (2010, p.452; 2005, p.850). It is therefore the interplay between a wide range of variables that determines the level of tenure security, both objectively and subjectively assessed.

#### **2.3.4. A Human Rights-Based Perspective**

International normative provisions on security of tenure can be found in article 11 of the International Covenant on Economic, Social and Cultural Rights (CESCR, 1966) where it is a component of the right to adequate housing. The Committee on the CESCR defines adequacy of housing as comprising seven elements, namely; legal security of tenure, availability of services, affordability, habitability, accessibility, location and cultural adequacy (1991, para.8). The committee provides that tenure:

“takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats” (1991, para.8).

The Committee has defined ‘forced eviction’ as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate form of legal or other protection” (1997, para.3). Conversely an eviction is not forced if carried out in “accordance with the law and in conformity with the provisions of the International Covenants on Human Rights” (1997, para.3). These provisions include a range of procedural protections such as the supply of legal aid and ensuring that evictions do not result in people being rendered homeless (1997, para.16). States should also follow general principles of reasonableness and proportionality (1997, para.14).

The right to adequate housing under the CESCR is a positive right and states have an obligation to “take steps..to the maximum of available resources...with a view to achieving progressively the full realization of rights” (1966, art.2(1)). The Committee on the CESCR, has provided guidance on state obligations in

General Comment 3 noting that states have “a minimum core obligation to ensure the satisfaction of, at the very least, *minimum essential levels*” of each right (1990, para.10). States are obligated to ensure that support is prioritised to target the most vulnerable (1990, para.12). The Committee also makes reference to incremental approaches to securing tenure indicating that states should take immediate steps which would “only require the abstention by the Government from certain practices and a commitment to facilitating ‘self-help’ by affected groups” (1991, para.10).

The human rights-based perspective is valuable because it emphasises the responsibilities of ‘duty bearers’ and the entitlements of ‘rights-holders’. State obligations to *respect, protect and fulfil* rights (Eide 1987) provides a particularly good framework to highlight the role of the state in contexts where resources are limited. The duty to *respect* limited *de facto* rights is supportive of a broad conceptualisation of property rights and the incremental approaches advocated by Payne.

The Rapporteur on the right to adequate housing has identified gaps in the guidance provided in international commentary on the CESCR and is currently in the process of developing further guidance to clarify the nature of state obligations as they pertain to tenure security. This may include providing a fuller definition of what a *minimum essential level* of security of tenure is; what it means to provide ‘*legal tenure security*’; and what ‘*most exceptional circumstances*’ entails with regard to evictions (Rolnik 2012, paras.52, 55–57, 60–61).

When seeking a definition of tenure security one approach may be to define it purely in terms of state obligations, the Rapporteur has noted “as a minimum this should encompass a) legal protection from forced eviction, harassment or other threats; b) recognition - legally...of the right to live in a secure place in peace and dignity; and c) justiciability - in other words, security of tenure must be enforceable” (Rolnik 2012, para.69).

A final point, raised by the recent work of the Rapporteur, is to ask how a right to tenure security should be protected when it conflicts with a right to property e.g. competing claims between a squatter and a private landlord (Rolnik 2012, para.68). These difficult questions demonstrate that providing tenure security often involves the need to reconcile different competing claims. This reflects the discussions above regarding the essential nature of property being related to competition over finite resources.

### **2.3.5. Other Perspectives – Vulnerability and Risk**

The sustainable livelihoods framework (figure 5) was originally developed as a conceptual methodology for understanding and analyzing the situation of the poor (Ashley & Carney 1999) but has also been used to support analysis of tenure security in conflict contexts (Unruh 2004; Unruh 2008) and urban regulations (Majale & Payne 2004).

Unruh, applying the framework to post-conflict contexts, notes that “by itself land as an asset has little utility apart from short-term extraction activities. It is the mix of land with human and social capital where tenure security emerges” (2008, p.110). This echoes the view that private property derives from the application of one’s labour to the natural environment (section 2.1). Unruh’s conceptualisation of tenure security places emphasis on the role other actors play enforcing and providing legitimacy to claims and rights. He notes that “tenure security is ultimately a product of the mix between natural, human, social and political capital. In this context tenure security is to a large degree less about the rights possessed by a particular individual, than it is about the respect for those rights that a community provides” (2008, p.108).

The sustainable livelihoods framework helps analysis of the capacity of a population and how this affects their interactions with the broader institutional environment. The framework is particularly useful in helping identify the factors or 'assets' that may influence the vulnerability of an individual or community.

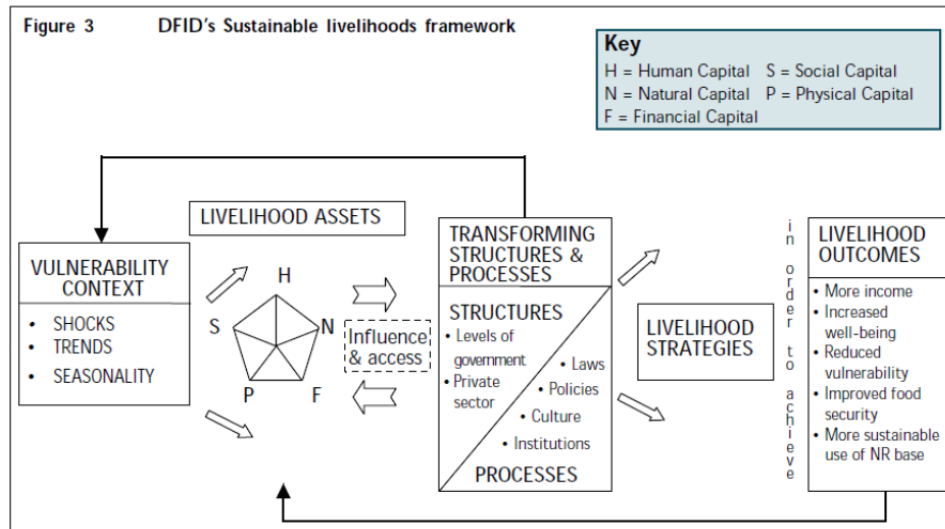


Figure 5: Sustainable Livelihoods Framework (Ashley & Carney 1999, p.47).

Palmer uses a risk management perspective when reviewing possible approaches to reducing the risks associated with land transactions (1998). In terms of tenure security, Palmer argues that people obtain security from different sources and use a variety of techniques to manage the risks they face. Palmer notes that people switch between different sources of security depending on an evaluation of their own situation and therefore this has implications when introducing new 'security products' such as formal title. Palmer's work is interesting for a number of reasons. Firstly, he introduces the concept of risk management into discussions of tenure security. Secondly, he emphasises that people obtain security from multiple sources, and further, that use of these different avenues will vary over time depending on the marginal benefits they perceive between the options available to them.

## 2.4. A Risk-Based Perspective of Tenure Security

A risk-based perspective of tenure security is presented below (figure 6) which draws on the concepts, language and definitions used in the field of (disaster) risk management. Risk is determined by evaluating the level of hazard (the threat), the 'elements at risk', their exposure and the vulnerability of those likely to be affected (van Westen 2013). *Exposure*, *elements at risk* and *vulnerability* are equated with the '*object - right - subject*' structure found in the Land Administration Domain Model (Henssen 1995; Lemmen 2012).



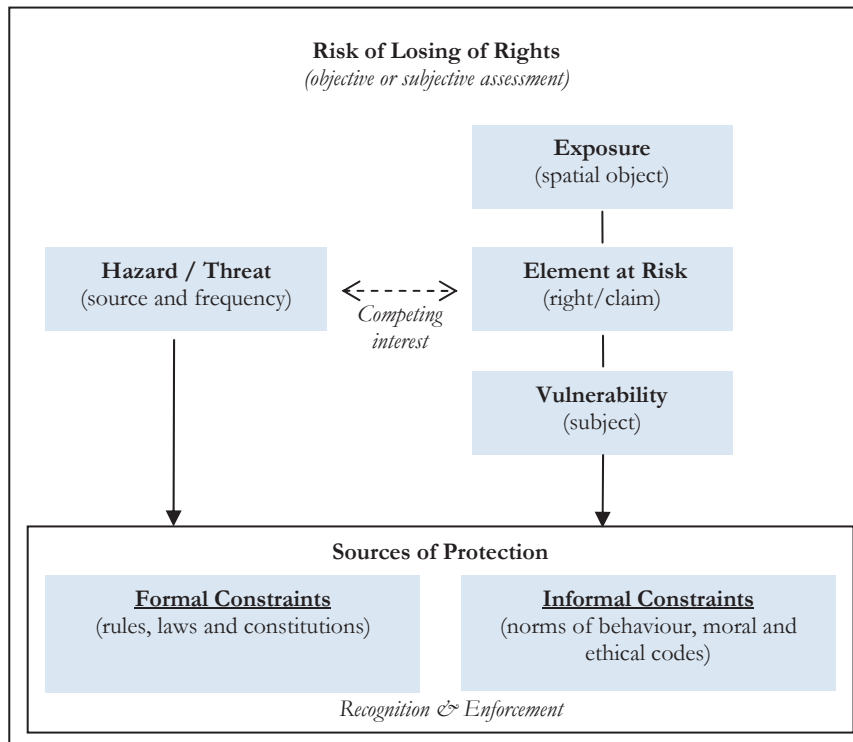


Figure 6: A Risk-Based Perspective of Tenure Security

In the above model the *Hazard* is the person or body that is competing for the rights in question. As land is finite, hazards ultimately arise from competition over, and allocation of, scarce resources. The main hazards encountered in the reviewed literature derive from private persons, developers or the state. Hazards can also arise from within the household or family for instance women, widows and children have been found to be vulnerable with regard to inheritance rights. The competition over resources means that tenure security is ultimately a balance between competing interests and will be influenced by the relative power of the hazard and subject.

Aside from the source of hazard one can also examine the frequency of occurrence. A hazard that occurs more regularly increases the likelihood of loss. For instance, if the state has evicted many thousands of squatters on state land within the past year the risk that other similar groups will be evicted in the future would be higher.

Land is a spatial object and therefore spatial characteristics impact tenure security. This will often manifest itself through value. Land which is of value to others will be *exposed* to competitive pressures. This may arise due to the proximity of the land to an urban centre, commercial development or other resource. Spatial overlap of unused public urban land that is earmarked in urban or regional master plans for future infrastructure development faces a threat from the state.

The *Vulnerability* characteristics of rights holders will influence their level of tenure security. Vulnerability is the extent to which one has social, physical, human, natural and financial capital to take mitigating actions and access sources of protection. For example, the wealthy are likely to be educated, know their rights and will be better positioned to take formal or informal steps to protect their rights e.g. by employing lawyers or bribing officials (Broegaard 2005; Kundu & Kundu 2005).

Different rights or *elements at risk* may encounter different sources of hazard. For instance a shared right to extract wood from a community forest area may face a different 'risk profile' than rights of occupation on homestead land.

Property rights/claims are protected by recourse to both formal and informal institutions. Protection of rights ultimately rests on two factors: recognition and enforcement. In the formal institutional environment, rights are recognised through policies, laws and procedures related to things such as planning and property registration. In order to properly enforce rights state land administration and legal bodies must have capacity to operate administrative systems on an on-going basis and to sanction violations.

In the informal institutional environment rights or claims are recognised through, and enforced by, reference to common moral and ethical codes. For example security can derive from long occupation or by maintaining good social relationships with family or neighbours. Buying property from known sources minimizes risks as participants to the deal are likely to share similar normative codes and social relationships. Informal institutional norms and behaviours also exist within the 'formal' land administration system. These may create barriers to accessing *de jure* protections. It should be noted that the use of the terms formal and informal constraints in this model do not equate directly with the common usage of formality and informality in an economy (as described in section 2.2), but rather is based on the work of North (see section 2.1 above). For instance, there may be informal constraints that influence the operation of the state land administration system. This may include corruption, vested interests of different parties, interaction between the different arms of the Land Administration System or organisational and societal cultures.

An assessment of the tenure security situation can be undertaken objectively or subjectively. All individuals with property rights undertake some level of subjective risk assessment and this influences their behaviour. As Van Gelder has noted, the basis on which decisions are reached is complex and will inevitably include inaccuracies arising from a lack of information.

## **2.5. Conclusion**

This chapter has sought to answer the question: *What are the characteristics of security of tenure?* (research question 1(i)). This has been done by reviewing a selection of existing perspectives drawn from available literature. The key characteristics identified are presented below.

From the foregoing we can see that tenure security is a multi-dimensional concept and, given that private property is a humanly devised construct, it is heavily influenced by local institutions according to the historical, economic and cultural context.

A number of models or perspectives of tenure security exist and the bulk of the reviewed literature tends to fall into one of two schools of thought. The first is the 'property-rights' perspective which emphasises formalisation of rights as a way to overcome tenure insecurity. This follows the Feder model and generally views formal title as providing secure tenure and anything short of this as being insecure. The second school of thought tends to focus on housing needs and rights, and emphasises the use of intermediate tenures along a continuum of increasing security (referred to here as the incremental perspective). This recognises that in practice many people without title are able to attain some level of *de facto* tenure security.



This perspective implies not only that there are multiple factors influencing tenure security, but also that there are multiple sources of security; both formal and informal.

Palmer also makes the point that there are multiple sources of security (legal, political and community 1998, p.85) and that people use these sources, both formal and informal, to manage the level of risk they face. The avenues of protection chosen are determined by each person's own subjective perception of risk, the options available to them and their ability to access these different sources of protection (e.g. cost, education).

The human rights-based perspective is valuable at highlighting the nature of state obligations with regard to protection and indeed tenure security can be defined solely in terms of these obligations. The present work of the Rapporteur to further clarify the nature of these obligations will be valuable in this regard. This inevitably involves a discussion of state minimum obligations and this can be viewed as a threshold: in other words the minimum a state should do in order to ensure tenure security. Payne also raises the notion of a threshold referring to 'adequate' levels of tenure security, although framed in terms of the Feder model effects (Payne 2001, p.12; Payne 2004, p.173).

It may be possible to differentiate between *quality* of tenure and *security* of tenure and by doing so we may be able to reconcile the 'property-rights' perspective with the 'incremental' perspective. Quality of tenure would refer to the desirable characteristics of tenure (security, facilitating property markets and accessing credit). Security then becomes merely another characteristic, albeit a fundamental one, and one upon which the others rest (figure 7 below).

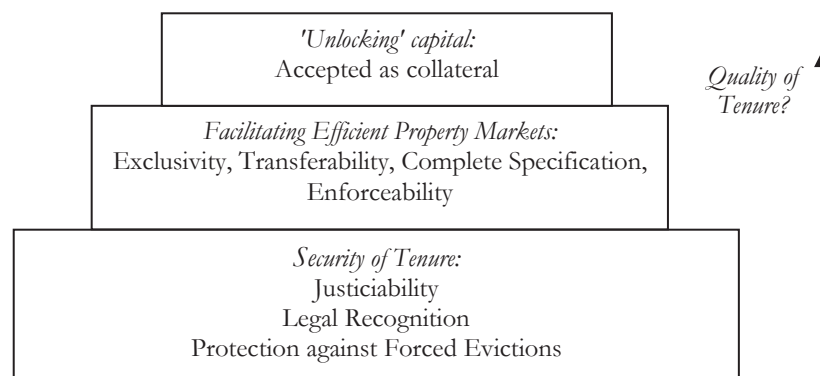


Figure 7: A Separation of Quality of Tenure and Security of Tenure?

Tenure security can be assessed objectively or subjectively and Van Gelder, in particular, advocates that subjective assessments be given more prominence. He also notes how subjective perceptions of tenure security may be inaccurate, affected by a lack of information or driven by fear. Recognition of perceived tenure security is important as it is these subjective evaluations that drive behaviour. A focus on subjective perceptions also places the affected parties at the centre of any discussion of their tenure situation. Similarly, the livelihoods perspective offered by Unruh also places the individual at the centre of analysis emphasising their assets/vulnerabilities. These perspectives are valuable as they can help to provide an understanding of the factors that influence behaviour.

Palmer raises the question: security of tenure for whom? The work of authors such as Payne and Durand-Lasserve have focused on ways to provide secure tenure to poor groups in cities with an emphasis on protection against forced evictions. On the other hand Palmer's work concentrates on transactions; where

the 'security' being discussed is for buyers, sellers and banks. The 'subject' needs to be identified in discussions of tenure security as 'security products' may have differential effects. For example, a bank may attain greater security from formal title, however this may provide little additional (or different levels of) security for the land owner, the land owner's wife or his tenant.

A corollary of highlighting the 'subjects' involved in a discussion of security of tenure is to emphasise that there are two or more competing claims. Tenure security is therefore fundamentally about competing interests over finite resources. The question is how the right to secure tenure can be reconciled and balanced against other competing rights?

The above also raises the question: exactly what rights are being secured? From an economic perspective the answer would be the benefit stream derived from a property right, be this use, occupation, mortgage or any other interest. Much of the literature reviewed in this study emphasises the right of occupation (and the prevention of forced eviction). One reason for this is perhaps due to the framing of tenure security in these terms under international law. Should discussions of tenure security limit themselves to the right of occupation or should other 'sticks' from the bundle also be considered? Is there something fundamentally different and special about the right of occupation that merits greater attention over other rights? Recent international initiatives to counter 'land-grabbing' highlight attempts to secure a broader spectrum of rights than those contained within international provisions related to housing (FAO & Committee on World Food Security 2012). The Human Rights-Based Perspective and the principles of *interdependence*, *interrelatedness* and *indivisibility* suggests that occupation should not be given undue prominence above other rights.

The factors influencing tenure security as found in the reviewed literature are presented in figure 8 (below). The core concept of tenure security identified throughout the literature is 'certainty' regarding rights, or phrased alternatively a 'risk of loss'. It is proposed that tenure security can best be explained and described by reference to this core concept and therefore the model of tenure security used in this study will be the risk-based model presented in section 2.4. The definition used for tenure security will be *the risk that property rights will be arbitrarily taken by others; and not effectively protected by the state.*<sup>8</sup>

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<sup>8</sup> This is a simplified version of the definition provided by Payne and Quan (2008, p.5) referencing FAO. The original is a little long winded and refers specifically to forced evictions: "the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it; the certainty that an individual's rights to land will be recognized by others and protected in cases of specific challenges; or, more specifically, the right of all individuals and groups to effective government protection against forced evictions".

<b>HAZARD: Source and Frequency</b>	
The state (e.g. land acquisition / titling programmes), Community/strangers - (e.g. land sales) Family - (e.g. inheritance, divorce)	No. and experience of disputes/evictions
<b>RIGHTS: Elements at Risk</b>	
Tenure / Breadth of rights	
<b>OBJECT: Exposure (Spatial Characteristics / Value)</b>	
Proximity to city centre (value) Proximity to wealthy neighbourhoods Topography – rivers – barrier to development Proximity to commercial developments Spatial overlap with planned major infrastructure (master plans road development etc). Land value (largely determined by location) Risk of loss through disaster (landslide, flood etc)	
<b>SUBJECT: Vulnerability (<i>Individual / Household Characteristics</i>)</b>	
Sex Age Education Wealth Knowledge of rights Physical presence (power) Ability to influence others Relative vulnerability to the source of hazard	
<b>Sources of Protection</b>	
<b>Formal Constraints</b> (rules, laws and constitutions)	<b>Informal Constraints</b> (norms of behaviour, moral and ethical codes)
Capacity of LAS Title Political support NGO Support Political Environment (authoritarian / democratic)  Length of occupancy (prescriptive rights) Document (proof of residence)  Permanent structures (laws against demolition) Tax payments Utility connections	Relations with neighbours Relations with sellers (known) Informal links to local leaders Social cohesion  Broader view of society Length of occupancy Settlement age Settlement size Permanent structures  Corruption Vested interests Organisational culture
<b>Social, Cultural, Political and Historical Context</b>	
Insecurity / Violence Conflict Historic policies (esp. land distribution / reform)	

Figure 8: Factors Influencing Tenure Security found in Literature Review

### 3. ASSESSING SECURITY OF TENURE

This chapter explores existing initiatives, methods and tools for assessing security of tenure and discusses the practical and methodological challenges that can arise in undertaking assessments. This chapter seeks to answer research question B (*What methods are used to assess security of tenure?*). Section 3.1 presents the international initiatives that seek to assess aspects of tenure security. Sections 3.2 and 3.3 review the indicators and methods used when assessing tenure security, drawn from both the international initiatives and academic research. The final section (3.4) discusses methodological and practical issues associated with assessing security of tenure.

#### 3.1. Assessment and Monitoring Frameworks

A wide variety of actors engage in assessment and monitoring activities and each do so for differing reasons. Bending provides a typology of the functions of monitoring structured by organisation type including inter-governmental organisations, national governments and civil society (2010, pp.14–18).

Monitoring by national governments generally falls into three categories: Periodic data capture for national statistics through censuses or household surveys; monitoring of public services and ad hoc assessments to guide policy development. Use of ‘results based public management’ means that governments are increasingly using indicators to track performance, however the extent to which this data is collected and made public will vary across jurisdictions.

The most widely recognised international process to monitor development obligations is the reporting that takes place under the Millennium Development Goals (MDGs). UN-Habitat has responsibility to monitor target 7d which seeks “by 2020, to [improve] the lives of at least 100 million slum dwellers” (UN General Assembly 2000). This adds to existing responsibilities from the 1996 United Nations Conference on Human Settlements (Habitat II), where it was charged with collecting data on global urban conditions and tracking progress of state commitments to the Habitat Agenda (UN General Assembly 1996). UN-Habitat has developed a range of resources to support states and local actors to undertake monitoring activities, some of which are squarely focused on assessing tenure security (Bazoglu et al. 2011; UN-Habitat 2002; UN-Habitat 2003b; UN-Habitat 2004b).

OHCHR has worked in a similar fashion to UN-Habitat by developing indicators and guidance to help countries meet their international treaty reporting obligations. A number of regional initiatives have also been developed to aid states report international commitments including the 'Blueprint for Strengthening Real Property Rights' (Blueprint) developed in support of state commitments made towards the OAS Declaration of Nuevo León (2004) and the Africa Land Policy Initiative (ALPI) framework, developed and supported by the African Union Commission (AUC), Economic Commission for Africa (ECA) and the African Development Bank (AfDB).

Some inter-governmental organisations make assessments to determine the allocation of development resources, notably the International Fund for Agricultural Development (IFAD) and the Millennium Challenge Corporation (MCC). Monitoring is also done for purposes of tracking development policies. Examples include the World Bank Doing Business Survey and the Human Development Index which both rank countries according to standardised indicators and emphasize cross-country comparison. The World Bank recently launched the Land Governance Assessment Framework (LGAF) with the stated

intention of supporting countries to ‘diagnose and benchmark land governance’ and to help ‘prioritize reforms and monitor progress’ (Deininger et al. 2012, p.1).

All of the international initiatives reviewed provide a set of indicators laid out in a framework. Two main structures can be identified: separation according to substantive themes or the use of a logical framework (impacts, outcomes, outputs, activities and inputs). The ‘Blueprint’ divides indicators according to selected functions / sectors of the land administration system. The LGAF uses five broad thematic areas of ‘good land governance’. In contrast, the ALPI and OHCHR both use a logical framework structure.

UN-Habitat provides an alternative approach using ‘unit of analysis’ as the overall structure. Household, settlement and city/country are used with different methodologies and indicators provided for each level. Each level has a different target of assessment: people, land and policies. Therefore, perceptions of tenure security are explored at household level through the use of surveys whereas expert panels are used at country/city level to investigate policies (Bazoglu et al. 2011; Sietchiping et al. 2012).

USAID has developed a ‘situation assessment tool’ to support one-off assessments intended to help diagnose challenges and identify programmatic responses (Tetra Tech ARD 2011, p.vi). The tool is based on a matrix of common challenges or ‘constraints’ and possible intervention categories that are of interest to USAID. This tool differs from the other initiatives mentioned above as it is intended for a single one-off assessment. Although the tool is silent on the specific period in which it is intended to be applied, it is similar in structure and format to a number of tools created by the UN for use in emergency situations.

### **3.2. Indicators of Tenure Security**

Security of tenure is a multi-dimensional concept that cannot be measured directly and therefore proxy indicators<sup>9</sup> are used. Indicator selection is influenced by the concept of tenure security used, the purpose of monitoring and by practical and methodological issues. This section presents a summary of the indicators encountered in academic research and those used in the monitoring initiatives mentioned above. This review will guide and support the identification of indicators that may be applicable in post-conflict contexts.

The units of analysis used are typically individual/household, plot or settlement. Most academic quantitative studies use either individual or household and this is often influenced by the structure of the datasets available (census and household surveys often using household as the unit of analysis). The threat to rights can often arise from within a family or household and therefore it may be preferable to use the individual as the unit of analysis (this is particularly relevant when exploring the tenure security situation of women and children (UN-Habitat 2002, p.16)).

The universe under consideration varies depending on the objective and focus of the study. Although much of the reviewed literature does not expressly state the universe of study the most common focus is either at regional or settlement level. Country level analysis was found where census data was used or in global monitoring initiatives such as the LGAF, OHCHR and MDG monitoring.

A range of practical considerations influence not only the unit of analysis and the universe assessed, but also the selection of indicators. Time and cost are obviously significant considerations; others include

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<sup>9</sup> For the purpose of this study the terms indicator and variable are considered the same and are used interchangeably.

whether the assessment is comparative (e.g. the tenure situation in one country compared with another) or whether it is longitudinal (i.e. tracking over time).

### 3.2.1. Review of Variables used to Measure Tenure Security

#### 3.2.1.1. Academic Research

This section presents the indicators used in the academic literature reviewed as part of this study. As discussed above in section 2.3 a backward spider method was used to identify documents. 72 papers were reviewed, of which 58 were from academic journals (including documents from Wisconsin Land Tenure Centre), 8 documents were from development banks or donors including the World Bank. The remaining 6 were from other sources including conference papers, NGOs and book chapters. The articles reviewed focus on a combination of topics including: titling (34); informal settlements (31), customary tenure (17); evictions (15); and security of tenure (12). Some articles make reference to multiple topics.

Studies that use quantitative methods, particularly econometric analysis, tend to identify variables more clearly. Studies that employ solely qualitative methods and provide a general discursive analysis on ‘causes’ of tenure insecurity without being explicit regarding the variables being measured or the methodology used have been excluded from the review. Table 2 (below) presents an overview of the main indicators encountered and their frequency of use. A similar review undertaken by Arnot et al. (2011), which focused purely on econometric analysis, is presented in annex N.

Main Indicators	No.	Comment
<i>Perceptions of future loss</i>	18	Perception of future risk of loss or continued ability to use.
<i>Tenure</i>	14	Used as either: Binary secure/insecure (title or no title) or range of tenures with different levels of security (title being most secure).
<i>Breadth of rights</i>	11	Greater the breadth of rights, greater the degree of tenure security (sell, bequest, mortgage).  Mode of acquisition sometimes used as indicator of breadth or independence of rights e.g.(Place & Otsuka 2002).
<i>Previous experiences of loss</i>	9	Recalled experiences of previous loss of rights. Evictions or reallocations.
<i>Autonomy of transaction</i>	8	Linked with breadth of rights. Whether person requires authority from others to transact, especially for sales..
<i>Duration of rights</i>	3	Assume that if have held rights for a long time this indicates that rights will be secure in the future.
<i>Disputes</i>	3	Previous experiences of individuals or plots with disputes
<i>Others</i>	4	Previous threats, governance indexes, turnover of population in an area.
<i>Objective assess of previous losses</i>	3	
<i>Perception of security</i>	3	Specific questions not provided.
<i>NA</i>	24	No primary research
<b>Total References</b>	<b>100 (72)</b>	<b>Multiple references</b> (total docs)

Table 2: Indicators found in Academic Literature

Many studies attempt to assess the risk that rights will be lost, including both objective and subjective estimations. The most common approach is to question targets on their perceived risk of future expropriation to provide a subjective view of the future (Van Gelder's *perceived* security of tenure). A number of studies ask targets about previous experiences of loss and in some instances previous experience of disputes is used. Very few articles use an objective measure of past loss as suitable data on evictions is rarely available. Where data on past evictions is presented this is usually through qualitative approaches such as the presentation of case studies.

Where tenure is used as an indicator of security, this is done either as a binary variable (title classified as secure and anything else not) or by recognizing a continuum of tenures of increasing levels of security. Studies that take the former approach are generally those testing the Feder model. Few quantitative studies use duration of holding as an indicator of security. Commentators have noted that duration of holding does not necessarily imply future security and rather could instead reflect other issues such as residential inertia or a lack of housing options. Use of 'duration of holding' would also mean that new residents are automatically considered to have insecure rights (Durand-Lasserve & Selod 2007, p.23). Those studies that have used duration have tended to be from contexts with centralised land administration systems where duration of holding is a measure of time since previous reallocation (e.g. in Ethiopia and China). Qualitative studies exploring the characteristics of informal settlements and evictions have used settlement age as variable (Boonyabancha 1983).

One group of studies, that generally focus on security of tenure in customary regimes, use breadth, independence and exclusivity of rights as measures of security (Besley 1995; Migot-Adholla et al. 1991). Selection of these indicators follows economic definitions of tenure security (Feder & Noronha 1987; Wachter 1992).

### 3.2.1.2. Monitoring Initiatives

Some monitoring initiatives expressly provide indicators to assess tenure security whereas others simply provide indicators related to the broader policy, governance and land administration environment. Monitoring initiatives are valuable as they represent attempts to operationalise repeated assessments and are therefore mindful of resource implications and other practicalities. One factor that needs to be borne in mind is that many seek to identify a small number of generic indicators that are applicable across as many contexts as possible in order to aid global comparison. Table 3 (below) presents some of the areas covered by the different initiatives. Detail of specific indicators can be found in annexes A to K.

Indicator Area	Comment	Initiative
<i>Perceptions</i>	Perception of risk (household/individual)	UN-Habitat, USAID, ALPI
<i>Evictions</i>	Number of evictions	OHCHR, USAID, UN-Habitat (A), ALPI
<i>Documentation</i>	Documentation to prove legality or legitimacy of rights. Acceptance of alternative forms of documentation to prove rights.	UN-Habitat, LGAF
<i>Legal protection against forced eviction</i>	Legal provisions exist against forced evictions	UN-Habitat, UN-Habitat (A), OHCHR
<i>Disputes, due process and capacity</i>	Due process protections for expropriation are accessible and functioning. (disputes, time taken before court etc)	LGAF, UN-Habitat, UN-Habitat (A), OHCHR, ALPI, Blueprint



Indicator Area	Comment	Initiative
<i>Inclusion and recognition of the informal</i>	Formal recognition and inclusion of the ‘informal’ e.g. group tenures, recognizing informal forms of documentation, settlement boundaries in formal system	LGAF, UN-Habitat
<i>Discrimination</i>	Discrimination Female Inheritance, equal access	LGAF, UN-Habitat, USAID
<i>Extent or nature of rights</i>	Breadth, exclusivity of rights	USAID, LGAF <sup>(b)</sup>

Notes:

UN-Habitat (A) = Habitat Agenda

<sup>(b)</sup>Captured in tenure typology.

Table 3: Indicators used in Monitoring and Assessment Guidelines and Initiatives

Although the initiatives have their differences in terms of purpose, focus, scale and conceptualization of tenure security they reference a considerable number of common indicators. Few of the initiatives use the economic conceptualization of tenure security used by Feder, Norohna and Wachter. The USAID assessment is the only one to make direct reference to “assurance, exclusivity, duration and breadth” of rights. The ‘Blueprint’ has ‘creditor’s ability to repossess property’ as an indicator of secure tenure. This perhaps highlights the influence that current debates and trends have on these initiatives, the Blueprint developed in the post de Soto era when formalisation and access to credit were the focus of international debate. This is also reflected in the ALPI which is clearly influenced by recent initiatives on land grabbing.

As one would expect, given the objectives of the monitoring initiatives, indicators related to the broader legal or regulatory context are very common. These seek to identify whether appropriate laws and protections are in place thereby emphasising the *de jure* position. The LGAF takes an interesting approach by using indicators regarding accepted ‘best practices’ such as whether states recognise a tenure continuum. Again, as would be expected, most of the initiatives make reference to equality and discrimination. Particular attention is paid to women’s rights and whether legal provisions are discriminatory. The UN-Habitat, LIFI and USAID frameworks in particular explore issues of inheritance, divorce and how rights are acquired.

The ‘extent of titling’ is mentioned in the IFAD initiative, although with the proviso ‘where this is appropriate’. The LGAF provides an indicator exploring the extent of land formally recognized by the state including recordation of group and customary tenures (LG1/2). The LGAF also provides indicators related to the mechanisms for recognizing rights. These broadly cover the accessibility of processes for formalisation of rights including costs and the requirements for first registration (LG3). Aside from the above, type of tenure is generally not used as an indicator of security, although the LGAF and UN-Habitat both make use of a typology to identify the range of tenures available.

UN-Habitat is the only organisation that uses ‘documentation’ as an indicator, although rather than being title documentation the indicators are framed such that they relate to any document supportive of a claim (providing “evidence of legality or legitimacy of claims” (Bazoglu et al. 2011, p.36)). UN-Habitat and USAID are the only initiatives that use duration as an indicator of tenure security. UN-Habitat has an interesting interpretation of duration linking it to the acquisition of prescriptive rights (Bazoglu et al. 2011, p.39). UN-Habitat, USAID and the ALPI seek to assess perceptions of tenure security and all recognise that this requires the use of dedicated household surveys.



Most of the frameworks include an indicator on the prevalence of evictions, however this is expressly rejected in the LGAF due to methodological concerns (Burns 2009, p.118) which instead places emphasis on planning and management of public land and whether appropriate procedures are followed and fair compensation paid (LG13 & 14).

### **3.3. Sources, Methods and Tools**

This section discusses the methods used to assess tenure security. This review refers to the methods found in both academic research and monitoring initiatives. A number of tools have been developed to facilitate data collection and these are also presented and discussed.

Before continuing, the terms ‘method’ and ‘tool’ require definition. A (scientific) method is a “procedure consisting in systematic observation, measurement, and experiment, and the formulation, testing, and modification of hypotheses” (Oxford University Press 2012). A tool is a “a practical method to achieve a defined objective in a particular context. More precisely, a tool facilitates decision processes based on knowledge to move from principles, policy and legislation to implementation” (GLTN 2012).

#### **3.3.1. Quantitative ,Qualitative and Participatory methods**

A large majority of the academic literature uses quantitative data in the form existing government datasets (censuses or household surveys) or dedicated household surveys. UN-Habitat and the LGAF also make use of household surveys. UN-Habitat indicates that a sample of approximately 4000 households should be used when undertaking a citywide Urban Inequalities Survey (UIS) (Bazoglu et al. 2011, p.16). The academic literature, focusing on far fewer variables, typically uses sample sizes ranging from 400 to 700 households. UN-Habitat and USAID assessments both suggest the use of household surveys to capture indicators related to perceptions.

Surveys, even when small, can be complicated, costly and take considerable time in terms of planning and analysis. Surveys also require dedicated expertise. Government data is valuable as the methodologies used are usually rigorous and either the entire population is surveyed or a very large sample thereof. Government data is also often available to support longitudinal research.

The main qualitative methods found are focus groups, site visits (observation or walkthroughs), desk studies and interviews. Desk studies are often used to provide background or historic information, especially with regard to the institutional and legal framework (the *de jure* position). Interviews are commonly used to target local leaders, representatives of the land administration system or independent experts in order to gather data related to the capacity and functioning of systems. In-depth interviews and case studies have also been used to capture previous experiences of individuals or their perceptions and fears regarding eviction (Broegaard 2005).

Of the academic literature reviewed only a very limited number of articles employ mixed quantitative and qualitative methods, although it has been noted that this may be due to weak reporting of methodologies (Payne et al. 2007, p.6). Monitoring initiatives make greater use of mixed methods and sources, or at least are more explicit in discussing methodologies. UN-Habitat and ALPI frameworks in particular pay considerable attention to the sources and methods used for each suggested indicator. The UN-Habitat monitoring framework suggests a range of methods tailored for each unit of analysis. For instance,

recommending a range of qualitative methods for data collection at settlement level including the use of walkthroughs, interviews with leaders and focus group discussions (Bazoglu et al. 2011, pp.25–26).

Very few studies make reference to eviction figures, presumably due to a lack of available data. Some studies have made use of NGO monitoring figures (Audefroy 1994; Murphy & Anana 1994) and others make reference to government figures (Boonyabancha 1983).

Participatory approaches emphasize involvement and control of the assessment process by the targets of the assessment “built on the assumption that the experience and knowledge of people are extremely valuable and should inform and guide development” (UN-Habitat 2010, p.13). Such techniques are often called participatory rural appraisals or rapid rural appraisals (PRA/RRA) due to their origins in rural development work, however they are also applicable to urban areas (Chambers 2002). The main purpose of participatory approaches is to facilitate targets to undertake a process of assessment, appraisal or analysis themselves, rather than it being something imposed externally or from above.

Some of the principles and approaches used in PRAs can be incorporated into more centralised top down assessments, and although the targets of the assessment may not fully control and ‘own’ the process, their participation enhances buy-in and data quality. The UN-Habitat (LIFI) and the World Bank (LGAF) discussed below, to a certain extent, can be seen as examples of processes developed, initiated and driven by external organisations but which seek to use participatory approaches both to improve data quality and to encourage ownership of the findings.

### **3.3.2. Tools**

#### **3.3.2.1. Expert Panels**

The LIFI and LGAF both use expert panels to gather information regarding the institutional, legal and policy environment. Both of these initiatives are fairly recent and the expert panel approach is still being tested by both organisations<sup>10</sup>. Although there are some differences in how the panels are used the fundamental method is essentially the same; a group of experts is drawn from a variety of backgrounds and asked to discuss and provide a rating using a preset range of indicators. Both processes include representatives from government, civil society and the private sector. The LGAF approach is little more in-depth and structured with a preliminary process of investigation and use of multiple panels.

Learning from LGAF trials indicates that one of the benefits perceived by the participants is that it the process facilitates interaction between different stakeholders who may otherwise have not met. This is noted as being particularly relevant for land management where responsibilities are often split across multiple departments or arms of government (Hilhorst 2012). The LGAF and LIFI trials have resulted in rich qualitative reports on the institutional context concerned, however given the limited trials to date, the extent to which the findings of the processes are ‘owned’ and recommendations acted upon is unclear.

#### **3.3.2.2. Tenure Typologies**

A tenure typology is a tool to present and help analyse the range of *de facto* tenure options in a given context. This method was originally developed by Payne (2001; 2002; 2004) and was later used by UN-

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<sup>10</sup> The LGAF has been used in Peru, Kyrgyz, Tanzania, Ethiopia and Indonesia are presented in (Deininger et al. 2012, chap.4). A further 10 locations are cited by Hilhorst (2012): Cameroon, Madagascar, Mali, DRC, Iraq, Rwanda, Malawi, Benin, Ukraine, Colombia and Brazil. The UN-HABITAT appears to have been trialled in Brazil and Kenya (Bazoglu et al. 2011)

Habitat as the basis for its tenure continuum (Payne & Quan 2008). The tool was originally intended for use in urban areas (at city level) with a view to identifying options for incremental strengthening of tenure security and has been used in a wide variety of contexts<sup>11</sup>. The tool, as a method of presenting tenures in a continuum of increasing relative security, has been widely adopted and tenure typologies are developed as part of the LGAF and LIFI processes. The Payne and LGAF tenure typologies and instructions on use are presented in annexes L and M.

The guidance for development of a tenure typology used in the LIFI are unclear, however UN-Habitat literature defines the tool as a classification of informal/formal tenures which distinguishes ‘public ownership/use, private ownership/use and indigenous and non-indigenous community tenure’ (Bazoglu et al. 2011, p.xii). Sietchiping et al. indicate that the tenure types depicted in the typology will be tailored to the country, city or specific area and therefore the exact form the typology takes will vary between contexts (2012, p.10).

The tenure typology used by the LGAF is undertaken separately for rural and urban areas and distinguishes between: public land, private individual holdings, private communal holdings and commercial holdings (for rural areas); and public land, private residential permits, private residential leases, private condominium, informal residential and commercial property (urban). The characteristics recorded for each tenure type are the area and population covered, whether rights are legally recognized and whether they can be registered or transferred. Space is provided to identify where rights overlap i.e. where there are different perceptions of the tenures or ambiguity. Guidance indicates that the typology be tailored to the local context (Burns & Deininger 2010, p.89/90).

The original formulation and use of the tool provided a vehicle to present *de facto* tenure arrangements without pre-empting the forms of tenure that would be included. In practice, however, there appears to be a tendency to use the tool to record only relatively formal tenures (this is definitely the case with the LGAF and LIFI but is also evident in the 2004 Habitat International papers). This is a shame as the tool then simply becomes a tabulated presentation of the different formal tenure options available, rather than capturing the full spectrum of *de facto* tenure arrangements (e.g. such as pavement dwellers). The reasons for this may include the application of the tool to national levels whereby categories become very broad; due to the process used; or the personal profile of those developing the typology (lawyers in particular may tend to think solely in terms of the *de jure* options).

### 3.3.2.3. Other tools

Space limitations prevent an in-depth discussion on the full range of methods and tools that have been used to collect and present data on tenure security so this last section, very briefly, highlights a few that may be of relevance in post-conflict contexts. Satellite imagery has been used to provide a rapid assessment of the tenure situation in S. African cities. Areas are mapped according to a tenure typology and checked with field visits (Bazoglu et al. 2011). This could be a valuable method to make a rapid assessment over a large area or in locations which would be otherwise inaccessible (e.g. due to security concerns). A number of tools exist to help mapping and analysis of customary rights (Deininger et al. 2010, chap.2; Lavigne Delville, 2004; Lemmen 2010). These may be valuable to assist understanding and analysis of rights in areas with plural regimes. Finally, Huchzermeyer uses a ‘housing affordability ladder’

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<sup>11</sup> A special edition of Habitat International (Vol 28, issue 2, June 2004) included nine reports which each used the tenure typology tool: Cambodia, The Philippines, Bolivia, Brazil, Colombia, India, Kenya, Peru and Thailand.

to analyse the housing market in Nairobi (2008). This may be valuable in urban areas and could be used in conjunction with a tenure typology.

### **3.4. Methodological and Practical Issues**

A number of methodological issues have been raised regarding the body of quantitative research that has sought to test the Feder model. These include issues regarding both attribution and causation, especially with regard to investment effects (Besley 1995; Sjaastad, & Bromley 1997; Brasselle et al. 2002). Durand-Lasserve and Selod have also noted a number of challenges related to research design that may introduce selection bias (2007, pp.20–28).

Study respondents may have different perceptions and understanding of the concepts used in the research conceptual framework and this can affect results if not factored into study and tool design. This is certainly the case for formal tenures which carry specific legal definition, but will also be relevant for fundamental concepts such as ‘ownership’ and ‘rights’. For instance, men interviewed as part of a study in Uganda regularly stated that ‘women could not own land under the customary system’, however when questioned further it became apparent that men could not own land either; ‘ownership’ was simply an inappropriate term for the context (Ker Kwaro Acholi 2006; LEMU 2005). Research respondents in Brazil differentiated between rights to their shelters and the land upon which it was built (de Souza 2004). These examples highlight the need to take great care to ensure that research design, methods and tools are appropriate for the local situation, especially with regard to the use of language and terminology (Bazoglu et al. 2011, p.46).

Some of the concepts at the heart of tenure security can themselves prove very difficult to define. ‘Eviction’ provides a good example. For instance, is someone evicted if they move voluntarily, albeit reluctantly, after being threatened with eviction by their landlord? The position of market related displacements has also been the source of considerable debate. Is it eviction when a person moves because the formalisation of their tenure situation means they can’t afford to pay increased costs associated with this new status, such as increased property taxes? Evictions can also sometimes initially appear to be *prima facie* legitimate, occurring following an open process of compulsory acquisition, however subsequently being changed from public to private use for the benefit of private developers (Zimmermann 2008, p.9; Bazoglu et al. 2011, p.37).

Bassett (2005) examines market related displacements by comparing the residents of an area over time, however this approach is also fraught with methodological challenges including poor record keeping of official settlement residence lists, challenges in tracking those that have moved and difficulties isolating the specific influence of tenure among other factors driving movement.

It is for these reasons that the LGAF expressly excludes indicators on the frequency of evictions (Burns 2009, p.118). Despite these concerns OHCHR and UN-Habitat frameworks continue to use evictions as a measure of tenure security. The OHCHR framework suggests measuring those evictions formally referred to the Rapporteur on the Right to Adequate Housing (annex G) where submissions must meet certain requirements in terms of form and detail. The OHCHR framework also suggests that civil society play a role in terms of on-going monitoring of evictions. This approach tends to focus on qualitative methods which can provide richer narratives and analysis.

Many studies use tenure as the primary measure of security and an independent assessment by researchers is made to determine the level of security provided. Studies have highlighted some practical challenges related to the capture of data on tenure. Firstly, respondents may not know the law and hence misreport their true tenure status<sup>12</sup>. This problem can be overcome by inspection of documents, however this requires that those undertaking the survey are suitably qualified and trained. Respondents may also sometimes not have documents readily available for inspection, may have lost them or be cautious of sharing with strangers. It has also been noted that when questioned on tenure respondents have a tendency to overstate their rights (Sietchiping et al. 2012, p.11).

Posing questions regarding land rights in general, and evictions in particular, is a sensitive matter and respondents may be hesitant to discuss their particular circumstances. Bazoglu et al. note that, in urban inequalities surveys (UIS), the questions on documentation and evictions appeared to intimidate people and led to lower response rates (2011, p.19). This may be because respondents are suspicious of the motives of the research being undertaken and there may be aspects of their situation that they wish to remain hidden (e.g. if ownership is disputed or to avoid legal obligations related to planning or taxation). Such sensitivities are likely to be heightened in post-conflict contexts, especially where the conflict has been a consequence of ethnic, religious or tribal issues. Such factors may also introduce security concerns, not only for the respondents, but also for those carrying out the assessment.

A final practicality concerns time and cost. UN-Habitat and World Bank documents contain thorough discussion of these issues. Household surveys, required to capture data regarding perceptions, are very costly<sup>13</sup>. A number of approaches have been taken to address issues of cost/time. 'Piggybacking' tenure security questions onto others' surveys is a possibility, although this takes time, itself has cost implications<sup>14</sup> and depends on the frequency of such surveys (Bazoglu et al. 2011, p.16). Alternative approaches involve using existing datasets, cheaper rapid qualitative methods (such as focus groups) and limiting the breadth of the investigation by reducing the number of variables used to the bare minimum. The unit of analysis will also affect cost. A shift of focus from individual to household to settlement will result in reduced costs, but at the same time reduce the level of detail. UN-Habitat has used aerial photographs and satellite imagery as a way to rapidly estimate tenure security over larger areas (Sietchiping et al. 2012, pp.12–13).

### 3.5. Conclusions

This chapter has sought to answer research question B (*What methods are used to assess security of tenure?*). A wide variety of variables have been used as indicators of tenure security and there is some overlap between those used in academic research and those used by international organisations, particularly regarding form of tenure and perceptions of eviction risk (either past experience or future expectation). As one would expect, the indicators employed broadly follow the models of tenure security laid out in chapter 2. Inclusion of indicators regarding both perceptions and the broader environment represents an attempt to combine objective and subjective estimations of tenure security.

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<sup>12</sup> This is not something limited to developing countries, Simpson(citing Pollock) noting "that it was often said that in no country were landowners so ignorant of their legal position and so dependent on legal advice as in England"(1976, p.26).

<sup>13</sup> The UN-HABITAT Urban Inequalities Survey (UIS) takes six months to complete and costs approximately 200k USD (Bazoglu et al. 2011, p.18). The UN-HABITAT LIFI expert panel process takes 2 months and costs approximately 33k USD (Bazoglu et al. 2011, p.16). The LGAF process takes between 4-6 months and costs approximately 60,000 USD (Bazoglu et al. 2011, p.9; Hilhorst 2012).

<sup>14</sup> Method, cost(usd) and time (months) are: UIS, 199k, 6m; HH Survey, 52k, 10m; Small Sample Survey, 46k,3m (Bazoglu et al. 2011, p.16).

Many studies that seek to explore the Feder model examine the effects of title or secure tenure by exploring levels of investment, access to credit and social effects. This exploration of the consequences or impacts of secure tenure is in contrast to those studies which seek to identify indicators of risk by focusing on perceptions of future loss or limitations of the institutional environment.

The literature review demonstrates that a variety of methods can be used depending on the chosen variables and units of analysis. Qualitative approaches, such as desk studies and expert panel reviews, are often used to explore the broader policy environment (the *de jure* position) while quantitative approaches are generally used for gathering information on perceptions of tenure. The work of UN-Habitat, in particular, demonstrates the benefits of a mixed methods approach tailored according to context and unit of analysis.

Finally, the research demonstrates that even with an agreed concept of tenure security and its constituent elements, measuring these in practice presents a range of challenges. This includes methodological complexity in terms of indicator and group selection, conceptual issues - notably apparent when once tries to define 'eviction'- and finally, a range of practical challenges related to the data gathering process itself.



## 4. SECURITY OF TENURE IN POST-CONFLICT CONTEXTS

The objective of this chapter is to answer research questions A(ii) and A(iii) (*What are the characteristics of: ii) post-conflict contexts and iii) security of tenure in post-conflict contexts?*). The aim is to identify issues that need to be considered and incorporated into the assessment framework. A supplementary question is to ask: What exactly does tenure security mean in such a situation, particularly for those that are displaced from their homes?

The chapter begins by presenting the characteristics of post-conflict contexts in general (section 4.1) and as they pertain to land and land administration, including a discussion of the characteristics of displacement and property rights in displacement (sections 4.2 - 4.6). Section 4.7 concludes the chapter by reviewing the factors that influence tenure security post-conflict contexts.

### 4.1. Characteristics of the Post-conflict Period

The majority of conflicts in the post cold war era have affected developing countries. Most have been intrastate in nature and this has led to an increase in the proportion of displaced classified as IDPs (Ayoob 2001; Themner & Wallenstein 2012; UNHCR 2006a). As the majority of displacement occurs in developing countries the response often entails international assistance including a range of UN agencies working together with local and international civil society (four fifths of refugees are living in developing countries and 45% of all UNCHR mandated targets residing in countries with a GDP per capita of less than 3000 USD (2012, p.2)).

The characteristics of the post-conflict context can be categorised as institutional; economic and social; and security related (Ball 2001, p.721). These are presented in table 4 (below) and many will, either directly or indirectly, have an impact on land administration and tenure security.

Institutional Characteristics	Economic and Social Characteristics	Security Characteristics
<ul style="list-style-type: none"> <li>– Weak political and administrative institutions</li> <li>– Non-participatory political system</li> <li>– Vigorous competition for power at expense of attention to governing</li> <li>– Limited legitimacy of political leaders</li> <li>– Lack of consensus on direction the country should follow</li> </ul>	<ul style="list-style-type: none"> <li>– Extensive damage to or decay of economic and social infrastructure</li> <li>– High levels of indebtedness</li> <li>– Unsustainably high defence budgets</li> <li>– Significant contraction of legal economy and expansion of illegal economy</li> <li>– Reversion to subsistence activities</li> <li>– Destruction or exile of human resources</li> <li>– Conflicts over ownership of and access to land</li> <li>– Gender imbalance</li> <li>– Environmental degradation</li> <li>– Weakened social fabric</li> <li>– Poor social indicators</li> </ul>	<ul style="list-style-type: none"> <li>– Bloated security forces</li> <li>– Armed opposition, paramilitary forces</li> <li>– Overabundance of small arms</li> <li>– Need to reassess security environment and restructure security forces accordingly</li> <li>– Lack of transparency in security affairs and accountability to civil authorities and to population</li> <li>– Political role of security forces</li> <li>– History of human rights abuses perpetrated by security forces</li> </ul>

Table 4: Characteristics of War Torn Societies (Ball 2001)

The security situation in the post-conflict period may not have fully stabilized and there may be paramilitary groups and a prevalence of small arms. Ex-combatants will demobilize and these groups will have specific needs in terms of livelihoods and fitting back into civilian life. Unruh notes that the demobilization of 270,000 ex-combatants at the end of the civil conflict in Mozambique created significant competition for land (Unruh 1998). Liberia experienced significant challenges due to squatting by armed ex-combatants (Unruh 2009b). The existence of land mines and UXOs may also be a further challenge in accessing land (Fonseka 2010).

State institutions in the post-conflict context are weak, creating challenges for policy and law making and providing an environment where corruption can flourish. This can particularly impact land administration functions where the powerful can take advantage of the confused institutional environment to grab land (FAO 2005; Unruh & Shalaby 2012; Huggins 2009). The impact on land administration functions is discussed further below in section 4.4.

Disputes over land and inequitable distribution of land can be factors that lead to or aggravate conflict (Pons-Vignon & Lecomte 2004; Pantuliano 2009). As discussed in chapter 2, land rights are humanly devised constraints that shape interactions between people. Conflict will often fundamentally change the nature of relations between individuals or between individuals and the state and this can lead to an increase in secondary conflicts, Lewis noting that “armed conflict and its aftermath reconfigure the network of relations and procedures upon which all land tenure systems depend” (Lewis 2004, p.6). Groups may seek to use the uncertainty of post-conflict situation to assert historic claims to land (FAO 2005). A high prevalence of disputes, particularly those involving violence or former warring parties, pose a risk to peace building and can lead to a return to conflict.

One of the main characteristics of conflict is the destruction of property, for example during the conflict in Afghanistan almost 50,000 houses were destroyed in Kabul alone (Lewis 2004). Public infrastructure is also likely to be destroyed or damaged, including public buildings, roads and bridges (FAO 2005). There will be a strong emphasis on reconstruction in the post-conflict period including pressure to demonstrate that investments in peace will benefit the population (Ball 2001). There will be significant momentum and support from external donors for programmes that seek to capture this 'peace dividend' (Törhönen & Palmer 2004). This will include support to develop aspects of the land management system including review of policy, legislation and technical facilities. There is also often a strong desire to spur inward economic investment from the private sector and this has impacts on the land use, planning and value aspects of land administration. The post-conflict context can therefore result in a rapidly changing and unstable policy and legislative environment as systems are changed and updated to the new context (Augustinus & Barry 2004; Augustinus & Barry 2006; de Waal 2009).

Post-conflict development activities can sometimes cause further conflict, thereby undermining the peace building objectives they seek to address. For example road construction in Afghanistan has created a range of unanticipated consequences leading to further conflict (Unruh & Shalaby 2012). Challenges can arise due to poorly thought out programmes or a disregard for rights (Törhönen & Palmer 2004). Urban planners may seek a *tabula rasa* or the government may grant large rural concessions over common or disputed areas (IFRC 2011, p.7; Unruh 1998; FAO 2005). Such actions can prevent return and cause 'development induced' displacement. For example, it is estimated that the government of Mozambique awarded concessions covering nine million hectares for farming, hunting, tourism and mining in the post-conflict period (Unruh 1998, citing Moll(1996)).



The following sections expand on some of the key characteristics of the post-conflict period that are most pertinent to questions of tenure security. These include the impact of conflict on vulnerability; land administration systems; displacement; and property rights.

## **4.2. People and Vulnerability**

Conflict will generally result in increased levels of vulnerability as people lose access to assets and livelihoods. There will be an increase in the number of deaths, either directly as consequence of fighting or as a result of secondary factors such as poor public health and inaccessibility of medical services. This can lead to an increased proportion of vulnerable groups in the post-conflict period (e.g. disabled, orphans or widows).

Conflict often results in the loss or destruction of physical capital (Unruh 2008). For those with moveable assets, there is a limited amount that one can take when fleeing. Financial capital in the form of cash savings may not be accessible due to the closure of banks. Assets may be expended during flight (e.g. to buy passage to safety or bribe border officials). In the case of slow onset emergencies, such as droughts, people may have exhausted assets prior to flight (Unruh 2008; FAO 2005; FAO 2008). Displacement can mean a loss of access to or a change in the type of livelihood, either by movement into urban areas or a shift to short term extractive activities (Unruh 2008; FAO 2005).

In many instances conflict affected persons will move to areas where they have networks of family or friends from whom they can obtain assistance. These 'hosts' can themselves in turn become more vulnerable due to the additional burden of providing assistance. The wider community can also become more vulnerable due to reduced access to land, livelihood opportunities and other resources which are shared with the displaced.

Conflict can lead to a breakdown of social and moral norms that would normally regulate behaviour. Depending on the context these changes can be viewed positively or negatively. In some instances previously marginalised groups have gained access to education (human capital) and have been better able to overcome discrimination and challenge their position (e.g. Guatemalan refugees in Mexico (Long 2011)). On the other hand, family separation or changes in family structures due to high levels of mortality can result in the breakdown of protective norms (e.g. vulnerable position of widows in post-conflict Uganda (Adoko & Levine 2004)).

Displaced populations may be unable to draw on the protections of their broader community in the same way they would if they were not displaced. This can be due to the absence of community representatives or because people are scattered across a wide area. Conflicts can arise between hosts and the displaced and this can be exacerbated in contexts where the displaced and hosts do not share common cultural beliefs and practices. This was recently noted in Jordan where relatively liberal Syrian refugees were displaced into conservative rural communities (Mercy Corps 2012; UNHCR 2012). The displaced may not bring problems forward to the attention of the authorities for fear of discriminatory treatment or due to concerns that doing so might create conflict with hosts. This means such groups become vulnerable to exploitation (Mercy Corps 2012; Washington 2012).

Land documents or other proof of rights (such as boundary markers) can be lost or destroyed during conflict. Loss of personal identity documents can mean that people have difficulty accessing formal services. The conflict may emphasise existing barriers faced in accessing formal sources of support including poverty, distance from services, illiteracy and gender.

### 4.3. Displacement and Durable Solutions

One of the primary characteristics of conflict and post-conflict contexts is the displacement of people from their homes. The conflicts in Sierra Leone and Bosnia led to the displacement of over half the population; in Timor 75% were displaced (FAO 2005, p.16). The post-conflict period is associated with the search for durable solutions (return, resettlement or local integration), although in some cases displacement can continue for a considerable time after a conflict finishes.

Displaced persons broadly fall into two main groups: Internally Displaced Persons (IDPs) and Refugees. The Guiding Principles on Internal Displacement (sometimes also referred to as the 'Deng Principles') define an IDP as “a person or group of persons who have been obliged to flee or to leave their homes or places of residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border” (United Nations 1998). The Statute of the office of the UNHCR defines a refugee as a person who is “outside of the country of his nationality...because he has or had a well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable...to avail himself of the protection of the government of his nationality” (Goodwin-Gill & McAdam 2007).

There are a number of distinctions between the definitions of an IDP and refugee, however the primary one is legal. A refugee acquires special legal status by virtue of having crossed an international border. They are unable to draw on the protection that their state would normally provide and hence a substitute framework of international protection is required. In comparison, the legal framework for protection of IDPs, the Guiding Principles, is founded on existing norms of international human rights and humanitarian law<sup>15</sup>. IDPs do not therefore “constitute a distinct legal category. Their status of being displaced does not need to be legally recognised in order to get certain legal entitlements” (Kalin 2007, p.36). This distinction has consequences for their property rights under international law (see section 4.5 below).

#### 4.3.1.1. Nature and Phases of Displacement

Displacements typically impact areas over which others have existing rights or claims and therefore there is usually a 'receiving' or 'host' community into which the displaced population arrives. This means that displacement leads to an increased level of competition over land, property and resources. The influx of a large population of displaced people may have an impact on the tenure security situation of the hosts themselves. For example, increasing numbers of displaced Syrians entering the rental market and driving up rents in Jordan and Lebanon are thought to have reduced security of tenure among poorer sections of the host community (NRC 2013).

The manner of settlement will vary according to context and a wide range of options are possible including living with host families, self settlement in rural or urban areas, settlement in collective centres and self settled or planned camps (Corsellis & Vitale 2005). In some contexts the displaced maintain some level of contact with their property. This can be through periodic return to check and secure the property or through on-going access from a nearby location where they are seeking refuge. For instance, in Uganda,

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<sup>15</sup> The guiding principles are considered 'soft law'. The Introductory Note by the Representative of the Secretary-General on Internally Displaced Persons Mr. Francis M. Deng states that the principles "do not constitute a binding instrument" but seek to "restate existing norms and seek to clarify grey areas and fill in the gaps".

some IDPs maintained access to their property for farming purposes during the day but would seek refuge at night in more secure locations (Adoko & Levine 2004) .

The end of displacement is generally considered to occur once a 'durable solution' to displacement has been found. For refugees section 1C of the Convention provides a cessation clause which determines when refugee status is considered to have ended. The first four of the provisions of the cessation clause relate to the (re)acquisition of state protection, either through voluntary *return* to the country of origin or through settlement in another state (either the host state defined as *local integration*, or a third party state defined as *resettlement*). The fifth provision of article 1C provides that refugee status is deemed to have ended when “the circumstances in connection with which [the refugee] has been recognized.. have ceased to exist”. For IDPs the same durable solutions framework, of *return*, *local integration* and *resettlement*, also applies but is premised on the right to freedom of movement and to choose one's residence (Guiding Principles 14/15). The difference for IDPs being that resettlement involves movement to a different part of one's home country rather than a third-party state.

UNHCR practice recognises that displacement does not end at a fixed point in time and that those returning home (or going elsewhere) require on-going assistance and hence UNHCR provides assistance to 'returnees' to help them re-integrate back into their home location. The end of displacement is achieved when “the persons concerned no longer have specific protection and assistance needs related to their having been displaced, and thus can enjoy their human rights in a non-discriminatory manner vis-à-vis citizens who were never displaced” (The Brookings Institution 2007, p.10). The post-conflict early recovery period typically coincides with the point where people are returning home or seeking alternative solutions (figure 9 below)

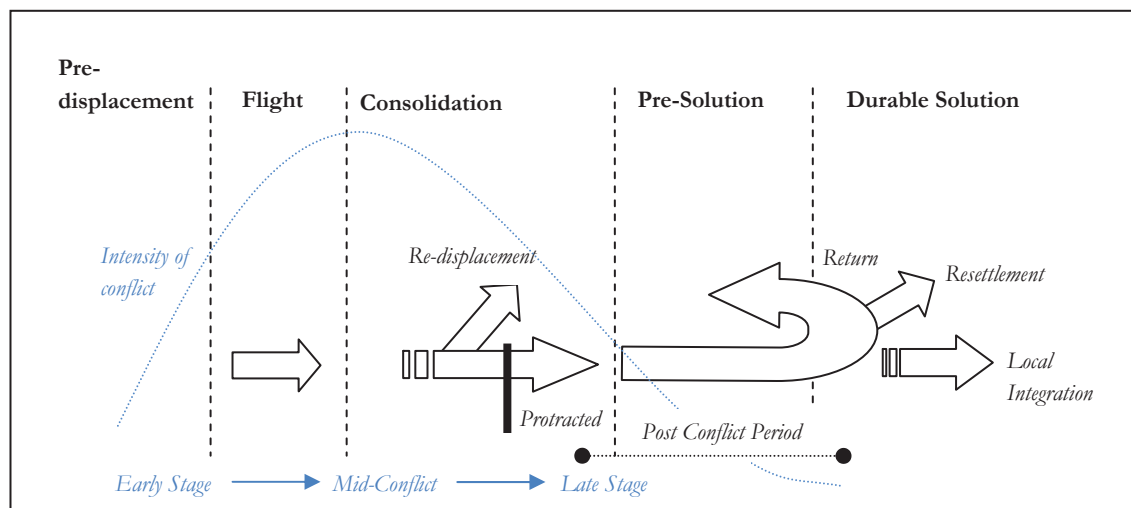


Figure 9: Phases of Displacement and Conflict (adapted from Lund (1996))

#### 4.4. Impact of Conflict on Land Administration Systems

Land administration infrastructure including buildings, equipment and the land records themselves can be destroyed during conflicts and this can happen intentionally, as happened in the Balkans and Timor (Zevenbergen & Burns 2010), or 'accidentally' due to a failure to secure infrastructure as happened in Côte d'Ivoire where records in partly damaged municipal buildings were left exposed and subsequently damaged by rain (Norton 2011).

The conflict may also influence the veracity or legitimacy of the land record. The pre-conflict land record may be reflective of previously discriminatory laws or corrupt practices. This may be the case where the conflict has an ethnic dimension or where a leader has used land distribution to reward their supporters (UN-Habitat 2007). Examples of issues that can arise during the conflict or in the immediate post-conflict period include the manipulation of the record by powerful groups (assigning to themselves the properties of those that have been displaced) or forced transactions whereby those leaving an area either feel obliged, or are physically forced, to transfer their properties to others (FAO 2005; Zevenbergen & Burns 2010; Fonseka & Raheem 2010) .

Staff may have been displaced or killed during the conflict, for example in Rwanda 75% of land administration staff were lost and 80% of trained legal personnel were killed or exiled (FAO 2005, p.29). Longer term conflicts can have a significant effect on capacity as senior and qualified staff leave the area. This was the case during the civil conflict Sri Lanka where many posts were left unfilled during the post-conflict period (Fonseka & Raheem 2010). Similar issues can affect traditional systems where elders are lost during the conflict, or in long running conflicts, the norms of customary tenure are forgotten or manipulated.

Land administration systems are not fixed and are in a continuous state of development. The systems in many conflict affected countries will already have been weak, particularly in poorer or fragile states that have experienced previous cycles of conflict. The low baseline of capacity can mean that systems are unable to meet the increased demand for services following displacement (FAO 2005) as happened in Sri Lanka where many people lost property documentation during fighting and the land administration system struggled to provide replacements necessary to access government reconstruction programmes.

It has been noted that the multi-disciplinary nature of land administration means that the different components can operate in silos and this can make it difficult to coordinate and develop responses in uncertain contexts (Augustinus & Barry 2004; Augustinus & Barry 2006). These challenges of coordinating HLP related activities have also been identified in recent humanitarian responses, for instance in Haiti with regard to developing appropriate solutions and coordination between international actors and the state (Levine et al. 2012). The heavy involvement of international actors in the rapid reconstruction of national systems means that changes are sometimes not fully 'owned' or implemented by local actors (FAO 2005; Stanfield et al. 2006).

The above discussion has tended to focus on the core function of registration, however many of these same issues will also affect the broader land administration system as a whole, impacting on courts, planning, taxation and municipal administration. Decision and law making bodies both at local and central levels may also be similarly affected and may equally have low baseline capacity. This can mean there is a lack of policies, laws and procedures together with slow and overly bureaucratic processes. The slow rate of law reform together with a loss of trust in state organs can mean an increase in levels of informality (Unruh 2009a; Augustinus & Barry 2006).

#### **4.5. Property Rights of Displaced Persons**

The legal framework governing forcibly displaced persons contains provisions governing housing, land and property rights. These can be found in the Guiding Principles on Internal Displacement; The Refugee Convention; and The Principles on Housing and Property Restitution for Refugees and Displaced Persons (commonly referred to as the 'Pinheiro Principles'); and in international humanitarian law (Hague

Convention and Geneva Conventions). It should be noted, as discussed above in section 4.3, that the legal regime for internally displaced persons is the national law of the country concerned (including state and customary regimes together with any international human rights treaty obligations).

References to property rights in displacement under International Humanitarian Law are generally framed in terms of minimizing forced displacements or treatment of the displaced<sup>16</sup>. Similar provisions regarding arbitrary displacement are found in the Guiding Principles (GP6). GP7 provides that “authorities undertaking displacement shall ensure..that proper accommodation is provided to displaced persons”.

Both the Refugee Convention and the Guiding Principles contain provisions regarding freedom of movement and the ability to choose one's place of residence (GP14(1) and Art 26 of the Refugee Convention). Principle 18(1) & (2) of the Guiding Principles state that IDPs shall have a right to an adequate standard of living including “basic shelter and housing”. The Guiding Principles (GP6-9) also provide protection against arbitrary displacement and details the manner in which lawful displacements should be carried out including the exploration of all feasible alternatives, provision of full information, compensation and the right to an appeal (GP7). The language used is reflective of General Comment No. 7 on forced evictions.

A fundamental tenet of both the Guiding Principles and the Refugee Convention is the notion of voluntary return. GP28 provides that displaced persons should be allowed to return home or resettle in another part of the country “voluntarily, in safety and with dignity”. The Refugee Convention provides that people will not be forcibly returned or expelled (article 33) and the statute of UNHCR provides that it will assist and promote voluntary repatriation (para. 8(c)).

Housing provisions in the Refugee Convention are framed in terms of ensuring that refugees are treated on the same basis as other aliens. Article 13 provides for “treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally.., as regards acquisition of moveable and immovable property”. Article 21 provides a similarly drafted provision for housing. As of 2007, there were 144 state parties to the Refugee Convention and Protocol (Goodwin-Gill & McAdam 2007) and this therefore raises the question of what protections exist for refugees displaced into countries that are *not* a party to these agreements. Although untested in practice, it has been proposed that the provisions of other international human rights treaties, such as the right to adequate housing in the CESCR, may offer protection (Williams 2011, chap.2).

#### **4.5.1. Abandoned Property**

A number of international instruments seek to provide protection for property abandoned during conflict. Article 23(6) of the Hague Convention (1907) provides that it is forbidden “to destroy or seize the enemy's property..unless imperatively demanded by the necessities of war” while article 28 prohibits pillage. Similar provisions are also present in the Geneva Conventions and in the Guiding Principles<sup>17</sup>.

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<sup>16</sup> Space limitation do not allow for a full discussion. Geneva Convention (IV) Relative to the protection of Civilian Persons in Time of War (1949) and the 1977 Additional Protocols on international and non-international armed conflicts contain provisions aimed at limiting 'forcible transfers', limiting attacks to military targets and providing that the displaced receive support. See articles 49 (GCIV 1949), 52 (protocol I 1977) and 13/17 (protocol II 1977)

<sup>17</sup> Guiding Principle 21(1) provides that “no one shall be arbitrarily deprived of property and possessions” and articles 21(2) & (3) provide that property left behind by the displaced shall be protected against pillage, “destruction and arbitrary and illegal appropriation, occupation or use”.

The most recent sources on such matters are the Pinheiro Principles (2005) and the Guiding Principles (GP29) which, aside from similar provision to those under international humanitarian law, also provide for restoration (restitution) of property to previous owners. The Pinheiro Principles state that “all refugees and displaced persons have the right to have restored to them any housing land and/or property of which they were arbitrarily or unlawfully deprived” (P2.1). Restitution is defined as “an equitable remedy, or a form of restorative justice, by which persons who suffer loss or injury are returned as far as possible to their original pre-loss or pre-injury position (i.e. status quo ante)” (UN Sub-Commission on the Promotion and Protection of Human Rights 2005, para.8).

The Pinheiro Principles give preference to restitution over other forms of reparation (P2.2) and indicate that compensation should only be used as a remedy “where restitution is not factually possible, or when the injured party..voluntarily accepts compensation in lieu of restitution” (P21). The emphasis on restitution aims to restore people back to their pre-conflict situation and this counters the issue of ethnic cleansing which was one of the main concerns coming out of the Balkans conflict, and upon which much of the learning that fed into the drafting of the Principles is derived. The rights under consideration in the Balkans were not freehold rights, but rather occupancy rights to social apartments. This is also reflected in the Principles which recognise a wide spectrum of rights including those of “tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property” (P16). The Principles also make specific provision for protection of secondary occupants (P17), another prominent issue in the Balkans.

The Principles state that the right to reparation is a “distinct right, and is prejudiced neither by .. actual return or non-return” (P2.2). Rights of reparation are separate and distinct from a person's choice of durable solution, therefore one is entitled to recover a property even if one chooses not to return. This was the case in Kosovo where many properties were recovered and subsequently rented out (Wühler et al. 2008).

The principles make two references to security of tenure, the first being principle 4.1 pertaining to the right to equality between men and women which states that there should be no discrimination related to the right of voluntary return, *legal security of tenure*, property ownership, inheritance, use, control and access to housing, land and property. The second reference comes in principle 15.2 which addresses the issue of the re-establishment of registration systems indicating that this should be done “as is necessary to ensure legal tenure security”. The term 'legal tenure security' is left undefined, although this is the same language as used in the CESCR General Comment 4 (1991, para.8) and can be construed as the legal recognition of tenure by the state and a prohibition against forced evictions (see section 2.3.5 above).

The Pinheiro Principles have been criticized for overemphasizing return over and above other durable solutions and not considering a broader range of redress beyond compensation and restitution such as reconciliation (Paglione 2008; Smit 2012). Alden-Wiley notes that the emphasis on restitution takes no account of pre-conflict inequalities and merely aims to restore the pre-conflict status quo (2009). Experience shows that the benefits of restitution programmes tend to accrue to elites at the expense of middle and lower income groups (Leckie 2009). The over-emphasis on protecting individual rights can also leave common pool resources exposed and this is particularly the case in contexts which do not have a history of individualised land holding (Alden Wily 2009). Principle 16 refers to “the rights of tenants and other non-owners” and it has been noted that having a separate principle for such rights together with the provisos of “to the maximum extent possible” and “in a similar manner to those possessing formal ownerships rights” implies that such rights are not on an equal footing with individual ownership (Rolnik 2011, para.27).



#### **4.6. Issues Related to Humanitarian Response**

Recent large scale humanitarian responses have highlighted a number of challenges related to tenure security in post-crisis contexts. These include: providing an appropriate response to the needs of tenants and squatters (Palmer 2008; Fitzpatrick & Zevenbergen 2008; Fitzpatrick 2008); overcoming regulatory barriers to response (IFRC 2011); reconciling obligations, standards of response and a desire to 'build back better' in contexts where targets are seeking 'simpler' solutions (Levine et al. 2012); and ensuring equity of response among different targets and geographical areas (Grewal 2006)

The Rapporteur on the right to adequate housing has noted that international post-crisis response is skewed towards supporting those with private property rights and that UN/NGO requirements to show proof of rights ahead of shelter construction reinforces existing inequalities (Rolnik 2010, para.20 & 25). She notes that a wide variety of tenures exist and therefore “it follows that only a minority of victims..may in effect have individual, formally registered, ownership rights to their housing or land” (Rolnik 2010, para.24). The Rapporteur also notes that there is an overemphasis on displaced persons, technical solutions and construction. She notes that reflection on the broader HLP environment may lead to more appropriate responses, many of which will not involve direct construction of houses (Rolnik 2010, para.52–55 & 59).

Further to the recent reports of the Special Rapporteur, the Human Rights Council (HRC) has issued a statement on the right to adequate housing in the context of disaster settings which highlights key principles and best practices (Human Rights Council 2012). The HRC emphasises that response in post-disaster settings should be based on needs; that people should be given security of tenure irrespective of their pre-disaster tenure status (para 4a); that priority be given to provision of housing for the most “disadvantaged and vulnerable” (para 4c); and that tenure rights of those without individual or formally registered property ownership are recognized in restitution, compensation, reconstruction and recovery programmes (para 4f). The Rapporteur will continue to work on issues of tenure security through to the end of her current term (2014) and is currently undertaking consultations with a range of stakeholders. It is therefore expected that further commentary will be made with regard to tenure security for the displaced (Rolnik 2013; NRC & IFRC 2013; DFID et al. 2013).

#### **4.7. Conclusion**

This chapter has sought to identify the characteristics of the post-conflict period and tenure security in such contexts (research questions A(ii) and A(iii)). The characteristics of the post-conflict period, in general, are those defined by Ball (2001) as presented in table 4 (above). The characteristics of the context as they pertain to security of tenure are presented in table 5 (below) which uses the same structure as that provided by Ball with an additional section detailing the common land and tenure issues that arise. As can be seen from table 5, many of the characteristics of the post-conflict environment are different to those of 'normal' contexts. The widespread destruction of property and displacement perhaps being the most distinct features. Many characteristics of the post-conflict context are also present in normal circumstances, however these are exacerbated by the conflict. Examples include a poorly functioning land administration system and the presence of vulnerable groups without access to documentation to prove their rights.

<b>Institutional Characteristics</b>	<b>Economic and Social Characteristics</b>	<b>Security Characteristics</b>
<ul style="list-style-type: none"> <li>– International Presence (UN)</li> <li>– 'Push for development'</li> <li>– Ownership of development projects</li> <li>– Poor coordination</li> <li>– Unstable policy and legislative framework</li> <li>– High levels of corruption</li> <li>– Damage to LAS infrastructure</li> <li>– Death / loss of staff</li> <li>– Loss or manipulation of land record</li> <li>– Inappropriate laws</li> <li>– Discriminatory laws</li> </ul>	<ul style="list-style-type: none"> <li>– Destruction of property</li> <li>– Displacement</li> <li>– Increase in deaths, widows, orphans</li> <li>– Loss of assets</li> <li>– Loss of livelihoods</li> <li>– Breakdown in social and moral norms</li> <li>– Loss of proof of rights (land)</li> <li>– Loss of proof of identity</li> </ul>	<ul style="list-style-type: none"> <li>– Insecurity - paramilitaries, militarised, weak police, demobilized ex-combatants</li> <li>– Unsafe areas - Land mines, UXO</li> <li>– Increased risk of secondary conflicts related to land</li> <li>– Conflicts between hosts &amp; displaced</li> </ul>
<b>Consequences/Issues</b>		
<ul style="list-style-type: none"> <li>Land grabbing by powerful</li> <li>Forced sales</li> <li>Forced resettlement</li> <li>Increase in demand for services</li> <li>Inheritance disputes</li> <li>Evidential issues - loss of documents / record</li> <li>Response issues - tenants/squatters, standards, equity</li> <li>Vulnerability of common pool resources</li> <li>Land acquisition for development</li> </ul>		

Table 5: Factors affecting Land Issues in the Post-conflict Early Recovery Phase

This brings us to the additional question posed in the introduction to this chapter: What exactly does 'tenure security' mean in situations of displacement? Is it fundamentally the same or does it possess different characteristics? If different, are alternative variables required in order to assess it? No existing studies could be found that explore the characteristics of tenure security in the same manner as those available for normal contexts (as presented in chapter 2) and therefore this is an area for possible future research. The discussion below seeks to provide a basic answer to these questions by exploring some of the characteristics and indicators of tenure security identified in chapters 2 and 3.

From a legal perspective the right to security of tenure for IDPs remains the same as it is under normal contexts, derived from the applicable national and international legal framework (particularly the provisions of the CESC). The position for refugees is somewhat different as tenure security is not expressly mentioned in the relevant laws, although it has been argued that the provisions of the CESC would apply (Williams 2011). This of course depends on whether the state is a signatory to the CESC.

In chapter 2, it was argued that a wide interpretation of tenure security should be made so as to provide protection for non-residential rights i.e. security should not be solely for the right of occupation. Soft law found in the Guiding Principles and Pinheiro Principles provides further rights that should be considered when discussing security of tenure for displaced persons, particularly those related to the prevention of



forced return and property restitution. A further distinction between post-conflict and normal contexts can therefore be made pertaining to the rights that need to be taken into consideration when assessing security of tenure.

The exposure to hazard may also differ in post-conflict contexts. Firstly, as just mentioned, the object under consideration will be not only the land currently occupied, but also the rights in one's place of origin. Further, due to displacement, there will be increased competition for land as the displaced move into areas over which others have existing rights/claims.

The subjects under consideration will also be influenced by conflict and displacement. There will be displaced persons and a receiving community (the hosts). As demonstrated by the current refugee response in Jordan and Lebanon, the emphasis is often heavily focused on the displaced population and little attention is given to the situation of vulnerable members of the host community. Therefore, assessment of tenure security needs to identify all of the subjects and balance rights accordingly. The extent of overlapping rights and claims in the post-conflict context means that a delicate balance or compromise needs to be reached, for example with secondary occupants that themselves have been displaced and may be highly vulnerable.

From the foregoing discussions we can conclude that the level of risk of losing rights is heightened in the post-conflict period i.e. security of tenure is weakened. Although, the fundamental concept of security of tenure remains the same, there are additional factors that need to be taken into consideration and therefore the range and complexity of issues tends to greater. Supplementary indicators will need to be identified for characteristics that are additional to normal contexts (e.g. forced return, resettlement, restitution rights).

It has been noted that the characteristics of land administration in post-conflict environments are the same as in “normal life conditions - but loaded with the characteristics of the post-conflict environment” (Todorovski et al. 2012, p.1). The same can largely be said of tenure security - the fundamental concept and its influences are largely the same, albeit exaggerated by the conflict. A greater range of issues exist and these affect different objects, rights and subjects, and therefore in terms of assessment, a more holistic perspective may be required in order to capture the full picture.

## 5. ASSESSING SECURITY OF TENURE IN POST-CONFLICT CONTEXTS

This chapter seeks to answer research question C (*What constraints are faced in assessing security of tenure in post-conflict contexts?*) and D (*Which methods are most appropriate for assessing security of tenure in post-conflict contexts?*). Existing tools and guidance are presented and discussed, and although none focus specifically on security of tenure in detail, most reference some aspects of the concept. The review of existing tools is valuable in terms of exploring the structure, methods and approaches taken to operationalise assessments in post-conflict environment. The chapter begins with a discussion of the constraints and challenges faced when carrying out assessments (s5.1) along with the possible opportunities that such contexts might present (s5.2). Section 5.3 contains a review of existing tools and sections 5.4 and 5.5 discuss methods. A framework for assessment and analysis of land administration systems in unstable conditions is discussed in section 5.6.

As mentioned in chapter 1, an assessment is defined as the “activities necessary to understand a given situation, [it] entails the collection..and analysis of data pertaining to the population of concern” (UNHCR, 2006). Darcy and Hoffman indicate that the purpose of a humanitarian assessment is “to inform decision-making in relation to four main questions: whether to intervene; the nature and scale of the intervention; prioritisation and allocation of resources; and programme design and planning” (2003, p.6). They further identify six elements of good assessment practice as being: timeliness, relevance, coverage, validity, continuity and transparency (2003, p.45).

The Rapporteur on the Right to Adequate Housing has recently noted that a rapid assessment should take place in the immediate aftermath of a disaster or conflict and has indicated that the purpose of such an assessment is a) to guide urgent steps to protect the right to adequate housing and tenure security, particularly for the poor and marginalised; b) to identify and warn against risk areas where poorly informed actions result in housing violations; and c) to identify opportunities for improvement and innovation of securing previously unavailable rights (Rolnik 2010, para.62).

### 5.1. Constraints and Challenges

Insecurity is perhaps the main constraint in the post-conflict period. There may be pockets of on-going violence and insecurity meaning that assessment missions often cannot access all the areas required. This will limit the extent of direct data gathering and consultation. Information from secondary data sources such as census and economic household surveys may also not be readily available, particularly in areas affected by long term conflict.

The capacity of national stakeholders is likely to be weak and therefore government departments may not have resources, time and capacity to design, manage or engage in assessment missions. Coordination of assessments may be difficult given the number of stakeholders involved, and further, land issues may be politicised resulting in there being competing agendas among those involved. International capacity can be used to support assessment missions through the UN, World Bank or regional bodies, however the

outputs of these processes can run into difficulty in terms of ownership (McKechnie 2003; Leonhard & Hahn 2004).

There may be time pressures involved in carrying out assessments and, in part, this will be driven by the need to seize the 'window of opportunity' when the state is under the international spotlight and can attract donor funding (Leonhard & Hahn 2004). At the same time there may be local political and public pressure to take advantage of the 'peace dividend' and demonstrate that the end of the conflict will yield benefits for the broader population.

In terms of the subjects of the assessment, certain groups may be less inclined to take part in assessments and surveys. This may depend on the history and nature of the conflict; the manner in which it was concluded; and whether there is a prevailing or historic climate of discrimination towards certain groups. Refugees and IDPs may not wish to be identified due to such discrimination or concerns that they will be forcibly relocated. Land rights are a sensitive matter, even under normal circumstances, and these sensitivities will be heightened in the post-conflict period, particularly if land was a contributing factor or driver of the conflict (FAO 2005).

In large emergencies, where many actors are conducting surveys, targets can become overwhelmed by repeated assessments and this 'assessment fatigue' can reduce willingness to take part in research activities (IASC 2011; Levine et al. 2012). This is particularly the case where assessments do not appear to yield an immediate tangible result. The link between assessment and humanitarian response also means that in some instances assessment targets will manipulate their responses in anticipation that this will result in them receiving assistance.

## **5.2. Opportunities**

Although the post-conflict period creates many challenges it also provides opportunities that may facilitate the conduct of assessments. To some extent these can be seen as the 'flip-side' to some of the above constraints.

There may be considerable international attention during the post-conflict period and this will attract funding from external institutional donors such as the World Bank and regional development organisations or via bilateral support from other states. Considerable resources will therefore be available to fund assessment missions, provide additional capacity and finance the resulting reconstruction programmes.

A large civil society presence and international response (be this UN or local and international NGOs) provides great opportunities for both data collection and dissemination of information, particularly in locations beyond the reach of normal government structures at the 'grassroots' level. Coordination mechanisms such as the cluster system or those setup through UNHCR provide an established vehicle for coordinating assessments. Assessment modules can be 'piggybacked' onto other assessment or data collection exercises including IDP or refugee registration; needs assessments; return intention surveys; or return and protection monitoring activities. The presence of external independent third parties may overcome some of the challenges regarding the willingness of targets to take part in assessments.

### **5.3. Assessment Tools for Post-conflict Contexts**

This section reviews a selection of assessment tools that have been developed for use in post-conflict contexts. No tools were found that squarely focus on assessment of tenure security, however lessons can be drawn by analogy from other assessment tools that are designed for application in the post-conflict period. The tools reviewed below fall into two main categories. The first are general multi-sector assessments developed for use in post-conflict situations. The second group consists of general HLP guidance which focuses either on natural disaster or post-conflict contexts. While recognising that natural disasters have different characteristics to post-conflict situations the humanitarian response, actors involved, and assessment processes used are often the same or very similar and therefore lessons can be transferred between the two contexts.

#### **5.3.1. Multi-Sector and Joint Assessments**

##### **5.3.1.1. Post-conflict Needs Assessment (PCNA)**

The Post-conflict Needs Assessment (PCNA) is an initiative of the World Bank and the UN Development Group. The PCNA is a multi-sector, multi-stakeholder assessment carried out in the post-conflict period with the objectives of identifying “mid-term recovery priorities..[and] to articulate their financial implications on the basis of an overall long-term vision or goal” (Kievelitz et al. 2004, p.1). The PCNA is seen as both a methodology and a process where the methodology is a technical assessment of recovery needs and the process is one of consultation, negotiation and analysis to agree on joint priorities.

The PCNA is primarily driven and implemented by the UN and World Bank although with heavy consultation and involvement of local actors and this is reminiscent of the World Bank LGAF approach. The PCNA uses a results-based structure including goals, outcomes and interventions (activities). It is primarily a tool to attract funding and set priorities.

For the present study the PCNA is of relevance as it highlights the joint nature and objectives of the majority of post-conflict assessments. It is also interesting that the PCNA emphasises the value of the process itself in terms of identifying common goals and priorities among the various stakeholders. The PCNA assessment also has a strong emphasis on conflict analysis to ensure that the proposed interventions are conflict-sensitive to “maximize [the] contribution to the ongoing peace process” and to avoid doing harm. The focus on the wider environment and broader goals of peace building are therefore also a prominent feature.

##### **5.3.1.2. ACAPS / REACH**

The Assessment Capacities Project (ACAPS) and REACH are two recent initiatives driven by international NGOs to improve the quality of assessments and data availability in humanitarian responses. ACAPs has a focus on supporting and strengthening capacities including the deployment of staff to undertake assessments. An ACAPs team is presently deployed in Beirut and is working to coordinate and collate assessment data to provide a regional overview of the crisis in Syria (SNAP/ACAPs pers. com. 2013).

The REACH programme is an initiative of ACTED and UNITAR and has a strong focus on the provision of geospatial assessment data.

Both of these initiatives, which aim to provide independent assessment services accessible to the broader group of humanitarian responders, provide opportunities for data collection. This could be through dedicated surveys or the addition of a tenure security module into other larger multi-sector assessments. REACH links with UNITAR and their use of GIS represents an opportunity to incorporate spatial assessment and analysis in a similar vein to the work undertaken by UN-Habitat in S. Africa and Iraq (see section 3.3.2.3). These processes are part of a broader range of data capture initiatives that are often used in emergency contexts including registration, case intake, protection monitoring, enumerations and profiling (Rolnik 2011, para.36; IDMC & UN-OCHA 2008).

### 5.3.2. Land Assessment Tools

#### 5.3.2.1. IASC Protection Working Group: Situation Assessment and Action Planning Tool

The IASC Protection Working Group has developed guidance for assessment of HLP issues in situations of armed conflict or natural disaster. The guidance is intended to assist actors address “HLP conflicts and disputes, prevent arbitrary deprivation of HLP rights, and to protect rights to HLP assets left behind” (Global Protection Cluster n.d.). The tool provides a checklist of approximately 188 questions structured by three thematic areas: HLP conflicts; Rules; and Institutions. These are further broken down into thematic sub-groups consisting of 'inquiries' (questions). The thematic areas are presented below in table 6. The tool states that it can be used as a prompt for a rapid standalone assessment or can feed into a larger multi-stakeholder process.

HLP Conflicts	HLP Rules	HLP Institutions
<ul style="list-style-type: none"> <li>– Typology</li> <li>– Geographic dimension</li> <li>– Time dimension</li> <li>– Parties to disputes</li> <li>– Historical context</li> </ul>	<ul style="list-style-type: none"> <li>– International obligations</li> <li>– Domestic formal rules</li> <li>– Patterns of recognition of informal and customary rules</li> <li>– Policies supported by statutory law</li> </ul>	<ul style="list-style-type: none"> <li>– Rule-making institutions</li> <li>– Adjudicatory institutions</li> <li>– Record-keeping institutions</li> </ul>

Table 6: Structure of Global Protection Cluster Situation Assessment and Action Planning Tool

The tool does not make explicit reference to security of tenure although many aspects are covered including land grabbing and forced eviction from customary land; legal provisions related to evictions; and government acquisition of land including review of procedural safeguards. Reference is also made to forced or involuntary displacement. The protection of vulnerable groups and gender are mainstreamed throughout the document.

The tool does not specify methods of data collection expressly stating that this is left for the reader to determine. Targets of this document (UN and NGO staff) can be assumed to be well versed with common rapid assessment methodologies.

The 'inquiries' in the tool related to the nature and type of disputes and those regarding the background to the conflict ensure the tool is conflict sensitive. Questions are included regarding the perceptions of actors to each other and the different institutions, the broader power relations and the underlying objectives of legislation and policy. The potential for sensitive land matters to prompt secondary conflict is included as an area of inquiry, and the focus appears to be on trying to identify those disputes that may lead to further violence.

#### 5.3.2.2. USAID Land & Conflict Toolkit for Intervention

USAID provides a 'rapid appraisal tool' in its Land and Conflict Toolkit, and this contains a sub-theme specifically exploring security of tenure. The tool consists of three pages of questions categorised by *Basic Questions, Targets and Themes* (see table 7 below). The tool takes a two tier approach looking at the macro level (policies, laws, political issues etc) and the micro level (questions for specified targets). The security of tenure sub-theme consists of questions related to the nature of tenure; evidence of tenure; whether the respondent thinks rights are enforceable; whether rights are shared with others; knowledge of protections; and the respondent's assessment of the quality of protections (e.g. are they fair and transparent).

Basic Questions	Targets	Themes
<ul style="list-style-type: none"> <li>– Knowledge of land laws and land rights</li> <li>– Governance and legal issues</li> <li>– Operational issues</li> <li>– Political considerations</li> </ul>	<ul style="list-style-type: none"> <li>– Apparent landless persons/labourers/ squatters</li> <li>– Tenants/sharecroppers</li> <li>– Landowners</li> <li>– Local officials</li> <li>– NGO representatives</li> </ul>	<ul style="list-style-type: none"> <li>– Inequality of land holdings</li> <li>– Tenure insecurity</li> <li>– Competing and conflicting land uses</li> <li>– Displacement/refugees in post-conflict situations</li> </ul>

Table 7: Structure of USAID Rapid Appraisal Tool (Land and Conflict Toolkit)

The USAID tool is noteworthy as it is 'people focused', identifying specific targets that could be sources of information (e.g. landless, tenants, landowners etc - see table 7 above). The questions on tenure security focus on the claimant's/rights-holder's perceptions, including their views of how enforceable they feel their rights are against others, knowledge of available protections and their perception of how fair, transparent and accessible these structures are. This approach reflects an attempt to measure 'perceived' tenure security.

#### 5.3.2.3. HLP Handbooks

A number of 'handbook' style publications have been produced by UN-Habitat and FAO and these focus on a range of thematic areas including simple advice for humanitarian actors (UN-Habitat 2008) (see annex v), post-conflict tenure and livelihoods (Unruh 2004), land and natural disaster (Fitzpatrick 2010), land and disaster risk management (Mitchell 2012) and post-conflict land administration and peace building (UN-Habitat 2003a; UN-Habitat 2007). Most of these publications contain reference to

assessments, although there is limited discussion on assessment of tenure security. In the interests of space these documents are discussed together.

Most of the documents are drafted as handbooks and are therefore designed to offer practical advice for practitioners. Most make use of case studies, make reference to common issues and provide recommendations regarding possible solutions. This includes discussion of 'recognised issues' related to tenants, squatters, informal settlements and the landless. All of the documents identify specific vulnerabilities related to gender. This can be seen as an attempt to prioritise and focus advice towards known problematic areas based on experience from previous humanitarian responses.

A number of common approaches can be identified in the documents, particularly the more recent ones focusing on emergency contexts (Fitzpatrick 2010; Mitchell 2012). The assessment advice is structured according to the phase of response defined as emergency, early recovery and long term recovery. The timeline provided for these periods varies and, particularly for the two latter documents, is focused on natural disasters, however the use of a phased approach would also be relevant in post-conflict situations. Multiple assessments are likely to be necessary with increasing knowledge and understanding coming over time as a fuller picture of the context is developed.

Most of the documents include assessment of the practicalities involved in implementing a response. For instance, Unruh provides a framework which includes assessment of inter-agency coordination and avenues of communication to the general public (for messaging on rights). A final commonality is a strong focus on action, and this is most clearly demonstrated in Fitzpatrick where multiple kinds of assessment are defined with specific purposes and timeframes in mind (rapid, needs, damage and loss, land availability and risk mapping - see annexes P and U).

### **5.3.3. LGAF and UN-Habitat Monitoring**

Brief note should be made regarding UN-Habitat tenure security monitoring and the LGAF as both of these tools have been applied in post-conflict contexts (sections 3.1 and 3.3.2.1). The UN-Habitat tenure security monitoring framework has used satellite and aerial imagery to estimate tenure security at a city wide level in South Africa and Iraq (section 3.3.2.3 and (Bazoglu et al. 2011, p.26)). This may be a suitable option in highly insecure contexts where a preliminary overview of the tenure security environment is required.

The LGAF has been undertaken (or is currently in progress) in a number of conflict affected countries including Georgia, DRC, Iraq, Colombia and Sudan (Hilhorst 2012). World Bank staff interviewed as part of this study confirmed that the LGAF process can be applied in the post-conflict period, although such contexts present a range of additional challenges including identification and availability of technical experts and a lack of data for some thematic areas and conflict affected regions. Sometimes data is not available due to the privatization of information or where there are personal interests in keeping it hidden. In some locations panel members have been reluctant to have their names publicised for fear of possible negative repercussions from the state (World Bank pers. com. 2012).

## **5.4. Methods**

None of the reviewed materials are prescriptive regarding the methodologies to be used. All generally make reference to common rapid assessment methodologies such as key informant interviews, focus



group discussions, direct observation and review of secondary materials. Some make reference to surveys, although significantly less than the aforementioned rapid methods, and often with the caveat that they be used only when required and to 'fill gaps'. The emphasis is therefore clearly on qualitative approaches and focused towards getting information in a timely fashion to feed into plans of action, recognizing that there is a compromise between speed and accuracy. This is in stark contrast to some of the monitoring frameworks presented in chapter 3, where great emphasis is placed on methodology. This is not surprising and perhaps simply reflects the differing purpose and objectives of data collection exercises.

It is interesting that none of the post-crisis handbooks use the tools available for assessing and analysing tenure security in normal conditions, for instance a tenure typology or participatory assessments (expert panels). Use of a tenure typology can be a good way to visualise the range of tenures available and this has been in use for over a decade so it is surprising that no mention of this tool is made. Many of the documents reviewed make reference to participatory approaches as a programmatic response (e.g. participatory enumeration and adjudication), however none suggest use of such methods for the assessment itself. The PCNA includes reference to such approaches and includes the state as a stakeholder, however the majority of the handbooks appear to view the state as a recipient of support rather than as a partner. This is perhaps because many of the handbooks are written with the UN and NGOs as intended targets, or because post-conflict state structures are assumed to lack the necessary capacity. Greater emphasis, like the PCNA, on state involvement using a process similar to the LIFI/LGAF would be valuable in terms of accessing necessary data; emphasising duty bearer responsibilities and obligations; obtaining buy-in for future actions; and most importantly, placing the state at the centre of any response. The recent LGAF experiences demonstrate that such approaches are feasible in post-conflict contexts.

Much of the literature, particularly the handbooks, emphasises rapid data collection. In part this may stem from a focus in some of the documents on natural disaster and use of a temporal structure to present guidance (emergency, early recovery, longer term recovery given as 5 days, 6 weeks, 6 months in (Fitzpatrick 2010, p.26)). In practice, particularly in post-conflict periods, the transition from emergency to early recovery will last longer than this. Further, the post-conflict period should not be considered in isolation as a starting point for assessment. In many cases assessments can begin before the end of the conflict, with local and international actors often having a presence for many years during the conflict.

One of the conclusions from the review of methods in chapter 3 was that greater use could be made of mixed methods approaches. The same conclusion can be reached for post-conflict contexts, with perhaps a greater emphasis on quantitative methods to complement the use of rapid qualitative approaches. Large data collection activities including registration and profiling exercises provide a good opportunity for quantitative data collection.

Joint assessments and coordination mechanisms provide an opportunity for data collection. For independent assessment processes could be improved through the development and use of common definitions and methods as this would enable the results to be combined and compared. For example in Jordan, many independent assessments have been undertaken by NGOs, however there is no common definition of the term 'eviction', nor a common method on how this should be measured. Some organisations report details of direct experiences, whereas others cite instances where refugees have 'heard of others' having experienced problems. This means it is impossible to evaluate the scale of the problem (NRC 2013).



Wider use of indicators would allow for tracking of progress over time. This may be valuable given that the unstable period, after a conflict and before a full durable solution is found, can last for a considerable time. Humanitarian actors are accustomed to such methods given the common use of logical frameworks for programme monitoring. The Protection Working Group guidance mentioned above in section 5.3.2.1 provides a step in this direction with a list of “HLP needs assessment & response monitoring indicators” grouped by assessment, output and outcome indicators (Global Protection Cluster n.d.). These can be found in annex Q. Indicators could also be framed in terms of governance and/or state obligation for delivering security of tenure (based on international norms). This approach may also enable assessments to align with, and feed into, larger processes such as the LGAF and treaty body reporting.

## **5.5. Variables and Indicators**

As was seen in the previous chapter the concept of tenure security is similar in normal and post-conflict contexts, and therefore, one would expect the variables used to measure it would also be similar. However, review of some of the common indicators used in normal circumstances highlights potential challenges in their application to the post-conflict context. Indicators of perceived security of tenure, duration of holding and levels of investment are discussed below.

Displacement has a strong temporal dimension because it is often presumed by those affected to be a temporary predicament. Although, duration of holding is generally viewed as a weak indicator of tenure security under normal contexts (s.3.2.1.1), it may influence people's subjective assessment of their situation. Displaced people often view their plight as temporary and this may even be the case with the long-term displaced. De Waal has noted that long-term displaced communities often have “selective nostalgia” - an idealised image of the past - which influences their views on their current tenure situation and options (de Waal 2009, p.21/22). They may maintain a strong desire to return home even though this is factually impossible. These kinds of issues are reminiscent of the 'feeling and thinking states' of van Gelder (section 2.3.4). A subjective measurement of tenure security may therefore be more complex for displaced persons.

Such perceptions of tenure security may have a consequence in terms of investment, as per the Feder model. For example, despite people having secure tenure (objectively assessed) they may be reluctant to invest in their property as it is viewed only as a temporary home. In cases of return or protracted displacement state policy might be aimed at encouraging investment either for reconstruction and peace-building purposes or to facilitate self reliance in displacement. Investment effects under the Feder model may be muted in such circumstances due to perceptions of temporariness.

In some contexts host communities or states may be reluctant to encourage people to make investments in their property as this would be seen as a step towards permanency and local integration (Williams 2011; IFRC 2011). The case of Palestinian refugees in Lebanon provides an interesting case, whereby although the refugees are expressly denied the right to own property, their presence is tolerated and they are not under threat of eviction. In terms of assessing tenure security they possess a very low risk of eviction, however they face restrictions in terms of bequeathing rights to children, are not encouraged to invest in their property and cannot use property as collateral. In such contexts the separation of 'protection from eviction' and 'other qualities' may be valuable and therefore the distinction between security and quality of tenure in such circumstances may be relevant (s.2.5).

A further issue related to 'duration' concerns the provision of 'temporary security of tenure' by humanitarian actors. For instance, in both Jordan and Lebanon, INGOs are rehabilitating partly constructed houses for Syrian refugees and signing a tripartite agreement (landlords, refugee, NGO) that provides a 'secure' tenancy for a fixed period (NRC 2013). Similar approaches have been taken in other contexts (IFRC 2011; NRC & IFRC 2013). The question arises whether tenure can be secure if only provided for a limited period. From an economic perspective the lease in these situations provides an expectation of a benefit stream of value for a fixed duration. If rights under this agreement are not arbitrarily lost then it could be said that for the duration of the term the subject has secure tenure. From the incremental tenure perspective such agreements could, arguably, be considered an intermediate form of tenure, during which time the persons concerned can build up or seek other protections. However, what is the consequence of repeated short term tenancies of this nature and how do they impact behaviour? Such questions remain unanswered. We can state that in post-conflict contexts there may be a prevalence of such quasi-official agreements this might create further complexity in assessing security.

## **5.6. Conclusions**

This chapter has sought to answer research questions C (*What constraints are faced in assessing security of tenure in post-conflict contexts?*) and D (*Which methods are most appropriate for assessing security of tenure in post-conflict contexts?*). The characteristics of the post-conflict period do appear to create a variety of challenges and constraints with regard to assessing security of tenure. These include an unstable environment; poor security; low capacity among state organs; poor coordination; and 'assessment fatigue' among targets. There are, however, also a range of opportunities including greater access to funding, international assistance and coordination mechanisms and the presence of independent third parties (UN/civil society) that can reach down to the grassroots level.

In terms of the purpose and objectives of assessment the emphasis of the reviewed documents is clearly focused on identification of needs to feed into decision making for programme planning and *action*. There is a clear emphasis on the timeliness of data collection and a clear compromise between data accuracy and speed. This is evident both in the temporal structure used to frame assessment advice (emergency, early recovery, long term) and from the focus on qualitative assessment methodologies. All of the documents stress that information and understanding will inevitably be imperfect during early phases of response but will improve over time. Therefore multiple assessments are used with increasing detail and focus.

Many of the available materials are in the form of handbooks and therefore use case studies to highlight known challenges and areas of weakness, including focus on vulnerable groups. This represents a prioritisation of a few select common issues based on previous learning. This may be a valuable approach to focus assessment resources where they can be of most benefit.

Most of the tools highlight the need to take a holistic view of the context including such things as the stakeholders, the underlying power relationships and history of the conflict. Most tools appear to take a conflict sensitive approach and the Protection Working Group's focus on disputes that could escalate into broader conflicts is a good demonstration of this.

The existence of humanitarian coordination structures and common experience of joint assessment exercises provides an opportunity for collaborative data collection on a large scale (both quantitative and qualitative). Few of the documents make reference to quantitative approaches, however the presence of so

many actors in the post-conflict period provides an opportunity to use common humanitarian practices and processes to gather data.

Few of the documents make use of indicators or make reference to, or even seek to track, state obligations, perhaps because much of the literature is focused towards humanitarian responders such as the UN and INGOs, however a greater focus on state obligations and governance would enable new and nascent state structures to evaluate their responses. This approach could help with international reporting and feed into, and align with, larger processes such as the LGAF, MDG and treaty body reporting. Indeed, much of the guidance, methods and tools provided by UN-Habitat to assist monitoring of tenure security for the MDGs is applicable in the post-conflict period, although requiring additional indicators tailored to the specifics of the environment.

## 6. ASSESSMENT FRAMEWORK

This chapter addresses the overall objective of the research, that is to propose a framework to guide assessment of tenure security in post-conflict contexts. This is developed by synthesizing the material presented in previous chapters and outlined in the research framework presented in figure 2 (chapter 1). The chapter begins by discussing the parameters/requirements of the proposed framework. Sections 6.2-6.6 present and explain the chosen framework.

### 6.1. Framework Properties

From the review of assessment and monitoring initiatives and tools presented in chapters 3 & 5 it is possible to discern a number of properties that assessment frameworks should possess (table 8 below). This section uses these properties to define the scope and approach of the proposed framework for post-conflict contexts.

**Properties of Assessment Frameworks**

A. Purpose/Objective	H. Methods
B. Clarity on the concepts to be assessed	I. Units of analysis
C. Logical structure	J. Spatial / Temporal scope
D. Intended users	K. Level of detail and inquiry approach (questions, guidance narrative, indicators)
E. Targets of assessment	L. Links to other processes (e.g. links to census, other assessment initiatives)
F. Context of application	
G. Prioritisation of assessment areas	

Table 8: Properties of Assessment Frameworks

The purpose of the assessment framework is to gather data to improve situational analysis and understanding in order to aid decision making. The concepts and definitions used in the framework have been clarified in previous chapters, and therefore will not be repeated here in detail (see sections 1.3 and 2.4). The concept of tenure security used in the framework is the risk-based model developed in chapter 2 and this provides the core structure of the framework. Having the structure of the assessment framework align with the conceptual model and factors influencing tenure security is logical and aids analysis.

The tool is designed for application in the post-conflict period and is intended for use by development actors operational in such contexts, namely staff engaged in land management, UN agencies and civil society. It is presumed that those engaging with the tool will have some pre-existing knowledge of land issues and therefore the framework does not provide detailed explanatory notes. It is also expected that users of the framework will be acquainted with basic assessment methodologies. The tool is not prescriptive with regards methods, preferring to leave this to the discretion of the user (see 6.2 below).

The tool is not intended for comparative purposes across different contexts. Given that land tenure and land administration is heavily context specific, the approach taken is to provide general 'areas of inquiry' that are phrased as statements or indicators. Some of these may not be applicable across all contexts and will need to be tailored accordingly. The 'areas of inquiry' are based on the findings of chapter 4 which

identified factors/issues related to tenure security in post-conflict contexts (chapter 4, table 5). This broad approach is contrary to other existing tools designed for post-crisis contexts which tend to offer a list of questions and guidance (e.g. handbooks and the PWG tool - annexes R,S and T). It is hoped that emphasis on providing a simple broad picture will facilitate analysis, diagnosis of issues and maintain focus on the 'core' of the concept of tenure security.

The units of analysis, and some of the indicators used in the framework, intentionally duplicate those used in other materials, particularly those from UN-Habitat monitoring of tenure security and the PWG guidance (Global Protection Cluster n.d.; Bazoglu et al. 2011). Annex X presents a summary of the indicators used in the framework separated by the UN-Habitat units of analysis.

## **6.2. Methodologies**

A range of methodologies can be used to gather data and a mixed methods approach is preferred, using a combination of qualitative, quantitative and geospatial data. The most appropriate methods can be determined according to the prevailing context.

Qualitative methods include key informant interviews, focus group discussions and direct observations. There is significant scope to use quantitative methodologies and UN / civil society initiatives such as monitoring, profiling, enumeration and registration exercises provide a good opportunity to gather data by addition of modules or questions on aspects of tenure security. Dedicated mini-surveys can also be used. Qualitative methods provide the best opportunity to gather data rapidly and cost effectively. Low cost approaches may be particularly appropriate for longitudinal assessment.

If multiple actors are going to be assessing aspects of tenure security it is important that common definitions of terms, concepts and methodologies are developed. This will enable findings to be consolidated or contrasted. Particular attention should be placed on developing common definitions of terms such as 'forced evictions', 'market-induced evictions' and 'development induced evictions'.

Typologies can be used to present information regarding the range of tenures and disputes identified. Tenures should reflect the actual situation and not simply be limited to the *de jure* situation. Although tenure typologies are valuable, it should be noted that tenure is not the only factor driving security and therefore the same tenure may provide a different level of security depending on particular subjects and objects. The risk-based model of tenure security emphasises this point.

## **6.3. Additional Dimensions of Assessment**

One of the fundamental differences between post-conflict and non-conflict contexts is the existence of large numbers of displaced persons. This dynamic changes the *subjects*, *rights* and *objects* that need to be assessed when analysing security of tenure.

Displacement creates additional subjects: displaced *and* hosts (a receiving community - either in displacement, return, integration or resettlement). Displacement may also create or change rights and one's relationship to the state (i.e. if a refugee). Finally, displacement means that the displaced possess rights/claims over multiple objects: the location where they are displaced *to*; and the location they were displaced *from* (i.e. their previous home/lands etc). These additional dimensions of tenure security need to

be included in the assessment. For example, the tenure security of a host may change as a result of an influx of displaced persons (e.g. poorer tenants being evicted in Lebanon to make way for wealthier Syrians, or loss of rights to land on which refugee camps are situated). In determining the rights a displaced person has over property in their point of origin one needs to evaluate their situation pre-displacement. Ahead of a possible return (or issuance of some form of reparation or compensation) one would need to know the current situation of this property (e.g. is it destroyed?, is there secondary occupier? etc.). The status of property at the point of origin may not become known until the return phase when, for instance, access becomes possible or a person returns to find their house destroyed or occupied. The assessment of tenure security needs to take account of, and separate out, these additional dimensions (figure 10).

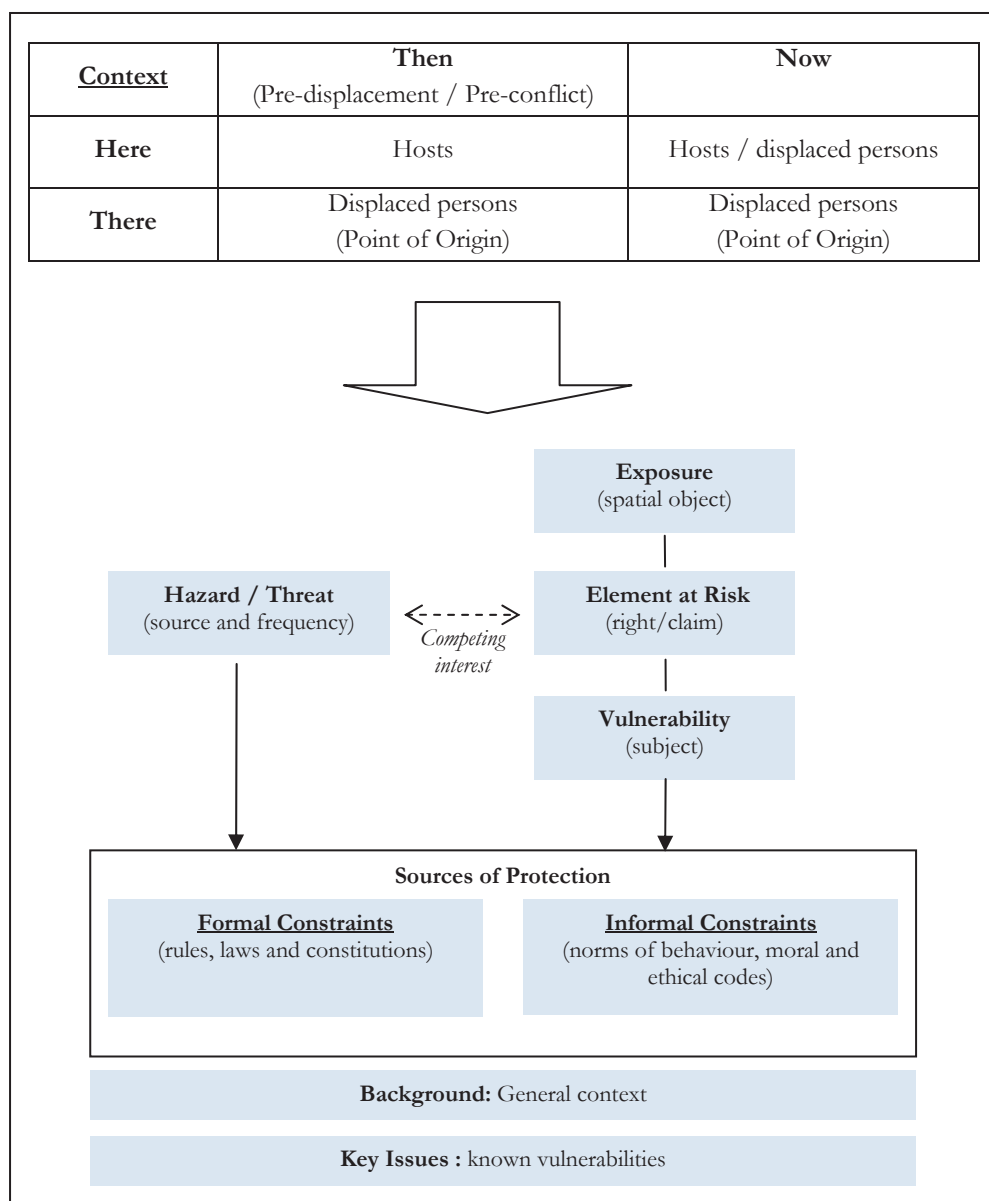


Figure 10: Overview of Framework Showing Dimensions of Assessment

#### **6.4. Assessment of Risk (Objective and Subjective)**

As shown in figure 10, it is proposed that both an objective and subjective assessment is carried out. As discussed above in chapter 2, tenure security influences behaviour and therefore it is important to understand perceptions of tenure security, not only to understand how this perception may influence behaviour, but also to corroborate findings of an objective assessment. Subjective risk can be determined by asking targets what their own assessment of their situation is. Questions can be framed in a variety of ways and these can be determined according to each given context and should be tested<sup>18</sup>. Care should be taken regarding results in this area as perceptions may be affected by a person's displacement situation (see section 5.5 above).

It is proposed that an objective assessment of tenure security use the risk-based model developed in chapter 1 (hazards, vulnerability, exposure, elements at risk, sources of protection and historical context). The framework includes an additional area of assessment that focuses on 'known issues' to prompt analysis and to enable tracking of issues that have proven to be problematic in previous responses.

The rationale for using the risk-based model as the primary structure of the assessment framework is twofold. Firstly, it is proposed that this model enables improved analysis of the many factors that influence tenure security. Secondly, given that the risk-based model reflects the fundamental aspects of tenure security, use of this structure means that the concept remains in focus during analysis (i.e. balancing of competing interests, risk of loss etc.).

The risk-based model is valuable for assessment because it enables the different aspects of tenure security to be clearly separated and identified in terms of the hazard, the objects under consideration and their exposure, the subjects and their vulnerability etc. This enables identification of the factors that cause insecurity and the relationships between them. For instance, a person may have low tenure security because they do not know their rights. This is a question of vulnerability and can be overcome by providing legal education. Others may be vulnerable because they cannot access land administration services due to poverty. This may lead to a conclusion that they be assisted with fees, or preferably the fees for accessing land administration should be made more affordable. In reality of course there will be a combination of factors influencing security. The risk-based model is also valuable because the subject is placed at the centre of analysis recognizing that personal traits or community characteristic influence tenure security.

#### **6.5. Assessing Tenure Security using the Framework**

The process to determine the level of tenure security is to identify the different factors under each of the elements of the framework (hazards, vulnerability, exposure, elements at risk, sources of protection and historical context). This process will clarify the object(s) and the rights/claims over them. Some objects may also have different exposure to hazards than others. The vulnerability of the subject should be determined and this will influence how readily they can access the available sources of protection. This can be done on a group or individual basis.

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<sup>18</sup> Documents reviewed in this study provide a range of examples of direct questioning: do you feel secure? do you think you might lose rights? An indirect approach could be questions such as: do you think you will be living here in X month's/year's time? If not, why not? A follow up question could then be used to identify the perceived source of hazard. Subjective assessment on specific aspects of the risk-based model could also be sought. This would include asking targets regarding their view of the avenues of protection available to them, the threats they face and the particular rights that are most at risk.



The likelihood of the hazard can be determined by exploring levels of prevailing or historic evictions. For instance, if the state has recently evicted many similar people then the likelihood of further evictions increases. The relative vulnerability between the source of hazard and the subject should also be considered, particularly in terms of accessing institutions ('sources of protection'). The state will be in a much stronger position to claim rights (although this depends on circumstance and politics - e.g. a cohesive community with civil society and political support may be able to resist). If the source of hazard is a person, this will depend on an assessment of the characteristics that may make them vulnerable - are they a powerful politician?, in the military? or a poor displaced person living in a property as they themselves have been displaced (secondary occupation)? The assessment is therefore ultimately about comparing two (or more) competing claims.

We can see that the evaluation of risk can be determined using a range of factors. This can be done even though some data is not available or known. This may be particularly valuable in uncertain situations where some issues can be presumed initially and then added later over time through further assessment.

As an example, one possible approach is to undertake a rapid assessment focusing on a city or region, as is suggested under the UN-Habitat framework. One could identify exposure to hazards through identification of state land, urban plans, level of destruction of land or property, mined areas, previous population of those areas etc. This could be combined with preliminary information on the population and institutional framework to provide a rapid overview of the situation.

## **6.6. Areas of Inquiry**

This section presents 'areas of inquiry' structured according to the assessment framework outlined in figure 10 above. This consists of the various components of the model of tenure security (hazards/threats, rights (elements at risk), objects (exposure), subjects (vulnerability), formal constraints and informal constraints) with additional inquiries covering background and key issues.

### **6.6.1. Hazards**

The main sources of hazard should be identified. This can be determined objectively by exploring reports of previous experience of loss or reported threats. This can be done through use of qualitative methods such as interviews, desk studies or through monitoring of previous evictions/disputes. Aside from reporting of direct experiences, it may also be possible to obtain a subjective perspective by asking the target who they perceive to be the greatest threat to their rights.

The manner and process of eviction is included in the framework as this relates directly to state obligations under international law and should be framed according to the provisions of General Comment No.7.

Disputes are not necessarily a bad thing and could be viewed positively as being an opportunity to resolve issues peacefully before a dispute resolution body. Disputes do however indicate that there is competition and overlapping claims. Frequency of disputes is also a factor in determining whether existing system can cope with demand.

Details of disputes and evictions will provide information regarding the different parties in dispute, their relationships and relative vulnerability. Importantly, in terms of the post-conflict period and future peace



building, it will highlight those disputes that involve violence or are along ethnic lines, particularly those involving groups party to the conflict.

### **Inquiries - Hazards (Sources, Frequency)**

– Identified Sources of hazard: State, community, household	
<i>Evictions</i>	<i>Disputes</i>
– # and type (forced eviction, forced return, forced resettlement, development induced, market induced), and source (e.g. state, private, military etc).	– # by type and actors highlighting those involving vulnerable groups and the state/powerful. (also ref <i>PWG - HLP1/2</i> )
– Process and manner of evictions (per G.C.7)	– Time taken to resolve disputes
	– # of disputes related to displacement, return, integration, resettlement
– # between hosts & displaced / # with ethnic, minority, racial, tribal aspects	
– # with violence (particularly involving groups) / # with potential to cause return to conflict.	
– Spatial distribution and hotspots	

Table 9: Areas of Inquiry - Hazards (Source & Frequency)

### **6.6.2. Rights**

The specific right held/claimed/threatened should be identified as different rights from the 'bundle' may face different hazards. The rights can be assessed along different dimensions including actual evidence of rights (documentation), or reported rights (lost or never had documentation). Where people have informal types of, or no, documentation (e.g. customary tenure, utility bills) it may be valuable to explore their understanding of what rights they possess (breadth of rights). Mode of acquisition can often be used as an indicator of tenure and the nature of rights held i.e. purchase implies a right to sell. Duration can be an indicator of prescriptive rights.

Some of the above (e.g. duration) may be of more relevance in determining the nature of host community tenure or the restitution rights in point of origin.

### **Inquiries - Rights**

– Actual rights: supported by documentation. % families which hold documents: e.g. Titles, Certificate of occupation, Purchase agreement / receipt, Property tax receipts, Utility bills, No documents ( <i>UN-HAB bh domain</i> & <i>UNHAB ST-HH1 / PWG - HLP3</i> ).
– Reported rights: as above but not in possession of document
– Available tenures - typology
– Understanding/perception of rights ( <i>restrict, develop, bequeath, sell</i> ) ( <i>UN-HAB bh domain</i> )
– Mode of acquisition ( <i>purchase, inheritance, self-settlement etc</i> )
– Duration: (% households residing at current dwelling for 10+ years - ( <i>UN-HAB bh domain</i> ))

Table 10: Areas of Inquiry - Rights

### **6.6.3. Objects/Exposure**

The objects (property/parcel) for which tenure is being assessed need to be clearly identified as in some locations people will possess rights over multiple properties. This could be due to separate parcels being used for housing and agriculture. Objects may include common pool resources such as a pasture for grazing

or woodland. For the displaced, objects include property both in the location of displacement and at point of origin.

Objects are a spatial feature and therefore lend themselves to analysis on this basis. These areas of inquiry are well suited to rapid appraisal techniques. In contexts of limited data or insecure access it may be possible to determine a rudimentary measure of exposure to risk through analysis of maps or satellite imagery and this may be a valuable first step in the assessment process. This approach has been taken by UN-Habitat in Iraq and South Africa to provide a rapid overview of the situation. A spatial overlap of objects with common known hazards would indicate insecurity, for instance where land is allocated for roads in urban plans, where land has mines or UXOs, areas rich in mineral or similar resources, areas with clear overlapping claims (e.g. border areas of national parks). Such spatial data is often available centrally and some of this analysis could therefore be done prior to the full stabilization of security.

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#### **Inquiries - Objects/Exposure**

- Location
- % people using land not planned for infrastructure/development (*UN-Hab*)
- Land available for displacement / durable solutions (PWG - HLP6)
- % of land unsafe (UXO etc) (PWG- HLP5)
- High value land - city centres, mineral or agricultural resources, coastlines
- Settlement characteristics (UN-Hab)
- % of common pool resources identified as such in LIS
- % of common pool resources with overlapping claims with state bodies ('free' land, national parks etc).

Table 11: Areas of Inquiry - Objects/Exposure

#### **6.6.4. Subjects/Vulnerability**

The socio-economic and demographic details of the population (hosts and displaced) can provide an indication of vulnerabilities. This may include issues such as illiteracy or groups 'with specific needs' such as female headed households, orphans etc. Demographic information together with background materials can be used to identify possible vulnerabilities with regard to discrimination based on gender or ethnicity. Vulnerability plays an important role in the subject's ability to access sources of protection.

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#### **Inquiries - Subjects/Vulnerability**

- Socio-economic & demographic details
- Knowledge of rights including rights in displacement (e.g., voluntary return, resettlement policies, land acquisition)
- Knowledge of sources of protection

Table 12: Areas of Inquiry - Subjects/Vulnerability

#### **6.6.5. Formal Constraints**

Formal constraints are the rules, laws and processes that relate to the 'formal' land management system. Assessment will involve an evaluation of the relevant regulations and how the system was affected by the conflict. Assessment needs to consider temporal aspects by examining the system as it was prior to the conflict (a baseline) as well as the present status. Areas of inquiry broadly cover the key components of the land administration system (legal, use, value).

The degree to which the system is accessible to different groups should also be assessed, particularly to identify any issues related to discrimination (e.g. have all ethnic groups historically been able to access the LAS?).

Much data on formal constraints can be gathered through desk research and key informant interviews. The use of participatory methods such as 'expert panels', as used by the UN-Habitat LIFI and the World Bank LGAF, should be the preferred approach.

<b>Inquiries - Formal Constraints</b>	
<p><i>Capacity LAS</i></p> <ul style="list-style-type: none"> <li>– Vacant staff positions</li> <li>– Records, Buildings, equipment damaged (PWG - HLP4)</li> <li>– Experience accessing and using services (inc. time taken to obtain copy documents)</li> </ul> <p><i>State Land</i></p> <ul style="list-style-type: none"> <li>– State land management system in place. State land is recorded in LIS (LGAF - LGI-12)</li> <li>– Expropriation (fairness, process, transparency) LGAF - LGI-14</li> </ul> <p><i>Planning</i></p> <ul style="list-style-type: none"> <li>– % of housing stock in compliance with building codes</li> <li>– Appropriateness of building codes to prevailing environment (LGAF - LGI-8)</li> </ul> <p><i>Land Sales</i></p> <ul style="list-style-type: none"> <li>– Status of banking system</li> <li>– Policy in place to re-establish land market</li> </ul> <p><i>Coordination</i></p> <ul style="list-style-type: none"> <li>– HLP working group setup and functioning</li> <li>– Relevant parties attend HLP working group</li> </ul>	<p><i>Dispute Resolution</i></p> <ul style="list-style-type: none"> <li>– # / % HLP of dispute resolution mechanisms operational (PWG - HLP7)</li> <li>– Legal provisions for legal aid exist (LIFI)</li> <li>– Legal provisions are practiced (LIFI)</li> <li>– Alternative dispute resolution structures (presence, nature, access, effectiveness, relation to formal)</li> </ul> <p><i>Laws and Policies</i></p> <ul style="list-style-type: none"> <li>– International treaty obligations</li> <li>– Legal provisions against forced evictions are accessible and effective (UN-HAB - ST-City2)</li> <li>– Informal settlements are included within the land information systems (UN-HAB - ST-City1)</li> <li>– Flexible evidential requirements</li> <li>– Recognition of continuum of land tenure / Customary tenure</li> <li>– Restitution policy is developed</li> <li>– IDP/refugee policy in place</li> <li>– HLP issues present in peace-agreements</li> <li>– Nature of discriminatory laws/policies their impact on the formal record.</li> </ul>

Table 13: Areas of Inquiry - Formal Constraints

#### 6.6.6. Informal Constraints

Informal constraints are the moral and ethical codes that shape human interactions. The avenues that people use to support their right/claims should be assessed (one possible way to examine this is to pose the question: if you had a land dispute or problem where would you go to resolve it?). The extent to which social constraints, attitudes and broader community provide a source of protection to different groups should be evaluated. Are some groups able to access support from the community, while some are not? (e.g. widows/single women with children out of marriage etc).

The displaced may lose contact with their leaders or otherwise lack community cohesion. Therefore they may not be able to call on informal protections as they normally would. Displaced groups may have differing traits (e.g. language), moral or social behaviours to their hosts which may mean local sources of protection are not available to them. These differences can exacerbate conflicts over local resources.

Modes of behaviour within the formal system should be explored. In practice this may happen at the same time as a review of the system and capacity. Do the different organisations that make up the LAS have internal cultures that restrict development, create conflict or prevent coordination? Is there a glass ceiling? Is there widespread corruption? Are there vested interests?

<b>Inquiries - Informal Constraints</b>	
<i>Informal protections</i>	<i>Common norms</i>
– Cited sources of protection	– Attitude of hosts to displaced
– Evaluation of protections (accessible/effective)	– Religion, ethnicity, moral attitudes (compare hosts-displaced)
– Presence of leadership structures	– Discrimination
<i>Informal Constraints in 'formal systems'</i>	– Disputes/violence between displaced/hosts
– Political will	
– Perception/experience of corruption	
– Barriers to coordination between organisations	

Table 14: Areas of Inquiry - Informal Constraints

#### 6.6.7. Background

As mentioned elsewhere, tenure and the land system in a country is borne of the cultural, political and historical context and therefore this background needs to be understood. The current situation and conflict needs to be placed in a historical context, particularly in terms of the stakeholders involved and the different power relations. Much of this investigation can be done through desk study and key informant interviews.

#### **Inquiries - Social, Cultural, Political and Historical Context**

<i>Background to context</i>	<i>Conflict Analysis</i>
– history, politics, people, culture, religion, discrimination etc.	– Structures, Actors, Dynamics (see: Goodhand et al. 2002).

Table 15: Areas of Inquiry - Social, Political and Historical Context

#### 6.6.8. Key Issues

The above framework should enable a thorough assessment of the tenure security situation. Experience demonstrates that there are a number of 'problematic issues' which seem to recur and for which states and responders struggle to find solutions. Given these challenges, and to ensure such matters are given sufficient attention, it is proposed that separate indicators are used to track specific known problematic issues.

#### **Inquiries - Key Issues**

– # of people in camps who are former tenants/squatters (after X time).	– # of people affected by secondary occupation (actors involved and locations)
– State develops policy to address issue of tenants/squatters	– # of people affected by forced resettlement
– Common pool resources - development induced displacement (#, location, nature)	– # people affected by forced return
	– # of formal land acquisition process and their nature (location, purpose, process etc)

Table 16: Areas of Inquiry - Key Issues

## 7. CONCLUSIONS AND RECOMMENDATIONS

This study has explored security of tenure in post-conflict contexts and has proposed a new model to better understand the concept. The model has been used to form the structure of framework that can be used to guide assessments.

Four research questions were posed in this study. **Research question A(i)** sought to identify the characteristics of tenure security in 'normal' contexts. The literature demonstrates that security of tenure is a multi-dimensional concept and many factors influence the level of security experienced. A range of conceptual frameworks or perspectives exist to define and explain the concept. This includes the property-rights perspective (Feder model) which equates security with formal tenure provided by the state. An alternative perspective is provided by Payne who suggests that intermediate forms of tenure can also provide *de facto* security. This view implies that there are multiple sources of security or protection. It also proposes an incremental approach to securing tenure as a way to minimise possible negative unintended consequences of titling. Van Gelder emphasises the importance of perceptions and how these influence behaviour. The human rights-based perspective emphasises state responsibility and obligations and provides a definition of tenure security under international law, which is framed in terms of protection against forced evictions.

A risk-based model of tenure security has been developed that allows for both subjective and objective assessment of tenure security using the *subject-rights-object* structure of the LADM. This emphasises that tenure security ultimately concerns competition over a finite spatial object and requires the balancing of competing claims, whether between individuals or individuals and the state.

**Research questions A(ii) and (iii)** sought to identify the characteristics of post-conflict contexts and security of tenure in post-conflict contexts. The post-conflict environment is unstable and characterised by insecurity, destruction of property and displacement. Although the fundamental core concept of tenure security in the post-conflict environment is largely unchanged, the characteristics of the post-conflict environment mean that the factors influencing it are more varied and exaggerated. This means that a broader range of factors need to be considered in assessments including different *objects, subjects and rights*. Displacement presents a particular subset of challenges and existing variables used to measure tenure security may not necessarily be directly transferable.

**Research question B** sought to identify the methods that are used to assess security of tenure. It was found that a wide range of indicators and methods can be used including both qualitative and quantitative approaches. Common indicators of measurement include tenure, breadth of rights, perceptions and previous losses (evictions).

**Research question C** sought to identify the constraints that are faced in assessing security of tenure in post-conflict contexts and **research question D** sought to identify the most appropriate methods for assessing security of tenure in post-conflict contexts?

It was found that the post-conflict context provides a number of challenges for the performance of assessments including an insecure environment; poor state capacity and coordination; assessment fatigue; and sensitivities which limit willingness of targets to participate in assessments. Despite these challenges, it

is possible to transfer much of the lessons, tools and methods from normal contexts for use in the post-conflict period. This is demonstrated by the application of the LGAF and UN-Habitat monitoring activities in a number of post-conflict contexts. Further, there are a number of opportunities in the post-conflict environment that facilitate data collection and assessment including: greater access to funding and support; multiple independent groups working with communities at the grassroots level; and existing structures and methods of data collection including registration, protection monitoring and profiling. A greater use of mixed-methods approaches would be of value in assessing tenure security in both normal and post-conflict contexts.

A number of potential methodological issues were identified where a number of commonly used indicators of tenure security may not be easily transferable to contexts involving displacement. This includes questions regarding what impact displacement would have on subjective assessments of tenure security (perceived tenure security) and the impact this may have on the investment effect under the Feder model.

Application of the risk-based model to the post-conflict context highlights that the *subjects*, *rights* and *objects* will differ from those in normal contexts. The *subjects* under consideration will involve both those that have been displaced and the host community into which they have been displaced. This is often overlooked and there is little consideration of the impact the displaced are having on poor host community tenure security (a significant issue with increased rents in the Lebanon Syrian refugee crisis). The *rights* under consideration may also vary, for example local laws related to housing may not apply to refugees. Displacement may create a set of rights that were not considered previously (such as property restitution). Finally, the range of *objects* being assessed will also differ as the object under consideration will be not only the land currently occupied, but also the rights in one's place of origin. Further, due to displacement, there will be increased competition for land as the displaced move into areas over which others have existing rights/claims. These additional aspects of tenure security in post-conflict contexts demand that a broader, more holistic, assessment of the context be undertaken. It is posited that the risk-based model facilitates such a holistic view by widening the range of variables under consideration while providing a meaningful framework.

The main objective of the research (*to propose a framework to guide assessment of tenure security in post-conflict contexts*) was addressed in chapter 6. The proposed framework was developed by synthesizing the materials in chapters 2-5 according to the research framework presented in figure 2 (chapter 1). The framework draws on the risk-based model of tenure security developed and presented in chapter 2, together with the different aspects of post-conflict tenure security identified in chapter 4 (in particular see table 5). The indicators and methods used in the framework are selected from those used in normal situations (chapter 3) and those suitable for post-conflict contexts (chapter 5).

## **7.1. Recommendations**

This section presents a number of recommendations that have been identified in the research. Some of these are addressed by the assessment framework itself while others are more general in nature.

Given the multi-dimensional nature of tenure security it is recommended that greater use is made of mixed research methods. Quantitative research, particularly those studies that employ econometric analysis, tend to state methods clearly (although these are often not explicit regarding the qualitative methods that have been used to gather background or contextual information and develop assumptions

upon which models are based). Qualitative research does often not explicitly state the methods and variables used. Greater clarity on such matters would assist further analysis and research.

The risk-based model of tenure security presented in chapter 2 identifies the spatial characteristics that influence security of tenure. UN-Habitat uses a spatial unit of analysis in the Meso level of its framework and there is experience of using maps and satellite imagery to undertake preliminary rapid assessments of tenure security in South Africa and Iraq (Bazoglu et al. 2011). It would be valuable to undertake further research regarding and how the spatial characteristics of tenure security can be processed in geographic information systems software (GIS) to rapidly identify areas with insecure tenure.

The research identified a number of opportunities in post-conflict contexts that may facilitate data collection (chapter 5) including registration processes, joint assessments and humanitarian coordination structures. It is recommended that greater use is made of such opportunities to gather information on security of tenure.

Alignment of definitions and indicators with those used in global reporting initiatives would enable data captured in the post-conflict environment to feed into larger data collection processes, particularly indicators related to governance or state obligations.

Further research could be undertaken regarding methodological issues, raised in section 5.5, regarding the applicability of subjective assessments of tenure security (perceptions of security) and the investment effect in post-conflict contexts.

Finally, the risk-based assessment framework proposed herein has been developed from a synthesis of existing literature and it remains to be tested. Further research could be undertaken to apply the framework and evaluate its usefulness.



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[Accessed August 31, 2012].



## ANNEXES

### Annex A: Structure and Coverage of Monitoring Initiatives

Organisation	Purpose	Structure & Coverage	Example Indicators for Tenure Security
<b>World Bank (LGAF)</b>	Monitoring for Policy Advocacy	<b>Areas of good land governance</b> <ul style="list-style-type: none"> <li>Legal and institutional framework</li> <li>Land use planning, management, taxation</li> <li>Management of public land</li> <li>Public provision of land information</li> <li>Dispute resolution and conflict management</li> </ul>	<p>Not mentioned directly – see list in annex F</p> <ul style="list-style-type: none"> <li>Recognition of Tenure Continuum , customary tenure and group rights</li> <li>Formal recognition of the informal</li> <li>Process and possibility for formalization</li> <li>Acquisition processes, public land management, planning and dispute resolution.</li> </ul>
<b>IFAD</b>	Fund Allocation	<p>Factors which influence rural development: Strengthening capacity of the rural poor and organizations; Equitable access to productive natural resources; Financial services &amp; markets; Gender; Public resource management and accountability</p> <p>Country assessment by IFAD staff</p>	<ul style="list-style-type: none"> <li>Access to land for vulnerable</li> <li>Access is secure (although left undefined)</li> <li>Extent of Titling (where appropriate)</li> <li>Poor can access markets</li> <li>Management of CPRs</li> <li>Civil society involvement</li> <li>Policies pro-poor and decentralised</li> </ul>
<b>USAID</b>	Situation analysis for programming	<p>Matrix of common constraints against possible areas of intervention</p> <p><i>Constraints:</i> Resource Conflict and Displacement; Weak Governance ; Insecure Tenure and Property Rights; Inequitable Access to Land and Natural Resources; Poorly Performing Land Markets; and Unsustainable Natural Resources Management and Biodiversity Loss.</p> <p><i>Intervention areas:</i> Institutions and Governance; the Legal and Regulatory Framework; Rights Awareness and Empowerment; Conflict or Dispute resolution; Restitution, Redistribution, and Consolidation; Rights Delivery and Administration; and Resource Use Management.</p> <p>Country or local assessment by USAID staff</p>	<p>Suggested monitoring indicators:</p> <ul style="list-style-type: none"> <li>Rate of evictions or destruction of informal settlements</li> <li>Number of landholders perceiving a high probability of dispossession from their land, disaggregated by wealth, gender, ethnicity, etc.</li> <li>Ability of landholder to exclude other claimants from one's land or natural resources</li> <li>Length of tenure</li> <li>Actions by the state to confiscate land</li> <li>Number or percent of citizens within key population categories receiving information/aware of legal rights associated with LTPR</li> </ul>
<b>OHCHR</b>	State Obligations	<p>Matrix of indicators</p> <p>Structural, process and outcome indicators by normative content of the RTAH (habitability, access to services, affordability and security of tenure)</p> <p>Per country to support treaty reporting</p>	<ul style="list-style-type: none"> <li>Date of entry into force and coverage of legislation on security of tenure, equal inheritance and protection against forced eviction</li> <li>Average time taken to settle disputes related to housing and land rights in courts and tribunals</li> <li>Number/proportion of legal appeals aimed at preventing planned evictions or demolitions ordered by court in the reporting period</li> <li>Number/proportion of legal procedures seeking compensation following evictions in the reporting period, by result after adjudication</li> <li>Reported cases of “forced evictions” (e.g. as reported to UN special procedures), in the reporting period</li> <li>Proportion of households with legally</li> </ul>

Organisation	Purpose	Structure & Coverage	Example Indicators for Tenure Security
			enforceable, contractual, statutory or other protection providing security of tenure or proportion of households with access to secure tenure
<b>UN-HABITAT</b>	State obligations under Habitat Agenda	Matrix of indicators related to tenure security. Divided according to SoT indicators	Various – see annex E % housing in compliance with regulations No. of evictions
<b>UN-HABITAT</b>	State obligations under MDGS	Matrix of indicators related to tenure security. Divided by Unit of analysis Household, Settlement, City/Country	Example include: <ul style="list-style-type: none"> <li>• Documents as evidence of rights</li> <li>• Perception of risk of eviction</li> <li>• Underlying tenure – proportion on state land that has development plans</li> <li>• Inclusion of informal rights in LIS</li> <li>• Legal provisions against forced evictions are accessible and effective</li> <li>• number of evictions</li> </ul> See Annexes B,C and D
<b>ALPI</b>	State Obligations	Matrix of indicators ordered by Logical Framework and economic, social, governance and environmental ‘factors’.  Separate sets of indicators for formal and customary regimes.  Countrywide. Indicators tailored to local context.  Tenure typology	Various – see list in annex I  <i>Examples:</i> <ul style="list-style-type: none"> <li>• Perception of tenure security in the past two years</li> <li>• No of evictions</li> <li>• Prevalence/severity of disputes</li> <li>• Functioning and access to dispute resolution fora</li> </ul>
<b>Blueprint for Real Property Rights</b>	State Obligations	Matrix of indicators Structure by selected LAS sectors Ability to use as collateral & to xfer Publicity rights (registry) Legal description (tenure) Physical description (cadastre)  Dimensions: Comprehensiveness, Efficiency, Transparency, Equity and Enforceability  Countrywide. Unclear who is assessing and how regular assessment should be.	Comprehensiveness of register. Assume if registered will be secure..  <i>Examples:</i> <ul style="list-style-type: none"> <li>• Degree of legal certainty of property rights.</li> <li>• Number of property rights disputes.</li> <li>• Number of unresolved property rights disputes.</li> <li>• Expropriations are pursuant to provisions established in law.</li> <li>• Can repossess the asset used as collateral expeditiously and at low cost.</li> <li>• Can evict non-complying tenants and repossess the asset expeditiously and at low cost.</li> </ul>

## Annex B: UN-Habitat Framework for Monitoring Security of Tenure in Cities

Source: based on narrative (Bazoglu et al. 2011, chap.4)

Level	Methodologies	Definition	Indicator ( <i>indicator name</i> )
Household	<ul style="list-style-type: none"> <li>• UIS</li> <li>• Module to HH Survey</li> <li>• Question added to census</li> <li>• Small sample surveys or qualitative methods</li> </ul>	Access to land for the majority of individual units are recognized by others (state or non-state parties) as legal or legitimate	1. Proportion units with documents as evidence of legality or legitimacy for access to land rights ( <i>ST-HH1</i> )  2. Proportion of units where people trust they will not be evicted ( <i>HH2</i> )
Settlement	<ul style="list-style-type: none"> <li>• Informal settlement assessment</li> <li>• City/settlement comprehensive rapid assessment</li> <li>• Household survey clusters</li> </ul>	Land legal status for the majority of informal communities allows for intermediate , flexible tenure solutions	1. Proportion of informal occupants using public land that is not planned for infrastructure or other services within total city population ( <i>Sett-Comm</i> )
City/ Country	<ul style="list-style-type: none"> <li>• Legal and Institutional Framework Index</li> </ul>	Intermediary forms of tenure are mainstreamed within the legal and institutional framework of the city/country	1. Informal settlements are included within the land information systems ( <i>ST-City1</i> )  2. Legal provisions against forced evictions are accessible and effective ( <i>ST-City2</i> )

## Annex C: UN-Habitat - Legal and Institutional Framework Index

Source: (Bazoglu et al. 2011, p.29)

THEME	VARIABLE	WEIGHT
<b>EVICCTIONS</b>		
Multi-stakeholder involvement		
Process prior to evictions		
	Consultation	3
	Justification	3
	Notification	3
	Recording	3
	Compensation/Relocation	3
Legal aid to potential evictees		
	Legal provisions for legal aid exist	6
	Legal provisions are practiced	6
<b>REMEDIAL &amp; PREVENTION</b>		
Legislative & policy enforcement		
	Constitution and land laws protect occupants and their possession rights	5
	Coherent, unambiguous and non-contradictory land laws and pro-poor land-use practices	5
	Gap between the practice (de-facto) and legal (dejure) systems is not wide	5
Equality of access to tenure		
	Laws of property inheritance and property registration are non-discriminatory.	3
	Co-tenure registration of multiple household members is possible.	3
	Household members have inheritance and development rights;	3
	Renters have tenure security according to clear regulations and rent is regulated	4
<b>LAND ADMINISTRATION PRACTICES</b>		
land administration and management		
	Basic land registration / recording systems are in place and operational	8
	HHs with informal tenure are included in the information systems	7
	Institutional capacity	3
	Capability	4
	Stability	3
	Affordability of Services	4
	Transparency	4
	Individuals have legal entitlement to access information and consultation about decisions that might violate their right to adequate housing	4
	Institutions are accessible at local level and provide information and assistance	4

## Annex D: UN-Habitat Indicators at the Household Domain

Source: (Bazoglu et al. 2011, p.35)

Indicator	Definition
<b>EVICTIONS</b>	
Family history of evictions	Number of households evicted in the last five years per 10,000
Perception HH's risk	% household heads who fear they will be evicted
Perception on women's risk	% women who fear they will be evicted from HHs after divorce/separation/loss of husband
<b>DOCUMENTATION AND ACQUISITION</b>	
Documents held:	% families which hold: Titles Certificate of occupation Purchase agreement/receipt Property tax receipts Utility bills No documents
Process through which dwelling (and/or land) was acquired	% families acquiring land by: Formal finance sources (public or private) Direct purchase from private individuals/developers Self-arranged building (direct labouring or via a developer)
<b>DURATION OF RESIDENCE/USE (OF CURRENT DWELLING/WORKPLACE)</b>	
Duration of rights	% households residing at current dwelling for 10+ years (proxy indicator for adverse possession). The same formula also holds for workplaces
<b>RIGHTS</b>	
Restrict	% families believing they have the right to prevent others from entering
Develop	% families believing they have the right to develop their dwelling
Sell	% families believing they have the right to sell
Inherit	% families believing they have the right to inherit

## Annex E: Habitat Agenda Indicators for Secure Tenure

Source: (UN-Habitat 2004b)

### Check-list 1 : Right to adequate housing

*Habitat Agenda Goal: Promote the right to adequate housing*

**Rationale:** Since the adoption of the Universal Declaration of Human Rights in 1948, the right to adequate housing has been recognized as an important component of the right to an adequate standard of living. Part of the actions that Governments are committed to providing, in the matter of housing, that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against them. Also, by ratifying the International Covenant on Economic, Social and Cultural Rights (1966), one of the core international legal instruments, members of the United Nations, accept the most significant foundation of the right to housing. Article 11.1 of the Covenant declares that: *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.*

**Definition:** Achievements of the right to adequate housing in the Constitution or National law for all citizen (questions below).

1. Has the country ratified the International Covenant on Economic, Social and Cultural Rights? ☐ yes ☐ no
- 2a. Does the Constitution or national law promote the full and progressive realisation of the right to adequate housing? ☐ yes ☐ no
- 2b. If yes, is this right mentioned as one to which everybody is entitled? ☐ yes ☐ no
- 2c. If yes, is this right mentioned for particular groups? ☐ yes ☐ no
- 2d. Which particular groups?
3. Are there any laws affecting the realization of the right to housing? ☐ yes ☐ no
4. Is the Constitution or national law promoting the full and progressive realisation of the right to adequate housing applied? ☐ fully applied  
☐ applied with exceptions  
☐ applied in some cases  
☐ not applied
- 5a. Are there impediments to women owning land? ☐ considerable ☐ some ☐ none
- 5b. Are there impediments to particular groups owning land? ☐ considerable ☐ some ☐ none
- 5c. Which particular groups?
- 6a. Are there impediments to women inheriting land and housing? ☐ considerable ☐ some ☐ none
- 6b. Are there impediments to particular groups inheriting land and housing? ☐ considerable ☐ some ☐ none
- 6c. Which particular groups?

**Methodology:** This information should be verified in the Constitution or national law with some specialised Lawyers. Other information should be verified through groups of non-governmental organisations and community-based organisations. If possible, answers should be documented. Any notable change which has occurred during the last five years should be mentioned and explained.

**Gender:** While law often gives a number of rights to women, traditional barriers impede them from benefiting. This check-list is proposed in order to identify the various kinds of impediments women face in a given national context.

**Comments and limitations** The existence of rights in the law does not necessarily mean that they are applied. This check-list will not be able to inform about the implementation of the law. Deviations from the law can be measured by the number of unlawful evictions for instance, when the data is available.

**Level:** National



### Indicator 3: Secure tenure

**Habitat Agenda Goal:** Provide security of tenure

#### Rationale:

Secure Tenure is *the right of all individuals and groups to effective protection by the State against unlawful evictions*<sup>7</sup>. Secure tenure can be considered as the first component of the progressive realization of the right to housing (...). The granting of secure tenure will not, in and of itself, solve the problem of homelessness, poverty, unsafe living environments and inadequate housing. However, secure tenure is one of the most essential elements of a successful shelter strategy<sup>8</sup>. A high risk of eviction in many circumstances constitutes an indicator of poor tenure security. Eviction should be enshrined in the law. Also, the law shall be enforced. The incidence of evictions can only be verified by checking the number of unlawful evictions (*extensive indicator 3: evictions*).

#### Definition:

Level at which secure tenure is ensured for households and individuals as measured by the questions (below) on the legal framework related to eviction.

1. Does the Constitution include protections against eviction?	<input type="checkbox"/> yes <input type="checkbox"/> no
2. Does the national law include protections against eviction?	<input type="checkbox"/> yes <input type="checkbox"/> no
3. Are the followings steps undertaken during eviction ?	
a. Consultation (the future evictees are consulted through formal meetings)	<input type="checkbox"/> always <input type="checkbox"/> always, with exceptions <input type="checkbox"/> sometimes <input type="checkbox"/> never <input type="checkbox"/> less likely to be applied for women
b. <u>Notification</u> (the future evictees are formally notified in writing about the date and process of eviction)	<input type="checkbox"/> always <input type="checkbox"/> always, with exceptions <input type="checkbox"/> sometimes <input type="checkbox"/> never <input type="checkbox"/> less likely to be applied for women
c. <u>Recording</u> (the eviction case is formally recorded by the police, local authority or any government institution)	<input type="checkbox"/> always <input type="checkbox"/> always, with exceptions <input type="checkbox"/> sometimes <input type="checkbox"/> never <input type="checkbox"/> less likely to be applied for women
d. <u>Compensation</u> (compensation is provided to the evictee in the form of property or funds)	<input type="checkbox"/> always <input type="checkbox"/> always, with exceptions <input type="checkbox"/> sometimes <input type="checkbox"/> never <input type="checkbox"/> less likely to be applied for women
e. <u>Relocation</u> (the evictee is relocated in a new safe accommodation)	<input type="checkbox"/> always <input type="checkbox"/> always, with exceptions <input type="checkbox"/> sometimes <input type="checkbox"/> never <input type="checkbox"/> less likely to be applied for women
4. Is there <u>legal aid</u> support to evicted people ?	<input type="checkbox"/> full support to any citizen <input type="checkbox"/> support to some extend <input type="checkbox"/> no support at all <input type="checkbox"/> less likely to be applied for women
5. Is there <u>legal aid</u> support to family-related evictions (result of domestic violence, eviction by family members, etc) ?	<input type="checkbox"/> full specific support <input type="checkbox"/> specific support to some extend <input type="checkbox"/> no specific support at all <input type="checkbox"/> less likely to be applied for women
6. Are spouses living in the same dwelling as the owner automatically recognised as <u>co-owners</u> in the law ?	<input type="checkbox"/> yes <input type="checkbox"/> no

#### Methodology:

This information should be verified in the Constitution and the national law and checked through experts from Lawyers associations, non-governmental organisations and community-based organisations working in the area of shelter security. Any important change which has occurred during the last five years should be mentioned and explained.

#### Gender:

It is important to verify if men and women are equally treated in the various steps of eviction. It is also crucial to check whether women and men are equally legally assisted in case of eviction. The particular case of family-related eviction should be considered. Problems of evictions of women as a result of domestic violence for instance remain unsolved in many countries.

#### Comments and limitations

This indicator can only inform about the overall legal context and general application of tenure regulations in a country. A more in-depth legal and institutional assessment is necessary in order to get a full picture of secure tenure in a given national context<sup>9</sup>. Also, the perception which citizens have of their own security of tenure is an important dimension to be recognised in the measure of secure tenure. This can only be measured through direct interviews with individuals from different types of neighborhoods.

#### Level:

National

<sup>7</sup> Expert Group Meeting on 'Defining Slums and Secure Tenure', UN-HABITAT, Nairobi, November 2002.

<sup>8</sup> UN-HABITAT Global Campaign for Secure Tenure

<sup>9</sup> UN-HABITAT has prepared a detailed questionnaire to assess the Secure tenure legislative/institutional framework. It can be obtained upon request to the Global Urban Observatory.



## Extensive indicator 2: Authorized housing

*Habitat Agenda Goal: Provide security of tenure*

<b>Rationale:</b>	This indicator measures the extent to which the urban population is housed legally. Only housing which both has a clear title to the land on which it stands, and which is constructed with all required building, land use, or land subdivision permits should be regarded as in compliance. A low value for this indicator is a sign that housing development is proceeding without proper government controls, and that government is either tolerant of housing which does not comply with its regulations or is unable to prevent trespasses.
<b>Definition:</b>	<b>Percentage of the total housing stock in compliance with current land and building regulations.</b>
<b>Methodology:</b>	Authorized housing excludes all housing which does not conform to land and main building regulations. Small additions or modifications to a unit in compliance should not change the status of a unit to unauthorised. Unauthorised housing is not recorded in Census and other households surveys. An estimation must be established through experts opinions of builders, surveyors, developers, officials or researchers in the area of land and housing. Maps or aerial photographs can be used in order to locate areas which are more likely to have unauthorized developments. Percentage of unauthorized housing can be established for each area and a general estimation can be made on the basis on the estimated housing stock per area.
<b>Gender:</b>	In some countries, women have a lower access to secure housing and are more likely to live in unauthorised areas. This status weaken their general conditions and expose them most to high risk of evictions.
<b>Comments and limitations</b>	Data for this indicators might be difficult to obtain. However, crude estimations on the extent of unauthorised housing in the different areas of the city may assist policy makers in planning future priorities, in particular in targeting possible regularization programmes. This indicator may be analysed in relation with indicator 12 (planned settlements) which addresses strategic planning of settlements at the city level.

## Extensive indicator 3: Evictions

*Habitat Agenda Goal: Provide security of tenure*

<b>Rationale:</b>	Whether is it legal or illegal, eviction has generally a negative social impact on populations. This indicator measures the degree to which this practice is still in force. Because eviction is usually irregular and intermittent, the value for this indicator is an average over the last five-year period. In developed countries the indicator will refer to evictions during large public works projects but mostly to evictions for non-payment of rent, and will measure affordability conditions and the availability of legal recourse by landlords. In developing countries the major component of this indicator will be squatter evictions. In many countries, Governments have chosen to allow long-term squatter settlements to remain in place. In other countries, however, eviction continues unabated.
<b>Definition:</b>	<b>Average annual number of men-headed and women-headed households evicted from their dwellings during the past five years (1998-2003 five-year period).</b>
<b>Methodology:</b>	This information might not be available as official information. It is usually collected through specific studies on the subject. However, non-governmental organisations dealing with housing rights issues, including consumer associations, usually have estimates on the number of evicted person per year.
<b>Gender:</b>	Eviction is perhaps the most dramatic manifestation of the fight for land and housing. Women-headed households, are more likely to be part of disadvantaged groups and therefore to experience evictions. Women and children suffer the most when such events occur.
<b>Comments and limitations</b>	Data for this indicators might be difficult to obtain through secondary sources. Another sustainable way to obtain such information for the long-term is to investigate on the issue of eviction through upcoming households survey by asking individuals, men and women, if they have been evicted in the last five years, and under which circumstances.
<b>Level:</b>	City

## Annex F: LGAF Main Indicators

Source: (Deininger et al. 2012)

<b>THEMATIC AREA 1. LEGAL AND INSTITUTIONAL FRAMEWORK</b>
<i>LGI-1. Recognition of a continuum of rights:</i> The law recognizes a range of rights held by individuals as well as groups (including secondary rights as well as rights held by minorities and women)
<i>LGI-2. Enforcement of rights:</i> The rights recognized by law are enforced (including secondary rights as well as rights by minorities and women)
<i>LGI-3. Mechanisms for recognition of rights:</i> The formal definition and assignment of rights, and process of recording of rights accords with actual practice or, where it does not, provides affordable avenues for establishing such consistency in a non-discriminatory manner
<i>LGI-4. Restrictions on rights:</i> Land rights are not conditional on adherence to unrealistic standards.
<i>LGI-5. Clarity of mandates and practice:</i> Institutional mandates concerning the regulation and management of the land sector are clearly defined, duplication of responsibilities is avoided and information is shared as needed.
<i>LGI-6. Equity and non-discrimination in the decision-making process:</i> Policies are formulated through a legitimate decision-making process that draws on inputs from all concerned. The legal framework is non-discriminatory and institutions to enforce property rights are equally accessible to all
<b>THEMATIC AREA 2. LAND USE PLANNING, MANAGEMENT, AND TAXATION</b>
<i>LGI-7. Transparency of land use restrictions:</i> Changes in land use and management regulations are made in a transparent fashion and provide significant benefits for society in general rather than just for specific groups.
<i>LGI-8. Efficiency in the land use planning process:</i> Land use plans and regulations are justified, effectively implemented, do not drive large parts of the population into informality, and are able to cope with population growth.
<i>LGI-9. Speed and predictability of enforcement of restricted land uses:</i> Development permits are granted promptly and predictably.
<i>LGI-10. Transparency of valuations:</i> Valuations for tax purposes are based on clear principles, applied uniformly, updated regularly, and publicly accessible
<i>LGI-11. Collection efficiency:</i> Resources from land and property taxes are collected and the yield from land taxes exceeds the cost of collection
<b>THEMATIC AREA 3. MANAGEMENT OF PUBLIC LAND</b>
<i>LGI-12. Identification of public land and clear management:</i> Public land ownership is justified, inventoried under clear management responsibilities, and relevant information is publicly accessible
<i>LGI-13. Justification and time-efficiency of expropriation processes:</i> The state expropriates land only for overall public interest and this is done efficiently
<i>LGI-14. Transparency and fairness of expropriation procedures:</i> Expropriation procedures are clear and transparent and compensation in kind or at market values is paid fairly and expeditiously
<i>LGI-15. Transparent process and economic benefit:</i> Transfer of public land to private use follows a clear, transparent, and competitive process and payments are collected and audited.
<b>THEMATIC AREA 4. PUBLIC PROVISION OF LAND INFORMATION</b>
<i>LGI-16. Completeness:</i> The land registry provides information on different private tenure categories in a way that is geographically complete and searchable by parcel as well as by right holder and can be obtained expeditiously by all interested parties
<i>LGI-17. Reliability:</i> Registry information is updated, sufficient to make meaningful inferences on ownership
<i>LGI-18. Cost-effectiveness and sustainability:</i> Land administration services are provided in a cost-effective manner.
<i>LGI-19. Transparency:</i> Fees are determined and collected in a transparent manner
<b>THEMATIC AREA 5. DISPUTE RESOLUTION AND CONFLICT MANAGEMENT</b>
<i>LGI-20. Assignment of responsibility:</i> Responsibility for conflict management at different levels is clearly assigned, in line with actual practice, relevant bodies are competent in applicable legal matters, and decisions can be appealed against.
<i>LGI-21. Low level of pending conflict:</i> The share of land affected by pending conflicts is low and decreasing



## Annex G: OHCHR Indicators for the Right to Adequate Housing

Source: (United Nations International Human Rights Instruments 2008)

	Habitability	Accessibility to Services	Housing Affordability	Security of Tenure
Structural	<ul style="list-style-type: none"> <li>International human rights treaties, relevant to the right to adequate housing, ratified by the State</li> <li>Date of entry into force and coverage of the right to adequate housing in the Constitution or other forms of superior law</li> <li>Date of entry into force and coverage of domestic laws for implementing the right to adequate housing</li> </ul>			
	<ul style="list-style-type: none"> <li>Type of accreditation of National Human Rights Institutions by the rules of procedure of the International Coordinating Committee of National Institutions.</li> <li>Number of registered and/or active non-governmental organizations (per 100,000 persons) involved Structural in the promotion and protection of the right to adequate housing</li> </ul>			<ul style="list-style-type: none"> <li>Date of entry into force and coverage of legislation on security of tenure, equal inheritance and protection against forced eviction</li> </ul>
	<ul style="list-style-type: none"> <li>Time frame and coverage of national housing policy or strategy for the progressive implementation of measures, including special measures for target groups, for the right to adequate housing at different levels of government</li> <li>Time frame and coverage of national policy on rehabilitation, resettlement and management of natural disaster</li> </ul>			
	<ul style="list-style-type: none"> <li>Proportion of received complaints on the right to adequate housing investigated and adjudicated by the national human rights institution, human rights and the proportion of these responded effectively by the government ombudsperson or other mechanisms</li> <li>Number of and total public expenditures on housing reconstruction and rehabilitation by evicted/displaced persons during the reporting period</li> </ul>			
	<ul style="list-style-type: none"> <li>Net official development assistance (ODA) for housing (including land and basic services) received or provided as proportion of public expenditure on housing or GNI*</li> </ul>			
Process	<ul style="list-style-type: none"> <li>Proportion of habitations (cities, towns and villages) brought under the provisions of building codes and by laws in the reporting period</li> <li>Share of public expenditure on social or community housing</li> </ul>	<ul style="list-style-type: none"> <li>Share of public expenditure on provision and maintenance of sanitation, water supply, electricity and physical connectivity of habitations</li> <li>Proportion of targeted population that was extended sustainable access to an improved water source*, access to improved sanitation*, electricity and garbage disposal in the reporting period</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of households that receive public housing assistance, including those living in subsidised rented housing and households subsidised for ownership</li> <li>Proportion of targeted households living in squatter settlements rehabilitated in the reporting period</li> </ul>	<ul style="list-style-type: none"> <li>Average time taken to settle disputes related to housing and land rights in courts and tribunals</li> <li>Number/proportion of legal appeals aimed at preventing planned evictions or demolitions ordered by court in the reporting period</li> </ul>
	<ul style="list-style-type: none"> <li>Habitable area (sq. m) added through reclamation, including of hazardous sites and change in land use pattern in the reporting period</li> <li>Habitable area (sq. m per capita) earmarked for social or community housing during the reporting period</li> </ul>		<ul style="list-style-type: none"> <li>Proportion of homeless population that was extended the use of public and community based shelters in the reporting period</li> </ul>	<ul style="list-style-type: none"> <li>Number/proportion of legal procedures seeking compensation following evictions in the reporting period, by result after adjudication</li> </ul>
	<ul style="list-style-type: none"> <li>Proportion of population with sufficient living space (persons per rooms or rooms per household) or average number of persons per room among target households</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of urban population living in slums*</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of households spending more than 'x' percent of their monthly income or expenditure on housing or average rent of bottom three income deciles as a proportion of the top three</li> </ul>	<ul style="list-style-type: none"> <li>Number and proportion of displaced or evicted persons rehabilitated or resettled in the reporting period</li> <li>Reported cases of "forced evictions" (e.g. as reported to UN special procedures), in the reporting period</li> </ul>
Outcome	<ul style="list-style-type: none"> <li>Proportion of households living in permanent structure in compliance with building codes and by-laws</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of population using an improved drinking water (public / private) source, sanitation facility, electricity and garbage disposal</li> </ul>	<ul style="list-style-type: none"> <li>Annual average of homeless persons per 100,000 population ('X' being defined normatively for the country context)</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of households with legally enforceable, contractual, statutory or other protection providing security of tenure or proportion of households with access to secure tenure</li> </ul>
	<ul style="list-style-type: none"> <li>Proportion of households living in or near hazardous conditions</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of household budget of target population groups spent on water supply, sanitation, electricity and garbage disposal</li> </ul>		<ul style="list-style-type: none"> <li>Proportion of women with titles to land or property</li> </ul>

## Annex H: IFAD Land Access Indicators

Source: (IFAD 2003, p.16)

### B. Improving Equitable Access to Productive Natural Resources and Technology

#### (i) Access to Land

*This principal indicator assesses whether the legal, institutional and market frameworks provide the basis for the rural poor to have secure access to land – both individually held and common property resources – and whether the poor are able to benefit from these.*

Score = 2. Rural poor households typically have either no access, or at best insecure access, to land. Their property rights are not formally recognized by law (or if they are, the laws are not applied), or are subject to easy termination or diminution; and they are unlikely to have a registered title for their land (where applicable). Formal land markets are inaccessible to the rural poor and informal markets are either absent or limited in scope. Equal rights for women and men are not a stated principle of the law and the law does not make illegal any customary action that deprives women of their rights. The majority of common property resources are open access, meaning that access is neither controlled by nor restricted to rural communities, with the consequence that the resources may be over-exploited and/or used mainly by powerful interest groups. Government has no active pro-poor land policies or programmes.

Score = 3. A majority of rural poor households have access to some land, though this access is often insecure. Frequently, vulnerable groups such as women and indigenous populations do not enjoy the same access to land as other poor groups. Where applicable, owned land is sometimes registered; leased and rented land is mainly unregistered and/or leases are out-of-date. Government policy on common property resources is vague, unclear and largely unimplemented: a majority of the rural poor do not enjoy sufficient user-rights and powerful groups often dominate their use. Civil society is not involved in key land policy and decision-making processes, and while some pro-poor land policies and/or programmes may have been formulated these are largely unimplemented at the local level.

Score = 4. A majority of rural poor households, including women, indigenous populations and other vulnerable groups, have access to land. This access is generally secure. Where appropriate, land titling and/or registration is common. Land markets function to some degree and are used by some rural poor men and women. Government is making concrete efforts to improve the management and allocation of common property resources, and to place some management responsibility in the hands of local users who are usually able to control access to the resources and restrict access to certain groups. Civil society is to some extent involved in land policy and decision-making processes; and government land policies and programmes are both pro-poor and, to a degree, implemented at the local level.

Score = 5. A range of land access mechanisms is available to rural poor households, including women, indigenous populations and other vulnerable groups, and their land access is generally secure. The law guarantees secure, equal and enforceable land rights to poor men and women. Where applicable, the majority of land holdings are titled and/or registered. Land markets function effectively and are used by the rural poor. Government has a clear and equitable policy for the allocation and management of common property resources: the rural poor have equal user-rights over these resources and locally owned users' institutions play an important role in managing them. Civil society organizations are actively involved in land policy and decision-making processes. Government land policies and programmes are thus both pro-poor and implemented at the local level.

1 Unsatisfactory for an extended period  
2 Unsatisfactory

3 Moderately unsatisfactory  
4 Moderately satisfactory

5 Good  
6 Good for an extended period

## Annex I: ALPI Score Card Template

Source: (AUC-ECA-AfDB Consortium 2011)

Content	Purpose
Country	-Country XXX
Dominant Tenure Type	-Customary Tenure Regime
Reference No	
Pillar ( i.e economic, social, environment and governance)	-Economic
Indicator Level ( Outcome, Output, etc)	-Outcome
Indicator -	Perception of Tenure Security/Insecurity
Rationale and Objectives	<ul style="list-style-type: none"> <li>• Communities felt insecure on their rights typically as of the two years</li> <li>• Customary tenure land rights are not recognized by the land policy/legislation; recently “forceful/unlawful” eviction occurring for accessing land for commercial investment ;</li> <li>• Increased tenure security through reforming the existing land policy/legislation and transparent and fair procedures developed for accessing land for “Public” development purpose.</li> </ul>
Methods to applied	<p>Suggest Focus Group discussion and Score Card methods to establish the problem, define the indicator and prepare the Score Card for the indicator;</p> <p>-As there are less incidence in the past, the communities felt that perception to be measured better by “fear” in the future and indicated three score to be sufficient</p>
Comments and suggestion	-Any

## Annex J: USAID Land Assessment Indicators

Source: (Tetra Tech ARD 2011, p.44)

Issue/Outcome	Examples of possible indicators
Conflict/stability	<ul style="list-style-type: none"> <li>• Number of land/resource disputes registered/filed</li> <li>• Perceptions of increase/decrease in number/frequency of land or natural resource disputes</li> <li>• Incidence of outbreaks of violence</li> <li>• Number of armed/mobilized combatants</li> <li>• Number of persons killed/injured in violent conflict per month</li> <li>• Ratio of displaced to settled/resettled persons</li> </ul>
Weak-strong governance	<ul style="list-style-type: none"> <li>• Percent of professional positions in land institutions occupied by individuals with relevant education and training;</li> <li>• Prevalence of bribery by institutions administering or enforcing land rights</li> <li>• Incidence of illegal or irregular grants of land by the state</li> <li>• Number or percent of expropriations by government that evaded due process or did not provide compensation after 1 year</li> <li>• Incidence of customary authorities facilitating arbitrary land acquisitions</li> <li>• Length of processing time for transactions involving more than one institution.</li> <li>• Average time for case disposition in new land related cases.</li> <li>• Number of new courts opened in rural and urban areas with concentrations of marginalized populations</li> </ul>
(Un)sustainable NRM	<ul style="list-style-type: none"> <li>• Measures of soil fertility, water quality/quantity, biodiversity</li> <li>• Regeneration capacity of soil, forest water (e.g., soil and water microbe counts and number of new saplings)</li> <li>• Number of farmers practicing slash and burn agriculture</li> <li>• Amount of land exploited for cultivation on hillsides</li> <li>• Adoption of conservation technologies</li> </ul>
(In)secure tenure	<ul style="list-style-type: none"> <li>• Rate of evictions or destruction of informal settlements</li> <li>• Number of landholders perceiving a high probability of dispossession from their land, disaggregated by wealth, gender, ethnicity, etc.</li> <li>• Ability of landholder to exclude other claimants from one's land or natural resources</li> <li>• Length of tenure</li> <li>• Actions by the state to confiscate land</li> <li>• Number or percent of citizens within key population categories receiving information/aware of legal rights associated with LTPR</li> </ul>

(In)equitable access to land and natural resources	<ul style="list-style-type: none"> <li>• Number or percent of women with independent or joint rights to land or natural resources on par with their male counterparts</li> <li>• Gini coefficients of landholding sizes according to wealth/income categories</li> <li>• Incidence of landlessness, disaggregated by wealth, gender, ethnicity, etc.</li> </ul>
Poor-robust land market performance	<ul style="list-style-type: none"> <li>• Number or percent of households engaged in land sale or rental markets</li> <li>• Amount of land purchased, sold, rented in, and rented out</li> <li>• Incidence of land being committed as collateral to obtain credit</li> <li>• Transparency and availability of reliable and accessible information on land assets available for sale, lease, etc.</li> </ul>
Crosscutting: Women and Vulnerable Groups	<ul style="list-style-type: none"> <li>• Parity of women's rights to inherit or administer land with men's rights</li> <li>• Incidence of daughter or widow inheritance of land</li> <li>• Size of territories controlled by pastoralists or indigenous peoples</li> <li>• Incidence of eviction of HIV/AIDS victims or their family members</li> <li>• Prevalence of landlessness among returning IDPs</li> <li>• Number or women/vulnerable groups accessing land through markets</li> <li>• Percentage of women/vulnerable group perceiving tenure security</li> <li>• Participation of women in decision-making bodies on land/resource tenure issues.</li> </ul>



## Annex K: USAID 'Quicksheet' for Insecure Tenure and Property Rights

Source: (Tetra Tech ARD 2011, p.71/72)

### LTPR ASSESSMENT QUICK SHEET:

### INSECURE TENURE AND PROPERTY RIGHTS

#### KEY INFORMANTS: Who can provide information on this LTPR theme?

- |  |   |   |
|--|---|---|
| <ul style="list-style-type: none"> <li>• Variety of landholders and resource users, including those lacking formal tenure status</li> <li>• Landless women and men</li> <li>• Tenants</li> <li>• Pastoralists, hunter/gatherer groups</li> <li>• Families experiencing death, divorce or (threat of) eviction/expropriation</li> <li>• Customary and other non-state authorities over land matters</li> <li>• Local dispute resolution bodies</li> </ul> | <ul style="list-style-type: none"> <li>• Professionals (lawyers, notaries, surveyors, etc.) working on real estate and inheritance</li> <li>• Universities and research institutions engaged in analysis of LTPR or governance practices</li> <li>• NGOs and advocacy groups with related mandates</li> </ul> | <ul style="list-style-type: none"> <li>• Ministry officials, including Ministries of Land, Environment, and Justice</li> <li>• Members of the judiciary overseeing property cases</li> <li>• Local government officials</li> <li>• Land administration offices</li> </ul> |
|--|---|---|

#### TIER 1 QUESTIONS: Is this a key LTPR concern?

- **Assurance.** Do individuals/groups feel assured that no one—whether government, an investor, or other individual—can arbitrarily deprive them of their claims over the land or natural resources they use in good faith? Is this the case for women? For OVGs? If government or other authorities possess expropriation rights, are there explicit and transparent justifications and procedures which must be complied with? Fair and timely compensation provisions? Are these requirements upheld in practice?
- **Exclusivity.** Do individuals/groups feel protected against others being able to access and use their land and resources without permission? Is this the case for women? For OVGs?
- **Duration.** Are individuals/groups entitled to use land and resources for a duration that incentivizes them to invest in the land and not degrade it? Is this the case for women? For OVGs?
- **Breadth.** Do individuals/groups have sufficient breadth of rights to their land and resources to meet their livelihood needs, without compromising the livelihoods and tenure security of others?
- **Legal pluralism.** Is there incompatibility between statutory and customary land tenure systems that is contributing to tenure insecurity?

If the country (or other sub-context) is indeed experiencing one of the above tenure insecurity situations, another question to be addressed is:

- **Relation to mission's LTPR and Strategic Objectives.** Does tenure insecurity undermine or threaten to undermine achievement of one or more of the mission's LTPR and Strategic Objectives? If so, how?

#### TIER 2 QUESTIONS: Causes and outcomes

- **Insufficient recognition of de facto land/resource rights.** Are de facto rights to land and resources (i.e., without formal documentation from the state) not recognized by government? Have long-term users been evicted because of a lack of formalization of land/resource property rights? Is an incompatibility between formal and customary systems contributing to tenure insecurity?
- **Lack of recognition of common property.** Is there legal or de facto recognition of common property access and rights? Has population pressure resulted in range enclosure or infringement of transhumant rights? Has land use change led to people being excluded from traditional resource bases? Have indigenous land/resource rights been lost (or reduced)? Have women's land/resource rights been lost (or reduced)?
- **Displacement/taking.** Has there been arbitrary taking of land that is depriving landholders of their land and natural resources? Has land been taken for non-public purposes? For non-/mis-use? Is compensation being paid? Is it perceived to be fair and timely? Did expropriated landholders possess titles or other statutory documentation of their rights? Do landholders fear their land will be taken or reacquired by the government? Has government taking of land resulted in involuntary resettlement?
- **Insufficient, poorly organized, or corrupt land/resource institutions.** Do the majority of people use the land administration system to uphold their rights? If not, is there a lack of public trust in the use of land administration institutions or the capacity/will of the state to uphold rights backed by formal certification? Are land administration institutions inefficient, understaffed, under-resourced, not decentralized, or otherwise perceived as inadequate? Is there a lack of access to land administration institutions in terms of the financial, time, and transaction costs of using their services?

- **Weak property or inheritance rights of women.** Do women have control rights over the land and natural resources they use (e.g., rights to decide what crops to grow, time and inputs applied to their fields, and how to direct the proceeds of their labor)? Does the formal/customary system preclude women from retaining land rights upon divorce, separation, or the death of a male family member? Does loss of rights occur at the time of family breakup or crisis (e.g., death of a family member due to HIV/AIDS)? Does the formal/customary system recognize women's inheritance rights, whether as widows or daughters? If so, are these rights upheld in practice?
- **Land disputes.** Are land/resource disputes widespread? What are the underlying causes of these disputes? Are conflicts over land or resources over boundaries, competing claims, inheritances or evictions frequent and serious occurrences? Are there adequate and accessible mechanisms to resolve land disputes?
- **Lack of awareness of land rights.** Do holders understand the extent of their land rights and how to claim and enforce them? Is this different for women or OVGs?
- **Capacity to secure rights.** Are holders able to access mechanisms for claiming and enforcing their rights? Are these mechanisms sufficiently inexpensive, nearby, and uncomplicated to ensure broad-based access? Are they substantially unbiased and free of corruption so that those who lack resources and are most vulnerable can successfully defend their claims vis-à-vis those with greater wealth and power?

#### TIER 3 QUESTIONS: Interventions

- **Government priority.** Is enhancing land and natural resource tenure security a government priority? Why or why not? What interventions are they pursuing or planning to pursue? Do these interventions seem likely to address the issue and underlying causes adequately? What are their (proposed) scope, timing, and duration?
- **Donor interventions.** Are USAID or other donors addressing land and resource tenure security? If so, what interventions are they pursuing or planning to pursue? Do these interventions seem likely to address the issue and underlying causes adequately? What are their (proposed) scope, timing, and duration?
- **New interventions.** What actions are most needed to strengthen tenure security? Are actions aimed at improving people's access to and security over land and natural resources important? If so, specifically which actions would be most beneficial? Are there any factors that might make taking such actions difficult (e.g., political, human resource capacity, economic, environmental, etc.)?

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## Annex L: LGAF Tenure Typology Guidance

Source: LGAF(Burns & Deininger 2010, p.89/90)

**Table A. Typology of Tenure Situations**

*Instructions: according to existing primary tenure rights (both formal and informal), adapt this table to the country context and provide area in 1000 ha for each ownership/use type, and an estimation of corresponding populations.*

Tenure	Area & Population	Characteristics (legality, recording, transfer)	Overlap with other Rights	Current Issues
<b>Rural Sector</b>				
Public Land				
• public use				
○ restricted access				
○ public access				
• commercial use				
Private individual holding				
Private communal holding				
Commercial holding (investors)				
<b>Urban Sector</b>				
Public Land				
• public use				
○ restricted access				
○ public access				
• commercial use				
Private residential (permit system)				
Private residential (leasehold)				
Private holding (condominium)				
Informal residential				
Commercial property (leasehold, or permit)				

\* By private ownership/use, we mean the formal recognition of private ownership or long-term use rights similar to ownership (right to transfer, inherit, mortgage, etc.).

The following remarks should be considered:

The consultant should begin by providing a definition of the various types of land tenure classifications usually identified in the country. The typology table can then be adapted by the consultant, either by aggregating categories, dropping irrelevant ones, or creating new ones.

The rows in the Table A refer to the primary status of the land, i.e. whether it is under public, private or community tenure. In particular, the second row of the table refers to private ownership/use. By private ownership/use, we mean full ownership or long term rights similar to ownership (having the right to transfer, inherit, mortgage, etc.).

The third row refers to communal land. The consultant should report whether communities are defined under the country's laws. If an official classification for community exists, then distinctions should be made accordingly and explained (for instance between indigenous and community land if relevant).

Once the tenure sub-categories have been listed in Table A, the three columns to the right refer to the legal recognition of rights, whether the rights can be recorded or registered, and comments can be added in the last column (including on overlaps with other rights). In particular, in the second column, it must be noted whether the tenure is legally recognized or not. If claims for a particular tenure category are contested, the sources and implications of the conflict should be discussed.

The adapted typology table should be filled out by providing area of land and population statistics for each tenure regime. In doing so, the consultant should be aware of the following three issues:

(i) Concerning the primary status of the land (i.e. for the three rows), different users may have different perceptions, especially regarding the distinction between state land and community land—any ambiguity of this type should be reported and discussed as it will affect how the table is completed;



- (ii) The cells in the table are not expected to add up to the total land as some categories may overlap;
- (iii) Data may be unavailable or dubious for some tenure situations, in which case this should be indicated and an estimation or estimation range should be provided and discussed.

The data used to complete the typology table can be obtained from different materials on tenure situations (from the statistics department, academic reports, etc.). All sources used should be indicated. If national information is not readily available, use of information at the sub-national level is possible by clearly stating the geographic relevance the data.

## Annex M: Payne's Tenure Typology

Source: (Payne 2004, p.171)

Proportion of each category to the total stock (indicative)											
		←-----→									
High security											
Degree of security											
Low security											
Tenure category											
	Pavement dweller		Squatter tenant (Partial Possession)	Squatter 'owner'	Tenant in unauthorised subdivision	Urban legalisation	Owner in unauthorised subdivision (Declaration of possession)	Legal owner Unauthorised construction	Tenant with contract	Lease-holder	Free-holder
Property rights											
Occupy/use/enjoy		/*	\								
Restrict											
Dispose, buy, inherit			\								
Develop/improve					X*						
Cultivate/produce											
Sublet											
Sublet and fix rent						\				\*	
Pecuniary				*							
To access services										X	
To access formal credit										X	
To enforce											

### Key

- \ Rights available to men only
- / Rights available to women only
- X Rights available equally to men and women
- Conditional rights or variations between contexts – (explain in the text)

Fig. 1. Notional typology of land tenure and property rights.

### 1.1. Identifying existing tenure and property rights

To complete the framework requires undertaking a few steps and including whatever information, data or estimates are available. The steps are as follows:

1. Identify the full range of formal, non-formal/unauthorised/semi-legal, customary and/or religious (e.g. Islamic) tenure categories within the selected city. These should include pavement dwellers, unauthorised subdivisions, recognised squatters who are not given formal titles, as well as formal categories.
2. Estimate the proportion of the total urban housing stock represented by each of these categories and indicate this by an appropriate width of the column on the table (e.g. a category accounting for 10 per cent of the total housing stock would take up 10 per cent of the distance along the horizontal axis). Technically, this can be done by clicking on the vertical column lines and moving them left or right to represent the correct proportion.
3. Estimate the degree of de facto (not de jure or formal) security available to households living in each category and represent this on the vertical axis as a proportion in between nil and absolute security. Remember that there is probably no category, which enjoys absolute security in that in almost every country the state retains the right of eminent domain, or the right to acquire land or property for public purposes. At the same time, even pavement dwellers often possess rights which entitle them to compensation or alternative housing if forced to move. This means that all categories in practice are somewhere above zero and below full security. When this section of the typology is completed, it will reflect the key characteristics of tenure security.
4. Next, it is necessary to identify all the rights available to households within each tenure category. For example, households may theoretically enjoy a high level of security, but heavy restrictions on their rights to use or dispose of property, whilst those with lower levels of security may possess more rights in practice to use or dispose, etc of their property. The list of property rights shown includes the right to occupy, use and enjoy; to restrict access by others; to buy, dispose or inherit; to develop or improve; to use for cultivation or production; to sublet; to sublet and fix the rent; to benefit from any pecuniary increase in property value; to access services; and to access formal credit. This list is not exhaustive, so all locally applicable rights should be included. It would be good to also identify the responsibilities or obligations which may be, and often are, tied to particular rights. These terms and conditions will affect the relative security and value of different forms of tenure and property rights. For instance, if a right exposes residents to property taxes or service charges, this could more than offset the benefit of such increased rights. This added dimension could be commented on in the notes reviewing the typology, rather than included in the typology itself.
5. The final stage involves noting the extent to which each category of property rights is available to households within each tenure category and noting if these rights are available to men only, women only or both sexes. For men only, insert a \ for women only insert a / and for both sexes, insert a X. The list should indicate the rights which apply in practice rather than in theory or legislation. When the typology is being explained or amplified in the discussion it is also important to allow for social and cultural variations such as ethnic differences and the social status of women as single, married, divorced, cohabiting or widows. For instance, women may be denied property rights if they become divorced or widowed. This variability or conditional right can be identified on the typology with an asterisk (\*) and then elaborated in the text.

The tenure categories listed in the example shown will not be found in every city, whilst some others not listed will need to be included. The proportion of each category will also need to be adjusted according to local conditions.

## Annex N: Definitions and Measures of Tenure Security (Arnot et al.)

Source: (Arnot et al. 2011, pp.300–1)

Authors	Definition of Tenure Security	Measures Used in Analysis
Benin et al. 2005	No definition provided	Perception of tenure security(a)
Besley 1995	Probability of expropriation	Transfer deed, previous litigation, method of acquisition, and duration of ownership
Bohn and Deacon 2000	Probability of expropriation	Political factors related to expropriation risk
Brasselle, Gaspart, and Platteau 2002	Long-term, continuous rights free from imposition or interference from outside, along with ability to reap benefits of labor and investment either in use or upon transfer to others	Categories based on use and transfer rights
Carter and Olinto 2003	Perceived change in likelihood of losing land	Tenure type
Cattaneo 2001	Expected time of residence before eviction	Expected time of residence before eviction
Costello and Kaffine 2008	No definition provided	Probability of renewal
Deacon 1994	No definition provided	Political stability
Deacon 1999	No definition provided	Political stability
Feder and Onchan 1987	Legal title to land	Legal title to land
Feder, Onchan, and Chalamwong 1992	Uncertainty over changes in government policy	Perceived likelihood of contract disruption and of retaining same plot
Gavian and Fafchamps 1996	Uncertainty over a user's claim to land and ability to sell or transfer land and duration of possession	Type of tenure
Godoy et al. 1998	No definition provided	Conflict with abutters
Godoy, Kirby, and Wilkie 2001	No definition provided	Conflict with abutters and duration of residence
Hayes, Roth, and Zepeda 1997	Probability of eviction	Transferability of rights
Holden and Yohannes 2002	Perceived probability of losing ownership of a part or the whole of one's land	Same as definition (binary variable for secure insecure)
Jacoby, Li, and Rozelle 2002	Risk of expropriation	Estimated risk of expropriation
Kabubo-Mariara 2007	No definition provided	Bequeath rights and individual or group ownership versus tenancy
Kabubo-Mariara et al. 2006	No definition provided	Ownership versus rental of land, and right to bequeath, sell, or rent land.
Kaufmann, Kraay, and Mastruzzi 2003	No definition provided	Governance indicators derived from several hundred variables based on perceptions
Li, Rozelle, and Brandt 1998	Uncertainty in land tenure	Duration and expectation that plot will be lost at end of crop year
Luckert 1991	Expected impacts of changes in various aspects of forest tenures	Expected impacts of changes in various aspects of forest tenures
Mendelsohn 1994	No definition provided	Probability of eviction
Nautiyal and Rawat 1986	Level of uncertainty or likelihood of extension	Probability of extension
Otsuka et al. 2001	Probability of retaining rights	Tenure type
Owubah et al. 2001	Confidence in rights	Capability to legally register land
Place and Hazell 1993	No definition provided	Transferability of rights
Place and Otsuka 2000	Probability of losing land rights	Proportion of land under different ownership types



Place and Otsuka 2001	Probability of losing land rights	Method of acquiring land
Place and Otsuka 2002	Probability of losing land rights	Tenure type
Robinson 2005	Uncertainty of land rights	Probability of eviction
Sjaastad and Bromley 1997	Perception of likelihood of losing a specific right	Probability of eviction
Sjaastad and Bromley 2000	Risk of losing rights and perception of that risk	N/A(b)
Smith 2004	Assurance of rights	Legal title
Southgate, Sierra, and Brown 1991	No definition provided	Ratio of adjudicated agricultural land relative to entire study area
Zhang 1996	Deletion conditions, area versus volume-based tenures and "general security"	Tenure type
Zhang and Pearse 1996	Renewability, comprehensiveness, obligation to share returns with government, and scope of regulatory intervention	Tenure type
Zhang and Pearse 1997	Renewability, comprehensiveness, obligation to share returns with government, and scope of regulatory intervention	Tenure type
(a) This paper gave no explanation of how the perception of tenure security was defined or measured. (b) No analysis carried out in this paper.		

## Annex O: Example Emergency Shelter Interventions - Lebanon

UNHCR The UN Refugee Agency			Shelter Interventions (based on UNHCR database classification)		
ID	Activity	Activity Tool tip	Type/ speed	Cost estimation	
1	 Weatherproofing <i>sealing-off</i>	Emergency winterization or sealing off for individual shelter using plastic sheeting & external doors & including if necessary basic quick repairs of sanitation facilities. These interventions could concern even beneficiaries staying with the landlord in an additional floor or even a stand alone self-made shelter or tents. Assistance in form of shelter kits may be done.	E shelter 1/2 day per units	100-150 \$	
2	 Providing temporary shelter (emergency shelter)	Lightweight solution with a life span up to 12 months, this emergency shelter could be a winterized tent or a temporary shelter (also called 'green house'). Usually with a covering and enclosing area of 20m2, they are used by a single household and made of a wooden or a metal structure cover by plastic sheeting or another lightweight material. Transportable, this solution could be also used as a stockpile for contingencies.	E shelter 1/2 day per units	+/-500 \$	
3	 Semi permanent	With a lifespan of 36 months, prefabricated shelter provide a covered and enclosed area of 25 m2 per family using sandwich panels, iron sheets and 2 windows and a door (also referred as Shelter Box). Equipped with a heating stove for the winter, this type of shelter may not have any kitchen and sanitation facilities initially provided. Additional cost with kitchen room and bathroom.	T shelter 4 day per units	3000 \$ 4,000 \$ (kitchen & bathroom)	
4	 Cash for Shelter	Conditional cash grant targeting vulnerable cases as a financial support targeting primary shelter needs. Rental or contractual agreement may not be required. Used also for emergency relocation in case of sub-standards, hazardous or under eviction condition, this solution allows rapid action for immediate response.	Cash, 2 weeks min.	average 100 \$ month	
5	 Cash for host families	Conditional Cash assistance dedicated to support host families and to reduce the fatigue inherent to long term refugee's accommodation. This cash support is not requesting a contractual documentation but require regular monitoring and visit.	Cash, 8 weeks		
6	 Rehabilitation of house	Based on an agreement providing rehabilitation of the host house in exchange of a free rental, this activity aim to finish the construction of premises with adequate internal/external walls, windows, doors, roof including also adequate facilities as kitchen and sanitation. These buildings could accommodate one or few families according the number of rooms and the size of the premises. Rehabilitation of dwelling in case of substandard situation with improved insulation, light, ventilation, wash access... cost varies case by case interventions.	P shelter 2 to 4 weeks	around 1600\$	
7	 Rehabilitation of Private Collective Center	Medium or large building with large capacity in term of accommodation. Collective Centre has to be rehabilitated changing if necessary the final use from non-habitable to habitable including the strict respect of indispensable standards. Structural works have to be strictly avoided. The owner is usually not sharing the premises with the beneficiaries and a MoU shall precise specifically roles and responsibilities concerning the change of the final use, the maintenance cycle and the total duration. Authorization and MoU might be proceed quickly. Over 6 families in a building is considered as collective center.	P shelter 1 to 2 weeks	around 3000\$ per family depending of the case	
8	 Rehabilitation of Public Collective center	Medium or large building with large capacity in term of accommodation. Collective Centre has to be rehabilitated changing if necessary the final use from non-habitable to habitable including the strict respect of indispensable standards. Structural works have to be strictly avoided. The owner is usually not sharing the premises with the beneficiaries and a MoU shall precise specifically roles and responsibilities concerning the change of the final use, the maintenance cycle and the total duration. Authorization and MoU might be take time.	P shelter 1 to 2 weeks	around 3000\$ per family depending of the case	
9	 Collective Center Management	Insure a proper management mechanism in collective centre including but not exhaustively the participative representation of the beneficiaries, a maintenance plan, proper documentation and owner liaising, protection of specific groups or individuals, financial support to collective services		to be defined	
10	 Renting Premises	Identifying and renting fixed price houses or adequate premises for the beneficiary accommodation. Standards for sanitation, insulation, ventilation and space are compulsory.	Cash, to be defined	depending the cases	
11	 Unconditional Cash Assistance	Unconditional cash assistance cover refugee needs according to the amount given including shelter needs. Primary driven by UNHCR, this cash assistance program is foreseen to be generalized after spring 2013.	Cash, to be defined	200\$/mont in depend # person	
12	 No intervention	No specific intervention needed in case of running collective center implemented and followed by private actors			

## Annex P: Assessment Process in Relation to Land Issues after Natural Disasters (Fitzpatrick)

Source: (Fitzpatrick 2010, p.35)

Type of assessment	Key issues for assessment	Key objectives of assessment
Rapid	The disaster's land-related impacts Urgent humanitarian requirements for land. Time-critical risks to early recovery from vulnerability in the land governance system.	Identify urgent land requirements for emergency relief. Identify time-critical land issues that may delay in early recovery.
Needs	Loss and availability of land for shelter and livelihoods. Overall risks to early recovery from vulnerability in the land governance system.	Provide inputs into strategic planning on land and disaster recovery. Update the initial identification and prioritisation of land issues in the rapid land assessment. Provide baseline data to allow monitoring and evaluation of land programs.
Damage and loss	The nature and extent of damage to (1) land, (2) land documents and (3) land administration	Calculate damage to land and systems of land administration and cost to restore to original condition.
Land Availability and Risk Mapping	Availability of sites for shelter and livelihoods. Vulnerability to natural hazards of sites for shelter and livelihoods.	Building back better and safer after a disaster.



## Annex Q: HLP Needs Assessment & Response Monitoring Indicators (IASC Global Protection Cluster)

Source: (Global Protection Cluster n.d.)

Indicator Code	Indicator Title	Indicator Description	Disaggregation	Cross tagging
HLP1	# / % of surveyed persons / communities reporting Housing, Land & Property disputes	HLP disputes caused or exacerbated by the emergencies could comprise: disputes over inheritance; land/property boundaries; breach of land sale agreement or revocation; HLP disputes are context specific and should be identified at country level.	Geographic; Administrative; Type of displacement site (i.e. camp/spontaneous site/collective centre name); Age; Sex; Specific categories (ethnic; religious; persons with disabilities; etc)	Food Security, Shelter, CCCM, ER/Livelihoods
HLP2	# of forced evictions affecting population directly or indirectly impacted by the emergency	Forced eviction refers to the <i>permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or lands which they occupy, without the provision of, and access to, appropriate forms of legal or other protection</i> . Forced evictions can result from a broad range of situation such as for example: conflicts in which eviction, housing demolition and displacement are used as a weapon of war, for ethnic cleansing and population transfer; armed conflict characterized by targeting of civilians homes, including for collective punishment; lack of legal security of tenure, adequate protective legislation and/or their implementation; non-deliverance or non-recognition of titles over land and housing; changes related to housing and land in countries in transition. The scope of the issue of forced eviction is context-specific and should be defined at country level.	Geographic (urban/rural); Administrative; Type of displacement site (i.e. camp/spontaneous site/collective centre name); Age; Sex; Specific categories (ethnic; religious; persons with disabilities; etc)	Food Security, Shelter, CCCM

Indicator Code	Indicator Title	Indicator Description	Disaggregation	Cross tagging
HLP3	# / % of persons among emergency affected population experiencing HLP documentation issues	Personal HLP documentation includes legal and customary, individual/collective records, and other informal types of evidence on land and property ownership. NB: Personal HLP documentation may have been lost or damaged during the emergency, or may have never been issued in the first place.	Geographic; Administrative; Household; Type of displacement site (i.e. camp/spontaneous site/collective centre name); Age; Sex; Types of document; Specific categories (ethnic; religious; persons with disabilities; etc)	Food Security, Shelter, CCCM, ER/Livelihoods
HLP4	# of public HLP records destroyed or damaged	Public HLP records include land and housing registers; cadastral maps; records of commercial property (bakeries, shops, private schools/clinics); etc. maintained by the civil administration at national or local levels.	Geographic; Administrative; Type of displacement site (i.e. camp/spontaneous site/collective centre name); Type of document	Food Security, Shelter, CCCM, ER
HLP5	Percentage of emergency-affected population on hazardous or inappropriate land	refer to land which could be affected by different types of disasters associated with natural hazards (floods; earthquake; etc.) but also land areas affected by environmental degradation and vulnerabilities (include industrial pollution) and land situated in areas with high health risks (epidemics/seasonal outbreaks). This indicator covers both displaced and non-displaced emergency affected population	Geographic; Administration; Displacement Site (i.e. camp/spontaneous site/collective centre name); Age; Sex; Types of document; Specific categories (ethnic; religious; persons with disabilities; etc)	Food Security, WASH, Shelter, CCCM, Early Recovery
HLP6	Hectares of appropriate land required for humanitarian purposes	ref. HLP5 in regards to "appropriateness" of land for humanitarian purposes, such as for camps, transitional shelter, temporary livelihoods, infrastructures, temporary services (clinics, schools, water points, latrines, livestock pasture); etc.	Geographic; Administrative; Type of displacement site (i.e. camp/spontaneous site/collective centre name)	Health, Food Security, WASH, Shelter, CCCM, Education
HLP7	# / % HLP dispute resolution mechanisms affected by the emergency	HLP dispute resolution mechanisms include the justice system (ex. courts, specific land or housing commissions and tribunals) as well as customary bodies (ex: local committees/councils)	Geographic; Administration; Type of displacement site (i.e. camp/spontaneous site/collective centre name)	CCCM



## **Annex R: Access to Rural Land After Violent Conflict- FAO Assessment**

Source: (FAO 2005, chap.4&5)

**Types of land tenure.** The primary types of tenure should be identified. These often include different forms of statutory tenure and customary tenure. The analysis should address all relevant rights to land, including ownership and other more limited or temporary rights for particular purposes (e.g. use rights and mortgage rights). Rights for different types of rural land use should be included (e.g. sedentary agriculture and pastoralism). The linkages between rural and urban activities should be considered. The analysis should address how the post-conflict situation changed the way in which access to land is acquired. At times, reports of early missions have focused on how land tenure might have worked in the absence of a conflict, and they ignored the disruptions caused by the conflict.

**Access to land.** The relationship between access to land and the livelihood strategies of people should be analysed. The analysis of the need for land by returning refugees and IDPs should consider seasonal access to land. The availability of food, and the need for it, will vary from one season to another. Issues may include:

- Restitution;
- Land disputes;
- Compensation;
- Eviction;
- Resettlement;
- Land for vulnerable groups;
- Emergency shelter and housing;
- Public and private abandoned land;
- Lands that are free of mines and lands that are mined.

**Operational issues.** The analysis should address:

- Land administration agencies and their mandates;
- Staffing levels of agencies;
- Location and condition of office premises;
- Availability and condition of equipment;
- Availability and condition of land records.

**Policy framework.** Policies related to land tenure should be identified, along with gaps and contradictions.

**Legal framework.** Legislation related to land tenure should be identified, and its strengths and weaknesses should be assessed. Legislation should be identified for translation so that it can be read by international specialists.

**Inter-agency co-ordination.** There should be an assessment of the co-ordination of land tenure activities of government agencies, the United Nations, international aid organizations and NGOs.

**Communication.** The ability to communicate with people should be assessed. Issues include those of language (e.g. the need to use translators), literacy levels, and the availability of media such as radio and television.

- Sources of information should be reviewed.
- People and organizations should be identified.

The availability and usefulness of remotely-sensed imagery should be assessed for its use in identifying mined areas and areas of potential agricultural redevelopment. Older imagery may be able to provide information on when particular areas were occupied.

## **Chapter 5**

### **RECOGNITION OF LAND TENURE PROBLEMS**

Is access to land on the agenda?

### **THE LAND TENURE SYSTEM**

What land tenure systems exist?

How has the post-conflict situation changed the way in which access to land is acquired?

Which groups are vulnerable?

### **ADJUDICATION OF LAND RIGHTS**

What is the need for restitution? What is the extent of unauthorized occupation of land?

The nature and extent of land disputes should be analysed.. The analysis should assess factors such as:

How many applications for restitution might be made in different regions of the country?

What different types of restitution cases might exist?

What types of people may apply for their land to be restituted?

What evidence are people likely to have to support their claims?

If people recover their property from occupants, how can those occupants be protected from becoming homeless?

Is restitution an option in all cases? If not, what other alternatives are available, e.g. compensation in money or in kind.

What problems may exist with evictions?

What legal mechanisms exist for resolving disputes over land?

What is the need to formalize rights?

### **NEED FOR LAND**

What land is needed for resettlement of landless people?

What land is needed for agricultural purposes?

What land is needed for residential purposes?

What land is needed for government operations and infrastructure?

What land is needed for temporary use?

### **AVAILABILITY OF LAND**

What public land has been abandoned or is otherwise available?  
What private land has been abandoned or is otherwise available?  
What lands are free of mines and what lands are mined?

### **OPERATIONAL FRAMEWORK**

What land administration agencies remain?  
What technical and managerial expertise remains?  
What buildings are available for the offices of agencies?  
What equipment exists?  
What land records exist?  
Is corruption a factor?  
What changes can be made to make the land administration system operational?

### **POLICY FRAMEWORK**

What is the scope of government power?  
What means are available to develop and implement land policy?

### **LEGAL FRAMEWORK**

What legal institutions remain?  
Does the legal infrastructure discriminate against certain people?  
What local expertise is available?

### **INTER-AGENCY COORDINATION**

What ability is there to communicate effectively with other government bodies, international organizations and NGOs?

### **COMMUNICATION**

What ability is there to communicate?

### **IDENTIFICATION OF PRIORITIES**

What are the priority areas?  
What issues should land administrators be wary of addressing?

## **Annex S: USAID Land & Conflict Toolkit - Rapid Appraisal Tool**

Source: (USAID 2005)

### **BASIC QUESTIONS**

These questions should help the user focus on the 'big picture' by thinking programmatically about the detailed information collected. The questions should also be able to guide the design of a scope of work for more full assessments or for activity design, where applicable.

**KNOWLEDGE OF LAND LAWS AND LAND RIGHTS:** • Are land holders clear about their land rights? Is there (some) confusion or competing notion of rights? Is there a common understanding which is contradicted or undermined by law or other rights holders? • Do rights holders have documents to support their claims? What other types of evidence do they use or are considered acceptable to prove claims?

**GOVERNANCE AND LEGAL ISSUES:** • Are the main governmental and quasi-governmental institutions relevant to land and property issues doing an adequate job? Are specific institutions particularly weak? If yes, in what areas? Are specific services regarding land issues needed but not available (i.e., are specific institutional roles not provided)? • Is the law and policy regime regarding land and property matters adequate? Do important gaps or other weaknesses exist in terms of legislation and/or policy (on paper)? Is the relevant legislation and/or policy being applied in practice? • Is there adequate institutional capacity to manage or resolve land disputes? What types of conflict resolution mechanisms need to be strengthened (e.g., the courts, alternative dispute resolution processes)? • Is corruption involved?

**OPERATIONAL ISSUES:** • Are the human capacities regarding land and property issues adequate or do they need to be strengthened? If so, in what areas do they need to be strengthened? • Are there any particular processes or procedures relevant to land and property matters that are deemed weak, corrupt or that do not seem to exist? • Are there particular processes and procedures relevant to land and property matters that exist but are not sufficiently accessible (i.e., because of cost, service availability, or access to information about the services available)?

**POLITICAL CONSIDERATIONS:** • Does the government have the political will to address the relevant land and property issues? • Are there other key stakeholders/actors who need to be supportive of programmatic interventions in order to make the interventions politically viable? (e.g., landowners, peasant farmer associations, etc.) • Are there strategic ways to address certain dimensions of land and property issues that would be more politically acceptable than others?

**OTHER SPECIAL CONSIDERATIONS:** • What timeframe would be involved in addressing the issues (immediate/urgent, short, medium and long-term)? Can the issues be strategically targeted to affect the potential timeframe(s)? • Are the main land issues rural, urban, or both? • Is land considered a resource? Is it contested as a resource because of access to riparian resources, differences in soil fertility, or proximity to transportation and markets? • What flash points or trigger events could most likely bring about violent conflict? • What are the agency's comparative/strategic advantages and limitations (e.g., legitimacy, know-how, resources)? • How can land issues be framed in order to avoid unproductive intra-institutional 'politics' that could slow things down? (i.e., are there ways to avoid arguments about whether land issues should be exclusively within the domain of democracy and governance (DG), economic growth (EG), environmental or financial markets, etc.) • What level of intervention is required? Are interventions needed at the national level (national government agencies, law, policies, national projects), at the local level (geographic hotspots, community-based conflict management mechanisms), or is some combination of both required?

## **QUESTIONS ABOUT LAND ISSUES PERTINENT TO VIOLENT CONFLICT BASED ON THE STATUS OF THE PERSON BEING INTERVIEWED**

**APPARENT LANDLESS PERSONS/LABORERS/ SQUATTERS** • Where do you and your family live and how long have you been there? • Do you own or have the right to use land? • If you lack land rights or access, how do you feel about your lack of land? Why do you think you don't have any land? What is your response to your situation? Do you expect it to get better or worse? • If you are seeking land (in tenancy or ownership), do you think you will be able to get some land? Enough land? On what terms will you receive land? When do you expect to receive land? If not, why do you believe you will not receive/be able to purchase land? • Are others also seeking land? Will they get the land? Why will they get it if you are not able to? • Are there currently any disputes in the community regarding land? If so, how are the disputes being addressed?

**TENANTS/SHARECROPPERS** • What is your tenancy or cropping relationship with the landowner? • Does your tenancy or cropping arrangement feel secure or insecure? Does it feel fair? Have you ever been moved off of the land or had your land changed or substituted? • Is anybody able to rent land on better terms than yours? Why? • Have you made improvement to the land you occupy? If so, who paid for the improvements? • Do you have the roads, clinics, schools, and other infrastructure you believe necessary to support your livelihood on the land? Do others have these things? • Do others in the community who are in the same situation as you meet and discuss the way they feel about their land situation?

**LANDOWNERS** • Do you have tenants or sharecroppers on your land? Is all of your land currently used by you and your tenants/sharecroppers (if any)? • Do you believe that your tenants are satisfied or dissatisfied about their land tenure situation? • Have your tenants/laborers approached you to discuss any difficulties, frustrations, or demands? • Have you had any sabotage or property damage? Have you had any problems with fences, security, breaches of property boundaries, crop theft, or the like? If yes, describe the problems. • Does the government support you in your concerns about or attempts to rid your land (or the vicinity) of squatters? If so, how? • Would you consider selling some of your land to squatters or to others that need land? If yes, on what terms? If no, why not?

**LOCAL OFFICIALS** • What are the principle institutions with responsibilities related to land and property issues? What is their general mandate? Do you believe that they doing an adequate job? • Who are the primary land holders in this area? • Are there informal developments in and around the edges of the cities? Who owns the land that these settlements are on? Are there ever attempts to clear these areas? If so, how has the local population reacted? • Do people come to local government to resolve land disputes? Are land disputes ever resolved according to custom, including mediation by elders or other traditional leaders? • Are there or have there been violent disputes over land in this country? Are the disputes between individuals or groups? Are there contentious but non-violent disputes over land? • Have there been any recent changes in the law or government policies regarding land rights? Do you know the details? Are you asked (and able) to carry them out or to enforce them? • Have there been any recent national/regional/local events that have impacted this community's land interests? • How do you/the government plan to address any concerns/fears/anger that arise regarding the implementation of new land law/policy and/or recent events?

**NGO REPRESENTATIVES** • What is the general welfare status of the community? • What do you consider to be the most significant problems facing the local community? Does the community itself perceive the same problems as the most significant? • How do members of the community interact, both within their own groups and with other groups? Are there organized meetings of any kind? What happens at the meetings? • Do you encourage the community to do certain things or take certain actions? What are they? • Does the community appear to feel positively or negatively about the future? • What are the principle institutions with responsibilities related to land and property issues? What is their general mandate? Are they doing an adequate job? Explain.

## **BASED ON SUB-THEMES WITHIN LAND AND CONFLICT**

**INEQUALITY OF LAND HOLDINGS** • Do you own or have other access to land? If some land, how much? • What kind of land do you have (house, house plot, house and garden plot, garden plot, small farm, other)? • Is the amount and type of land that you have (or do not have) consistent with others in your community? • What is your response to your situation? • Do you believe you are entitled to land? If so, on what terms do you think you should receive that land? • Have any groups met and discussed land issues? If so, who? What do they discuss? • Have any groups reached decisions regarding how to address land issues? If so, how?

**TENURE INSECURITY** • What is nature of your land interest (full, formal ownership; customary ownership; leasehold; squatting; other)? Are you satisfied with the extent/nature of that interest? • What is your evidence of ownership or other interest? If so, describe (title, certificate, community knowledge, demarcated boundaries, and investment in the land)? • Do you believe your land interests and rights are enforceable against others (including the government)? If yes, why? If not, why not? Who might violate your interest? • Are others in the same situation as you and do you think it would be useful to act collectively to protect your interests? • Does anyone else (individuals or groups) have access to your land (e.g., easement, right to cross land, right to subsurface resources, right to use water resources, other)? If so, who? • Do you know of any institutions or organizations designed to protect your interest? Who? • Do you believe those institutions/organizations function fairly and independently and do you have access (physical, financial, class status, legal, other) to them?

**COMPETING AND CONFLICTING LAND USES** • Are you free to use your land as you see fit? If not, why not? Describe the conflicts and restraints. • Is your community free to use its common resources? If not, why not? Describe the conflicts and restraints. • What is the impact of any restrictions on your land use? Have you or anyone in your community ever had a violent confrontation over the conflicts or restraints? • Are there mechanisms, people, organizations, or institutions for hearing and resolving the conflicts? What are they? Formal? Informal? Would there be an agreement that satisfies both sides or would there be a winner and a loser? • What/who governs your land use? Who should govern your land use? Why?

## **DISPLACEMENT/REFUGEES IN POST-CONFLICT SITUATIONS**

**To a community member (not displaced person):** • Are there displaced people from outside your community who are now within your community who are without homes? • Are they of an identifiable ethnic, religious, socioeconomic, national, regional, or other classification? • Are the numbers growing or decreasing? Do these displaced persons cause problems in the local community? • Are there people now residing within your community that are not from the community? That is, displaced people or refugees that came here to live and that have found homes or shelter? • How are they treated? • Are they of an identifiable ethnic, religious, socioeconomic, national, regional, or other classification? • Are the numbers growing or decreasing? Does this displaced group cause problems? • How do you feel about the presence of this group?

**To a displaced person/refugee:** • Where are you from and how did you get here? • How many others are with you? Family members? Community members? • How are you being treated here? • If you prefer to be elsewhere, where do you want to go? How do you expect to get there? What resources do you need? • Did you leave a home, house, land, or other assets in your previous location? • Who is using it now? Do you have any information concerning those assets? • Do you expect that you could return and reclaim it if you chose to do so? • Do you/the members of the community have a common purpose or desire regarding housing and land? If so, what is it? • Do you believe that your needs/the needs of your group will be addressed adequately in the future? Do you want help? Will you get help?

**Symbolic power of land** • Is there land on which you believe you/your family/your community/your religious group/your fellow nationals have a right to live or otherwise maintain/preserve/protect? • If so, why? Why is the land important to you? • What land? Where is it? Who is on it now? Why are they on it?



What is the nature of that right or interest? • Are you/your communities doing anything to preserve, enforce, or reclaim that right? • Do you have confidence that these methods will bring about the desired results? • If you are unsuccessful, what will the consequences be to you/your community

## **Annex T: Global Protection Cluster - Situation Assessment and Action Planning Tool**

Source: (Global Protection Cluster n.d.)

### **HLP CONFLICTS**

#### **Typology**

**ANALYSIS:** HLP disputes are a constant at all times in almost every society and do not present a destabilizing factor in and of themselves. Rather, such disputes threaten stability and early recovery in situations where they have become significantly more widespread, intractable or severe than before the disaster; where the terms of such disputes are politicized, particularly along ethnic or sectarian lines; and where little common ground exists between the parties to such disputes regarding which rules and adjudicatory institutions enjoy both the legitimacy and the actual capacity to mediate.

**INQUIRIES:** · What proportion of HLP disputes are of an ordinary nature, involving predictably recurring issues such as overlapping land uses, the drawing of boundaries between private plots and division of inherited estates? Has the incidence of such disputes increased or decreased and have any new trends in their adjudication emerged? Do such disputes tend to pit potentially politicized groups against each other? Are such disputes adjudicated in an accepted manner and within reasonable timeframes? Do the rules for resolving ordinary disputes affect men and women equally? · What proportion of HLP disputes has taken on a “territorial” or class dimension, pitting social groups with opposed economic or political interests against each other for control over assets? Do such disputes reflect the breakdown of earlier agreements on division or shared use of assets? Do they reflect the effects of past conflict, discrimination, dispossession or exclusion? · What proportion of HLP disputes has the potential to ignite or perpetuate actual conflict? Have such disputes resulted in the investment of significant resources by individuals and communities in measures to demarcate, patrol and defend HLP assets (through measures such as fencing off land, roadblocks, formation of militias and community patrols, or laying of land mines and booby traps)? Have they resulted in threatened or actual harm? Are any channels of communication or mediation open?

#### **Geographic Dimension**

**ANALYSIS:** While ordinary HLP disputes are likely to be distributed throughout any given countries, disputes exacerbated by or resulting directly from crises are likely to be focused on specific areas. These need not be limited to the areas where the crisis events actually occurred; for instance, new disputes may arise in distant areas where displaced populations have come into conflict with local communities over access to or use of HLP assets. In other situations, ongoing disputes between groups may spread to different areas of the country where similar tensions had not yet erupted into open conflict. It is crucial to be aware of latent future conflicts as well as the effects of past conflicts.

**INQUIRIES:** · How are destabilizing HLP disputes distributed throughout the country? Are they concentrated in particular areas? Are there areas for which information on HLP disputes is not available? · Are HLP disputes perceived as isolated and local or as part of a broader political struggle? Are they concentrated in areas inhabited by minority groups, indigenous persons or relatively recent migrants to the country in question? · To what extent do the conditions that have led to destabilizing HLP disputes in some parts of the country exist in other parts of the country? What factors may work against their spreading? · How do HLP disputes relate to demographic changes and population movements, including forced or involuntary displacement? Are such changes related to historical factors, including demographic trends, urbanization and local climate change, and are they likely to increase or decrease? How did the disaster affect these trends? Are they limited to the territory of the country or do they affect neighboring countries or regions as well?

#### **Time Dimension**

**ANALYSIS:** Understanding the way in which HLP disputes have peaked and subsided in the past may provide further insights into factors that may aggravate or mitigate them in the present and future.

**INQUIRIES:** -Have destabilizing HLP disputes been a chronic problem in the country's recent history, emerging in regular or predictable cycles, or have they been sporadic and unpredictable? -What temporal triggering factors may exist? Is the emergence of HLP disputes related to recurring social or political events such as elections, or to seasonal patterns such as growing seasons or cycles of transhumance? -Can marked improvements or deteriorations in HLP relations be related to a singular primary cause, such as the adoption of a new policy affecting HLP assets, a governmental transition or the beginning of a period of environmental or climate change? -How do destabilizing HLP disputes relate to the crisis? Did they exist prior to the crisis? Were HLP disputes or their consequences one of the root causes of the crisis or its worst effects (as in cases where inappropriate land use exacerbates the effect of natural disasters)? How did the crisis affect prior HLP disputes? Did it cause new HLP disputes? If so, how do these relate to prior disputes?

### **Parties to HLP Disputes**

**ANALYSIS:** While it is most obviously important to identify primary parties to HLP disputes, or those with a direct stake in the outcome, many powerful and influential actors are likely to have a secondary or indirect interest. Understanding the motivations of both sets of actors can help in mobilizing support for just and sustainable resolutions. However, participatory processes for identifying and addressing HLP disputes should clearly prioritize the input and involvement of those parties most directly affected in the development of solutions.

**INQUIRIES:** -Who are the parties directly involved in HLP disputes? Which parties are occupying or using disputed HLP assets, or otherwise preventing others from accessing them? Which parties claim to be displaced from their rightful HLP assets or otherwise prevented from accessing or using them? Are there multiple parties on either side and, if so, do they cooperate or compete? -Do the groups directly involved in HLP disputes implicitly or explicitly represent broader societal groups? Do they claim to represent ethnic or sectarian communities? Is one of the parties the state or government itself or seen to be acting on behalf of or with the support of public authorities? Are both or all parties associated with competing public bodies or political parties? -What actors bear responsibility for addressing HLP disputes? What is the role of the judiciary, competent ministries or agencies, administrative authorities and local leaders? (see below, 'HLP Institutions') -What role is played by civil society actors? What domestic private actors are commenting on HLP disputes, playing roles in negotiating or mediating them, or mobilizing, informing or providing aid to directly affected parties? Are they linked with international NGOs or advocacy groups? Do HLP disputes reflect deeply polarized political crises or does a significant proportion of the population still consider itself not partisan? -What role is played by commercial and business interests? Are such actors seen as partisan or neutral? Are they exploiting weak state capacity or corrupt access to state officials in order to access or exploit disputed HLP assets? Do they have an interest in acting as spoilers? Are they linked with business interests or governments outside the country? -What is the role of the international community? Have UN bodies or agencies or other international actors commented on HLP disputes or become involved in attempts to resolve them? What is the role and perspective of development actors active in the country prior to the crisis? Have international actors unintentionally aggravated HLP disputes through their own actions? -What role, if any, is played by the governments of neighboring states and regional actors or organizations?

### **Historical Context**

**ANALYSIS:** Seeking information regarding the historical background to disputes over HLP assets is crucial in order to be able to complement an understanding of the objective situation on the ground with insights into the subjective position of the parties to disputes and how they are likely to perceive developments related to HLP assets. In many situations, past grievances and traditional understandings regarding the motivations of other actors at the national level will color perceptions of the current situation, resulting in surprising and even violent reactions to seemingly innocuous events, and complicating humanitarian, human rights and early recovery responses. Given the inherent value of HLP assets for subsistence, commerce, speculation and political patronage, HLP grievances and disputes often reflect broader power relations and political struggles.

**INQUIRIES:** -When and how did the country come into being? Was it shaped by early migration, displacement and shifts in borders or has it had a relatively steady population development within an established territory? Do significant disputes over borders, natural resources, territorial claims or treatment of minority groups persist with regard to neighboring states? -What are the historical trends in terms of land ownership and use, national and regional migration and economic development? Has the country experienced colonialism or other forms of foreign domination or exploitation? Has there been significant industrialization and urbanization? -What historical patterns of HLP conflict, dispossession or exclusion can be identified? Have indigenous or other long-settled groups been pushed off their land? Have national minority groups faced forced integration measures or been suspect of harboring secessionist desires? Have large immigrant or refugee populations been prevented from integrating? -What role do women play in the political and economic system? Have women faced historical challenges to exercising equal rights to inherit, acquire, use and dispose over property? Have these been addressed or are there still discriminatory rules and practices? -Is the governance tradition highly centralized or federal? Have any regions traditionally enjoyed a degree of autonomy? Has the state historically been able to project power throughout the entire country? To what extent do HLP-related practices reflect the answers to these questions? -Do longstanding customary and informal HLP administration regimes exist? Are these tolerated or recognized by the state? Is the trend toward doing away with such systems or protecting them? What is the nature and resilience of voluntary local systems allowing overlapping land uses? -What economic policies related to HLP assets has the country pursued? Have there been significant episodes of nationalization, collectivization, forced industrialization, or privatization and titling of land? What policies exist regarding the exploitation of undeveloped land, commercial farming and the grant of concessions to exploit agricultural land and natural resources? Do such policies encourage or restrict foreign investment in HLP assets?

## HLP RULES

### **International Obligations**

**ANALYSIS:** In post-conflict situations, peace agreements increasingly commonly include rules related to disputed HLP assets and natural resources. The treatment of these issues may also be affected by other treaty obligations, including international and regional human rights rules and agreements on trade and foreign investment.

**INQUIRIES:** -What relevant rules are included in multi-lateral and regional human rights treaties ratified by the country in question? Do these treaties include relevant substantive protections, such as rights to free choice of residence, property, adequate housing, non-discrimination by age, race and gender and protection of indigenous and tribal peoples? Do they include relevant procedural protections such as the right to a fair hearing in the determination of civil rights and obligations as well as the right to an effective domestic remedy for alleged violations? Has the country accepted the jurisdiction of international or regional human rights monitoring bodies or courts? -Where a peace treaty or ceasefire agreement applies, what relevant rules are included? Are displaced persons recognized as enjoying the right to voluntary return and to remedies for HLP related violations? Are special institutions set up to implement these commitments or international monitors and peacekeepers mandated to support their implementation? -Do any applicable bi-lateral or multi-lateral agreements on trade and foreign investment affect the ability of crisis-affected individuals and populations to enjoy their rights to HLP assets? Have HLP assets that remain claimed or disputed been listed as available or allocated to foreign investors?

### **Inventory of Domestic Formal Rules**

**ANALYSIS:** It is important to develop an overview of the formal rules set out in the constitutional framework, laws and regulations that apply both generally and, where relevant, in regions of the country. Such formal rules may explicitly provide de jure recognition to informal and customary regimes de facto applicable at the regional or local level. However, where formal rules purport to be the sole source of legitimate normative authority throughout the country, the potential for misunderstanding and conflict in settings involving legal pluralism (see below) increases.

-CONSTITUTIONAL FRAMEWORK: What relevant rules are set out in the Constitution related to acquisition and protection of property, housing and land rights? Are there guarantees regarding accessible procedures for seeking protection of these rights? Does the Constitution define state or public land broadly, e.g. as any land not formally registered in the name of a natural or legal person? What overall land policies are reflected? (e.g., do strict conditions for expropriation perpetuate an unequal distribution of land? Do rules on acquisitive possession of land promote settlement and cultivation?) Does it guarantee gender equality generally or specifically with regard to property rights? Are indigenous groups or minorities and their customary institutions recognized and protected? In decentralized political systems what competences related to land and property are delegated to the regional or local level?

-RELEVANT STATUTORY LAW AT THE NATIONAL LEVEL: In mapping the statutory framework, important questions include (1) how property rights can be acquired (purchase, gift, inheritance, distribution, privatization, individualization, prescription, adverse position, regularization, recognition, allocation for use, leasehold, etc.); (2) how property rights are registered and regulated (registry and cadastre, rural land administration, urban planning and zoning, laws on pastureland, forests and protected areas, expropriation rules, taxation of ownership, transfers, improvements, etc.); and (3) how property rights are adjudicated (court jurisdiction, ADR and mediation, including through customary institutions).

-RELEVANT STATUTORY LAW AND LEGISLATIVE COMPETENCES AT SUB-NATIONAL LEVELS: In situations where subnational levels of government enjoy legislative or regulatory competences related to HLP assets, the above inquiries related to national legislation should be made and the relationship between the exercise of central and regional HLP-related competences understood. Less formally, it is also crucial to understand how state-regional coordination of property issues functions in practice and whether areas of tension or overlap exist. The adoption of HLP-related rules at significant variance with each other by different regions of decentralized states may also be an issue, particularly where regions adopt religious or customary rules rejected by significant local minority groups.

-RELEVANT EXECUTIVE DECREES HAVING FORCE OF LAW: In some legal systems, executive decrees may be issued with the force of law, at least for a limited time. These may set out important rules, including exceptions to ordinary legislation made during times of crisis.

-ADMINISTRATIVE BY-LAWS AND IMPLEMENTING REGULATIONS: Executive and administrative officials may be given a great deal of discretion by legislation to promulgate implementing regulations. Understanding the effect of such regulations as well as practice, in the sense of how they tend to be interpreted and applied, can be crucial to understanding the effect of general provisions of legislation on the HLP rights of local individuals and groups. As with legislation itself, it is important to understand the relationship between regional and national regulatory rules and systems. Patterns of Recognition of

### **Informal and Customary Rules**

ANALYSIS: Informal or unwritten rules, along with customary rules of long standing may or may not be recognized by the state. As a general rule, recognition is seen as an important measure in protecting the livelihoods of vulnerable groups. For indigenous groups, in particular, such recognition is an emerging obligation under international law. Recognition can take various forms and has both positive and negative implications. In post-colonial countries, recognition of community laws may historically have been a device for co-opting minority groups and can lead to tensions, particularly where community decision-makers are not institutionally accountable or the rules are seen as arbitrary or unjust. Likewise, attempts to recognize customary rights by transforming them directly into statutory ownership rights can endanger customary holders of secondary rights by denying them access to affected lands. On the other hand, failure to recognize customary rules can jeopardize the tenure of marginalized groups to their lands and facilitate encroachment, land-grabbing and forced evictions. Finally, although the nature of recognition provided to various groups may vary based on their express needs and wishes, arbitrary or discriminatory differentiation between groups is likely to increase tensions.

-OFFICIALLY RECOGNIZED CUSTOMARY, RELIGIOUS OR COMMUNITY LAWS: Some states accord official recognition to indigenous, tribal, ethnic, and religious minorities, delegating a degree of



competence to such communities to regulate their own affairs. Where recognition of customary and community laws is limited to family law issues, HLP issues are still likely to arise, particularly in the area of spouses' joint rights to property and inheritance laws that may dispossess women or children in favor of male relatives. However, where recognition includes broader rights to administer customarily held lands according to customary or religious rules, points of contention may still include the extent to which affected communities can bar access to outsiders, their control over sub-surface natural resources and conditions imposed in exchange for recognition.

**-CONVERSION OF INFORMAL AND CUSTOMARY RIGHTS THROUGH TITLING:** In urban settings, formal recognition of informally held property rights has been proposed as a means of providing the poor with both tenure security and assets that can be used as collateral. However, this approach may be complicated in rural settings by the fact that customary rights tend to be collectively held and exercised. In indigenous communities, an entire lineage group may be the 'owner' of the land, with individuals accorded rights of allocation (within the group), occupation, use and access. Insensitive conversion of 'higher' rights (such as allocation) within customary systems into outright ownership may lead to the exclusion of others whose 'subsidiary' customary rights may have been central to their livelihoods. It is therefore important to not only be aware of whether titling programs are underway, but also whether they provide title in a manner agreed with by the groups involved and compatible with their customary land administration practices.

**-CONDITIONAL RECOGNITION OF CUSTOMARY RIGHTS:** Where states recognize informal and customary rights, they often do so in exchange for concessions by the affected communities. In the best cases, such conditional recognition proceeds on the basis of participatory processes and is based on recognition of the emerging international law requirement that customary rights be recognized to the extent that they do not conflict with fundamental rights defined by the national legal system and human rights obligations. However, in any case, conditions for recognition may lead to disputes within affected groups or between them and government officials. Examples include requirements that customary groups provide the government with written charters setting out their land administration rules or the manner in which adjudicatory bodies are constituted, as well as acceptance of laws regulating extraction of sub-surface natural resources from customarily-held land.

**-UNRECOGNIZED INFORMAL AND CUSTOMARY RIGHTS:** In very many cases, informal and customary rights simply apply at the local level without state recognition. Such systems tend to function well in providing tenure security based on local attribution under normal circumstances. However, in situations of displacement or encroachment by powerful political or economic actors, such rights are easily brushed aside, leaving affected populations without legal recourse for their dispossession. As a result, the widespread persistence of unrecognized informal and customary rights can itself be a destabilizing factor.

#### **Policies supported by statutory law**

**ANALYSIS:** Understanding the policies underlying statutory laws can help to analyze how their application may affect tensions and conflicts over HLP assets, as well as which societal groups stand to gain and what groups stand to lose. In some cases HLP-related laws may serve policies that are themselves root causes of tension or conflict. In other cases, legitimate purposes served by such laws may become inappropriate when applied without sensitivity to the effects of a disaster or conflict.

**INQUIRIES:** -Who can and does own land? From a de jure perspective, is the state the default owner of much or most of the land or do the laws recognize and encourage strong individual ownership rights? In the former case, is the state following an active policy of nationalization of property or does it simply label any property not held under recognized title documents as state property? From a de facto perspective, who considers themselves to own the land? Does practice vary with law? -What specific legal rules govern expropriation of property and evictions? Are expropriations required to be in the public interest? Do guarantees of fair procedure and adequate compensation exist? Are evictions legally viewed as a last resort in order to achieve a pressing public interest goal? Do procedural safeguards and appeals possibilities exist for affected persons? Is compensation and assistance available to evicted persons who did not own their homes as well as those that did? -Do women and men enjoy equal legal rights related to HLP assets and



joint rights to marital property? Are any groups excluded by law from exercising property rights on an equal basis with others? In cases in which there is a legitimate basis for such exclusion, e.g. as in the case of orphaned children who have not reached the age of majority, do legal guarantees exist for the exercise of such rights when the justification in question no longer exists? Are facially neutral rules of law applied in a manner that results in the de facto exclusion of certain groups from exercising these rights? -Do the laws follow a 'land to the tiller' approach with occupation and productive use of land rewarded with stronger tenure? If so, are there any rules on the rights of persons displaced from lands they were using with a view to acquiring title? -Do the laws favor commercial use of land through measures such as encouraging large-scale consolidation of parcels and concessions, or do they favor smallholders? -Do the laws serve to reinforce the status quo, in terms of ownership and access to land, or to reform it, e.g. through the breakup of large estates, grant of title to tenants, access programs for landless, etc.? In the former case, is unjust distribution of land a cause of tension? In the latter case, are reform efforts likely to bring about broad-based and sustainable access, or is there a risk that favored groups may arbitrarily benefit at the expense of disfavored ones?

## **HLP INSTITUTIONS**

### **Rule-making Institutions**

ANALYSIS: As discussed in the section on 'HLP Rules', above, formal rules governing HLP assets may be issued at the state, regional and even local levels, while informal rules (which may or may not be recognized by the formal system) tend to be made at the local level but may, in the case of large tribal groups or religious law, be issued in a manner that covers much or all of the state. The relationship between formal and informal rule-making bodies at various administrative levels is important primarily as it affects whether the rules that result will be compatible with each other. Where competences and jurisdictions are clear and legitimate, this may reduce the potential for conflict. However, where there are overlaps or disputes – or where such systems simply operate in parallel to each other – the resulting legal pluralism and uncertainty is likely to result in forumshopping, with parties to disputes choosing among competing adjudicatory bodies (see below) based on the likelihood that they will apply a set of rules more favorable to them.

INQUIRIES: -Is the formal/statutory lawmaking system coherent? If regional or local governments have legislative or regulatory competences affecting the exercise of HLP rights, do they exercise them consistently with national law rules, or do gaps, overlaps or conflicts exist? Do such issues reflect broader political tensions in the country? Are national and regional legislative bodies perceived as legitimate and representative of the entire areas they are competent to legislate for? -Is the relationship between the formal and informal rule-making systems uniformly regulated? Where informal or customary rule-making bodies exist and are recognized under domestic law, is recognition universal or selective? Are informal and customary rules required to be in conformity with specific constitutional or statutory rules? Are there direct connections between the systems, e.g. legal rules by which customary rights can be converted into statutory ones?

### **Adjudicatory Institutions**

ANALYSIS: The institutions tasked with applying the applicable rules and adjudicating HLP-related disputes play a crucial role in both preventing tensions from developing into open conflict and in stabilizing post-conflict situations. However the centrality of HLP-assets and related natural resources to both economic growth and the basic needs of individuals can place severe pressures on such bodies, exposing them to threats, bribes and political interference. Formal adjudication bodies such as courts or administrative boards are often particularly challenged by HLP disputes, as they tend to be difficult and costly to access for those directly affected, often entail lengthy procedures and may be perceived as partial or corrupt. By contrast, informal adjudicatory bodies tend to be cheap, accessible and quick, and enjoy a high degree of legitimacy, at least within the local communities where they operate, but may have low legal capacity and apply unpredictable, arbitrary or even discriminatory rules.

A number of challenges are posed by situations of legal pluralism, in which multiple (formal and informal) adjudicatory bodies apply different rules in HLP disputes without having any clearly defined relationship

with each other. The first challenge, as described above, is the risk of ‘forum-shopping’, in which claimants are able to choose between multiple adjudicators based on considerations of which one applies the most favorable rules with regard to a particular claim – or is most likely to be sympathetic on the basis of ethnicity or political affiliation. A second challenge is legal uncertainty, or the inability of parties to land disputes to reasonably anticipate the outcomes of their cases due to the multiplicity of inconsistent rules in play.

**INQUIRIES:** -If informal adjudication bodies exist and are recognized, what is the nature of the recognition? Are their decisions, including settlements, simply deemed final and binding as long as they were taken in cases that clearly fell within their jurisdiction? Is some formal approval such as notarization required? Do they share jurisdiction with formal adjudication bodies or are there areas of unclarity or overlap? If a claimant has received a valid final determination from an informal body (including a settlement), can he or she bring *de novo* proceedings before a formal adjudicator? Can decisions or settlements by informal bodies be appealed to or challenged before formal adjudication bodies under any circumstances? Are those bodies then obliged to test the informal bodies’ application of customary rules in the specific case or merely to determine whether the outcome is in accordance with international and domestic rights protections? -If informal adjudication bodies exist but are not recognized, is there a *de facto* relationship or hierarchy by means of which decisions by informal bodies can be either recognized by or challenged before formal ones? Do formal institutions refer claimants to informal ones for alternative dispute resolution under any circumstances? If so, do they approve the resulting settlements and consider the parties bound by them? Can decisions and settlements by informal bodies be challenged – or presented as evidence – in courts? -If informal adjudication bodies exist and operate completely separately from formal ones, how does this function in practice? Do populations in local communities go to informal bodies for some types of cases and formal ones for others? Are preferences correlated to social class, ethnic or tribal affiliation or other factors? -How are formal adjudicators perceived? Are they present and physically accessible throughout the country? Are they viewed as politically partisan, corrupt or subject to influence? Do factors such as high fees, procedural and paperwork requirements, delays and use of languages not spoken locally discourage access? Are they able to conclude cases expeditiously? Are enforcement proceedings effective? Are any shortcomings recognized by the government and corresponding reforms planned or underway? -How are informal adjudicators perceived? Are they viewed as efficient, transparent, legitimate and representative? Are they factually representative? Specifically, is it possible for women or members of local minority groups to sit in such bodies? Do they have standing to participate as parties in disputes before such bodies? Are informal adjudicators seen as having jurisdiction over all types of disputes (e.g., including serious criminal cases and complex multi-party civil disputes)? If not, whom are parties referred to when they fall outside customary bodies’ jurisdiction? What rules do informal adjudicators apply? Are they applied consistently across localities or is there a great deal of local variation? How are HLP disputes between communities (as opposed to within communities) handled? Are any of the rules objectionable from a human rights perspective? Are they viewed as controversial locally? Do informal bodies apply an adversarial system, issuing decisions in favor of a sole ‘winning’ party, or do they follow a mediation model (or some other approach)? What types of remedies are available in HLP disputes before such bodies and how are decisions or settlements enforced?

### **Record-keeping Institutions**

**ANALYSIS:** As with legislative and adjudicatory functions, HLP record-keeping functions can often exist in parallel formal and informal guises. State record keeping typically involves extensive compilation of HLP records in the form of land registers and cadastral offices. Such records may be in paper or electronic forms, but are typically treated as binding evidence of valid title as well as the demarcation between respective properties. As such, they are crucial to resolving disputes, particularly in formal adjudicatory institutions, raising serious problems when they are damaged, lost, not updated properly or tampered with as a result of corruption or political pressure. Informal records may consist of anything from *petit papiers* – unregistered but signed and witnessed contracts on transfer of property – to the knowledge and attribution of the communities in which property-holders live. Both formal and informal records are vulnerable to loss and destruction in situations of conflict or natural disaster, complicating return processes and delaying reconstruction projects that are preconditioned on beneficiaries demonstrating legitimate possession of their damaged homes and lands.

INQUIRIES: -If informal record keeping institutions exist, is there any relationship between them and formal record keeping institutions? Alternatively, is there any device for recognition or conversion of informal title evidence? If not, what is the legal status of land held under informal documentation? Is it treated as state land by default? -Are formal record-keeping offices accessible for ordinary property-holders? Are they centralized or de-centralized? Are they physically accessible for the majority of the population? Do they charge high fees or are other significant expenses (e.g. taxes) imposed for the registration of property transactions such as sales and mortgages? Is there a tendency toward voluntary updating of formal records (because it brings tangible benefits) or do local populations tend to avoid official records offices and transact in HLP-assets informally?

-Are formal records seen as reliable? Are records offices liable to corrupt or politically motivated tampering? Are they up to date or are there major gaps? If records keeping methods are inadequate, has this been recognized by the government and are corresponding reforms planned or underway? -What types of informal evidence of legitimate ownership and possession of HLP assets exist? Is there a great degree of local variation in terms of what minimum evidence can establish ownership? Is paper documentation required or do local communities rely primarily on attribution?

-In the wake of conflicts or disasters, have formal records offices – and officials – survived? If records have been destroyed, have they been backed up elsewhere or does other data exist that would allow them to be reconstructed? Given what is known about how up to date and reliable the destroyed records were, would such an effort be worth it?

-Do displaced and other crisis-affected populations still have access to documentation and evidence of their HLP rights? Did many leave such documentation behind in areas that are now inaccessible? Were they forced to surrender such documentation or sign over their property under duress? Do they possess alternative means of documenting their rights? In cases of entirely undocumented rights, are community leaders or others present who are entitled to testify as to local land rights?

## Annex U: Assessing and Responding to Land Tenure Issues in DRM, Mitchell

Source: (Mitchell 2012, sec.4.2.4)

**TABLE 3. Information required for a baseline land tenure assessment**

<b>Baseline land tenure assessment</b>	<b>Pre-disaster attitudes towards land</b>
	<ul style="list-style-type: none"> <li>• What is the history of attitudes towards land and land reform?</li> <li>• What are the predominant current attitudes towards land?</li> <li>• What land policies exist?</li> </ul>
	<b>The legal framework for land administration</b>
	<ul style="list-style-type: none"> <li>• How do national land laws protect existing rights to property?</li> <li>• Do the laws include mechanisms to manage informal or customary law, institutions and practices relating to land?</li> <li>• What laws govern specific issues raised by the disaster, including women's rights to land, demarcation of boundaries and proof of rights to land?</li> </ul>
	<b>Capacity of the land administration system</b>
	<ul style="list-style-type: none"> <li>• What systems are in place to identify or manage public land (including State land)?</li> <li>• To what extent was formal land administration overloaded, out-of-date or serving only a small (often middle-class) portion of the population?</li> <li>• What types of documentary systems or databases are used in the land administration process?</li> <li>• What steps are involved in common land-related procedures and transactions?</li> <li>• Is there room for simplification?</li> </ul>
	<b>The main features of property rights and land tenure systems</b>
	<ul style="list-style-type: none"> <li>• Is the land customary land?</li> <li>• Is there a formal tenure regime, customary tenure system, or informal land tenure system?</li> <li>• Is this customary use recognized by law?</li> <li>• If not, does this present a problem?</li> <li>• If so, is further analysis of land rights required?</li> <li>• What was the nature and extent of documentary records relating to land before the disaster?</li> <li>• What documents are accepted as proof of ownership of land?</li> <li>• To what extent do these documents support the rights of women?</li> </ul>
	<b>Key laws and regulations on land and property, including discriminatory housing and property laws and acts in relation to displacement, age and gender in particular</b>
	<ul style="list-style-type: none"> <li>• Is protection against eviction included in the constitution or national law?</li> <li>• Are the land restitution and compensation mechanisms supported by law and valid for emergency situations?</li> <li>• Are there any impediments to women and children inheriting land?</li> <li>• Are there any impediments to women owning land or taking mortgages in their own right?</li> <li>• To what degree do the building code and land-use planning provisions consider disaster prevention and mitigation?</li> </ul>



**TABLE 10. Suggested land tenure questions for a detailed analysis**

<b>Post-disaster situation</b>	<b>Impact of the disaster on the land</b>
	<ul style="list-style-type: none"> <li>• What is the extent of damage to land – number of parcels affected, degree of damage, how much can be reoccupied after the recovery and site cleanup?</li> <li>• Is the building habitable?</li> </ul>
	<b>Impact of disaster on land records</b>
	<ul style="list-style-type: none"> <li>• What is the damage to land records held by agencies?</li> <li>• What is the damage to personal records of land tenure?</li> <li>• Will official land records need to be recuperated?</li> <li>• What is the capacity of the local land agency?</li> </ul>
	<b>Extent of geospatial (mapping) information</b>
	<ul style="list-style-type: none"> <li>• To what extent are high-resolution satellite images or aerial photos available for the affected areas?</li> <li>• To what extent are useful land information products (e.g. land use, geology, drainage, slope, geomorphology, geohydrology or seismotectonic maps) available for the disaster-affected areas?</li> </ul>
	<b>Need for resettlement</b>
	<ul style="list-style-type: none"> <li>• How many people need to be moved; what land rights will they receive, and how will their pre-disaster rights be protected?</li> <li>• How many people can return quickly to their pre-disaster land and under which land rights condition?</li> <li>• What is the need for emergency shelter (e.g. number, location, proof of identity)?</li> <li>• What is the need for resettlement (e.g. number of parcels, location)?</li> </ul>
	<b>Impact on vulnerable groups</b>
	<ul style="list-style-type: none"> <li>• What is the number of female-headed households?</li> <li>• What is the number of households with no surviving parents?</li> </ul>
	<b>Impact on the land agencies</b>
	<ul style="list-style-type: none"> <li>• How many staff are affected by the disaster?</li> <li>• How much damage is there to boundary markers and surveying infrastructure?</li> <li>• What is the post-disaster capacity?</li> </ul>

## **Annex V: Handbook for Humanitarians**

Source: (UN-Habitat 2008, p.39)

### **(i) Relief**

How many people have lost land temporarily or permanently and what are the land requirements for temporary and transitional shelter

How much land is available for livelihood requirements of displaced and settled population

Has an environmental assessment been carried out

Has there been a review of available land for site selection

Have steps been taken to ensure any government acquisition of land for sites conforms to international legal standards

What is the potential for ownership disputes due to unclear ownership/legal pluralism

Have the relevant authorities made public statements in support of security of tenure and against forced evictions

### **(ii) Recovery**

What is the status of land documents and records: how complete are they, how many have been lost or damaged, how reliable are they, what is the likelihood of fraud and corruption in the society

How can the records be secured from further loss or damage

If people have lost or do not possess official documents is this likely to cause them problems and in what alternative ways can they prove who they are and assert their tenure rights

How much detailed information exists about land tenure and institutions in the society and how accessible is this to those working with affected populations

Is satellite imagery of the affected land available and has it been analyzed

What is the capacity of the existing institutions for dealing with land-related issues and what is the relationship between the formal system and customary mechanisms

Are there any particular issues of concern regarding both systems – such as corruption or discrimination – and, if so, how can these be addressed

What are the potential obstacles to return and how realistic is it as an option

Has an analysis been carried out of how land and natural resource issues will affect the livelihood strategies of those in displacement

Would granting displaced people short-term occupancy permits help to increase tenure security

Have all the land-related programs been developed with gender-sensitivity and do they take into account the particular needs of vulnerable groups.

### **(iii) Reconstruction**

Is the existing land law adequate for dealing with the situation

Do planning mechanisms exist that take into account the need for risk reduction and addressing the vulnerabilities of all the population

Are strategies in place for upgrading informal settlements and dealing with the social, economic and environmental consequences

Do reconstruction projects include restoring and upgrading the land administration system

Have programs been implemented to address the land-related needs of particularly vulnerable

What measures have been taken to strengthen land governance systems



## Annex W: Framework for Objective Risk Assessment including Detailed Areas of Inquiry

HAZARD: - Source and Frequency	
<ul style="list-style-type: none"> <li>– Sources of hazard cited / identified</li> </ul>	<p><i>Evictions</i></p> <ul style="list-style-type: none"> <li>– # and type and actors (forced eviction, forced return, forced resettlement, development induced, market induced), and source (e.g. state, private, military etc).</li> <li>– Process and manner of evictions (per G.C.7)</li> </ul> <p><i>Disputes</i></p> <ul style="list-style-type: none"> <li>– # by type and actors highlighting those involving vulnerable groups and the State/powerful. (also ref <i>PWG - HLP12</i>)</li> <li>– Time taken to resolve disputes</li> <li>– # of disputes related to displacement, return, integration, resettlement</li> </ul> <p><i>Both</i></p> <ul style="list-style-type: none"> <li>– # between hosts &amp; displaced / # with ethnic, minority, racial, tribal aspects</li> <li>– # with violence (particularly involving groups) / # with potential to cause return to conflict.</li> <li>– Spatial distribution and hotspots</li> </ul>
RIGHTS: Elements at Risk	
<ul style="list-style-type: none"> <li>– Actual rights: proved by documentation. % families which hold documents: e.g. Titles, Certificate of occupation, Purchase agreement/receipt, Property tax receipts, Utility bills, No documents (<i>UN-HAB hb domain &amp; UNHAB ST-HH11/ PWG - HLP3</i>).</li> <li>– Reported rights: as above but not in possession of document</li> <li>– Available tenures - typology</li> <li>– Understanding/perception of rights (<i>restrict, develop, bequeath, sell</i>) (<i>UN-HAB hb domain</i>)</li> <li>– Mode of acquisition (<i>purchase, inheritance, self- settlement etc</i>)</li> <li>– Duration: (% households residing at current dwelling for 10+ years - (<i>UN-HAB hb domain</i>))</li> </ul>	
OBJECT: Exposure (Spatial Characteristics/Value)	
<ul style="list-style-type: none"> <li>– Location</li> <li>– % people using land not planned for infrastructure/ development (<i>UN-Hab</i>)</li> <li>– Land available for displacement / durable solutions (<i>PWG - HLP6</i>)</li> <li>– % of land unsafe (UXO etc) (<i>PWG- HLP5</i>)</li> <li>– High value land - city centres, mineral or agricultural resources, coastlines</li> <li>– Settlement characteristics (<i>UN-Hab</i>)</li> <li>– % of common pool resources identified in LIS</li> <li>– % of common pool resources with overlapping claims with state bodies ('free' land, national parks etc).</li> </ul>	
SUBJECT: Vulnerability ( <i>Individual/Household Characteristics</i> )	
<ul style="list-style-type: none"> <li>– Socio-economic &amp; demographic details</li> <li>– Knowledge of rights including rights in displacement (e.g, voluntary return, resettlement policies, land acquisition)</li> <li>– Knowledge of sources of protection</li> </ul>	
Sources of Protection	
Formal Constraints (rules, laws and constitutions)	Informal Constraints (norms of behaviour, moral and ethical codes)
<p><i>Capacity LAS</i></p> <ul style="list-style-type: none"> <li>– # vacant staff positions</li> <li>– Records, Buildings, equipment damaged (<i>PWG -HLP4</i>)</li> <li>– Experience accessing and using services (inc. time taken to obtain copy documents)</li> </ul> <p><i>State Land</i></p> <ul style="list-style-type: none"> <li>– State land management system in place. State land is recorded in LIS (<i>LGI-12</i>)</li> <li>– Expropriation (fairness, process, transparency) <i>LGI-14</i></li> </ul> <p><i>Planning</i></p> <ul style="list-style-type: none"> <li>– % of housing stock in compliance with building codes</li> </ul>	<p><i>Informal protections</i></p> <ul style="list-style-type: none"> <li>– Cited sources of protection</li> <li>– Evaluation of protections (accessible/effective)</li> <li>– Presence of leadership structures</li> </ul> <p><i>Informal Constraints in 'formal systems'</i></p> <ul style="list-style-type: none"> <li>– Political will</li> <li>– Perception / experience of corruption</li> <li>– Barriers to coordination between organisations</li> </ul> <p><i>Common norms</i></p> <ul style="list-style-type: none"> <li>– Attitude of hosts to displaced</li> <li>– Religion, ethnicity, moral attitudes (compare hosts-</li> </ul>

<ul style="list-style-type: none"> <li>– Appropriateness of building codes to prevailing environment(LGI-8)</li> </ul> <p><i>Land Sales</i></p> <ul style="list-style-type: none"> <li>– Status of banking system</li> <li>– Policy in place to re-establish land market</li> </ul> <p><i>Coordination</i></p> <ul style="list-style-type: none"> <li>– HLP working group setup and functioning</li> <li>– Relevant parties attend HLP working group</li> </ul> <p><i>Dispute Resolution</i></p> <ul style="list-style-type: none"> <li>– # / % HLP of dispute resolution mechanisms operational (PWG - HLP7)</li> <li>– Legal provisions for legal aid exist (LIFI)</li> <li>– Legal provisions are practiced (LIFI)</li> <li>– Alternative dispute resolution structures (presence, nature, access, effectiveness, relation to formal)</li> </ul> <p><i>Laws and Policies</i></p> <ul style="list-style-type: none"> <li>– International treaty obligations</li> <li>– Legal provisions against forced evictions are accessible and effective (<i>ST-City2</i>)</li> <li>– Informal settlements are included within the land information systems (<i>ST-City1</i>)</li> <li>– Flexible evidential requirements</li> <li>– Recognition of continuum of land tenure / Customary tenure</li> <li>– Restitution policy is developed</li> <li>– HLP issues present in peace-agreements</li> <li>– Nature of discriminatory laws/policies their impact on the formal record.</li> </ul>	<ul style="list-style-type: none"> <li>displaced)</li> <li>– Discrimination</li> <li>– Disputes/violence between displaced / hosts</li> </ul>
<b>Inquiries - Social, Cultural, Political and Historical Context</b>	
<p><i>Background to context</i></p> <ul style="list-style-type: none"> <li>– history, politics, people, culture, religion, discrimination etc</li> </ul> <p><i>Conflict Analysis</i></p> <ul style="list-style-type: none"> <li>– Structures, Actors, Dynamics</li> </ul>	
<b>Inquiries - Key Issues</b>	
<ul style="list-style-type: none"> <li>– # of people in camps who are former tenants/squatters.</li> <li>– State develops policy to address issue of tenants/squatters</li> <li>– Common pool resources - development induced displacement (#, location, nature)</li> <li>– # of people affected by secondary occupation (actors involved and locations)</li> <li>– # of people affected by forced resettlement</li> <li>– # people affected by forced return</li> <li>– # of formal land acquisition process and their nature (location, purpose, process etc)</li> </ul>	

## Annex X: Enquires by UN-Habitat Units of Analysis

This annex presents indicators from the model consolidated by the units of analysis used by UN-Habitat (Bazoglu et al. 2011, chap.4; Sietchiping et al. 2012). Three levels are used: *micro* (individual/household), *meso* (settlement/city) and *macro* (policy).

### 1. Micro Level (Individual / Household)

UN-Habitat Household Domain (annex D)	Additional Inquiries - Household Domain
<ul style="list-style-type: none"> <li>– Family history of evictions</li> <li>– Perceptions of HH risk</li> <li>– Perception of women's risk</li> <li>– Document held</li> <li>– How land acquired</li> <li>– Duration of rights</li> <li>– Rights - restrict, develop, sell, bequeath</li> <li>– Socio-economic &amp; demographic details</li> </ul>	<ul style="list-style-type: none"> <li>– Sources of hazard</li> </ul> <p><i>Vulnerability</i></p> <ul style="list-style-type: none"> <li>– Knowledge of rights including rights in displacement (e.g., voluntary return, resettlement policies, land acquisition)</li> <li>– Knowledge of sources of protection <i>Rights</i></li> </ul> <p><i>Informal Constraints</i></p> <ul style="list-style-type: none"> <li>– Cited sources of protection</li> <li>– Evaluation of protections cited (accessible/effective)</li> <li>– Perception / experience of corruption</li> <li>– Presence of leadership</li> </ul> <p><i>Formal Constraints</i></p> <ul style="list-style-type: none"> <li>– Experience and using accessing services (inc. time taken to obtain copy documents, obtain building permits etc)</li> </ul>

### 2. Meso Level (Settlement/City)

UN-Habitat	Additional Inquiries - Meso Level / Spatial
<ul style="list-style-type: none"> <li>– Proportion of informal occupants using public land that is not planned for infrastructure or other services within total city population (<i>Sett-Comm</i>)</li> <li>– Settlement characteristics (UN-Hab)</li> </ul>	<ul style="list-style-type: none"> <li>– Location</li> <li>– Land available for displacement / durable solutions</li> <li>– % of land unsafe (UXO etc)</li> <li>– High value land - city centres, mineral or agricultural resources, coastlines</li> <li>– % of common pool resources identified in LIS</li> <li>– % of common pool resources with overlapping claims with state bodies ('free' land, national parks etc).</li> </ul>

### 3. Macro level (Policy Level)

UN-Habitat LIFI Summary (Annex C)	Additional Inquiries - Macro Level
<p><i>Evictions</i></p> <ul style="list-style-type: none"> <li>– Process prior to evictions</li> <li>– Legal Aid (provisions exist / followed)</li> <li>– <i>Legislative &amp; policy enforcement</i></li> <li>– Constitution/Laws protect occupiers</li> <li>– Coherent, unambiguous and non-contradictory land laws and pro-poor land-use practices</li> <li>– Gap between the practice (de-facto) and legal (de jure)</li> </ul> <p><i>Equality of access to tenure</i></p> <ul style="list-style-type: none"> <li>– Inheritance and registration are non-discriminatory.</li> <li>– Co-tenure registration of multiple household members is possible.</li> <li>– Household members have inheritance and development rights</li> </ul> <p><i>LAS Practices</i></p> <ul style="list-style-type: none"> <li>– Basic land registration / recording systems are in place and operational</li> <li>– HHs with informal tenure are included in the information systems</li> <li>– Institutional capacity</li> <li>– Capability, stability, affordability, accessibility</li> <li>– Legal right to access info.</li> <li>– Consultation about decisions</li> </ul> <p><i>Overview Indicators</i></p> <ul style="list-style-type: none"> <li>– Informal settlements are included within the land information systems (<i>ST-City1</i>)</li> <li>– Legal provisions against forced evictions are accessible and effective (<i>ST-City2</i>)</li> </ul>	<p><i>LAS Practices &amp; Planning</i></p> <ul style="list-style-type: none"> <li>– Flexible evidential requirements</li> <li>– % of housing stock in compliance with building codes</li> <li>– Appropriateness of building codes (LGI-8)</li> </ul> <p><i>State Land Management</i></p> <ul style="list-style-type: none"> <li>– State land management system in place. State land is recorded in LIS</li> <li>– Expropriation (fairness, process, transparency)</li> </ul> <p><i>Dispute Resolution</i></p> <ul style="list-style-type: none"> <li>– # / % HLP of dispute resolution mechanisms operational</li> <li>– Alternative dispute resolution structures (presence, nature, access, effectiveness, relation to formal)</li> </ul> <p><i>Displacement</i></p> <ul style="list-style-type: none"> <li>– HLP issues present in peace-agreements</li> <li>– Restitution policy developed</li> <li>– Resettlement policy developed</li> <li>– Amount of land available for displacement / durable solutions</li> </ul> <p><i>Coordination</i></p> <ul style="list-style-type: none"> <li>– HLP working group setup and functioning</li> <li>– Relevant parties attend HLP working group</li> </ul>