

Coordinating Humanitarian Shelter



**Shelter Cluster South Sudan**

ShelterCluster.org



IOM International Organization for Migration

المنظمة الدولية للهجرة

# Humanitarian Shelter and Land Rights in South Sudan

## Due Diligence Guidelines for Shelter Actors

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## What Are These Guidelines?

These guidelines are an adaptation of the “Land Rights and Shelter: The Due Diligence Standard” document adopted by the Global Shelter Cluster in December 2013 to the South Sudanese context. They aim to assist shelter actors in South Sudan to understand existing land rights over plots of land and to minimize the risk of shelter activities further contributing to land disputes in South Sudan. They are also intended to help managers and implementers of shelter programs with identifying land rights in the complex South Sudanese context.

This adaptation is the outcome of a field assessment carried out by IOM land experts<sup>1</sup> at the request of the Shelter Cluster in South Sudan. This assessment took place in May 2015 and included a three week field visit to the states of Equatoria, Lakes and Jonglei. Except for Akobo in Jonglei State, the primary focus of the field visits was on shelter projects in government-controlled areas. Anecdotal evidence suggests, however, that the land dynamics in the opposition areas are largely similar. In addition to meeting shelter partners, government officials, traditional leaders, academic experts and civil society organizations,<sup>2</sup> the team also reviewed the relevant project documents, legislation, strategies and policies relevant to shelter and land tenure in South Sudan.

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<sup>1</sup> Ina Rehema Jahn (IOM’s Land, Property and Reparations Division, Geneva), Irfan Hameed and Harriet Inyani (Shelter/NFI experts, IOM South Sudan)

<sup>2</sup> A full list of interview partner is listed in Annex I.

## Scope – Who are these Guidelines for?

The guidelines are intended for emergency shelter actors who support the construction of humanitarian shelter for beneficiaries in South Sudan.<sup>3</sup> They cover the two principal emergency shelter scenarios in the country in which acute emergency shelter kits and standard emergency shelter kits are provided:

**Scenario “Host Land”:**

Shelter beneficiaries living on land provided by host communities

**Scenario “Government-allocated Land”:**

Shelter beneficiaries living on government-allocated land outside of the Protection of Civilian (PoC) sites (e.g. in Mingkaman)

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<sup>3</sup> The UNMISS-regulated Protection of Civilians sites (PoCs) are not covered by these guidelines in light of their particular situation.

## Due Diligence – What Does It Mean to Apply A Due Diligence Standard in Shelter Programming?

The Due Diligence standard as adopted by the Global Shelter Cluster requires emergency shelter actors to establish an ongoing process that both anticipates and responds to issues of land rights as they emerge, or where there is a risk that they may emerge, in shelter programming.

The underlying goal of this document thereby is to allow emergency shelter actors to:

- ▶ achieve as much legal certainty about land rights as is reasonable in the South Sudanese context and taking into account constraints on resources and time that all shelter actors invariably face;
- ▶ reduce, as much as possible, the risk that emergency shelter programming causes or contributes to increasing tensions and disputes around land; and
- ▶ reduce, as much as possible, the risk that shelter beneficiaries will be forcibly evicted from the shelters provided to them by or through emergency shelter programs.

Operationalizing the due diligence standard in emergency shelter programming requires:

- ▶ awareness amongst key staff members of emergency shelter actors about the connections between land rights and shelter;
- ▶ the mainstreaming of basic land rights verification and monitoring in all shelter activities either directly or through outsourcing;
- ▶ the creation of information sharing protocols regarding land rights' issues amongst emergency shelter actors working in South Sudan;
- ▶ the establishment of internal rules and procedures that encourage and allow for the application of the due diligence standard; and
- ▶ taking into consideration the needs of vulnerable groups and individuals throughout the emergency shelter programming.



## How Are the Guidelines Organized?

These guidelines are organized into four separate sections which correspond to the four phases characterizing a shelter intervention according to the Due Diligence standard. Each section opens by indicating respective applicability by shelter scenario (i.e. “Host Land” and/or “Government-Allocated Land”), and includes a Checklist envisaged to increase use of these Guidelines for practitioners.

### **1. Preparedness and Planning: Understand the Land Context in the Area of Operations**

Provides guidance on how to ensure awareness amongst your shelter team about the interlinkages between the shelter activities you intend to carry out, including the due diligence approach to land and shelter rights in the area of operations, and to obtain an understanding of the land rights situation in the area of operations.

### **2. Before Shelter Activities: Ensure sufficient Certainty around Land Rights over Shelter Land Plots for targeted Beneficiaries**

Details steps which will help your shelter team to achieve the highest possible level of certainty that the beneficiaries do indeed have the right to use the identified land plots for shelter.

### **3. During the Implementation of the Shelter Activity: Be ready to address Land Issues as they Arise**

Offers guidance on how to ensure your team is are ready to address land issues as they arise during the implementation of the shelter activity.

### **4. Evaluation**

Provides information on how to ensure that actors who work on land rights’ issues in the area where the shelter was constructed are fully informed about the shelter project, and are well positioned to protect beneficiaries’ land rights even after the completion of your shelter activities.

For further information, a glossary and further reading is provided at the end of the document. Annex I lists all organizations interviewed in compiling the Guidelines; while Annex II (Legislative Framework) and Annex III (“Institutional Framework”) provide further information to contextualize the formal, if widely unimplemented, land administration system in South Sudan.

## What Are The Key Characteristics of the Land Rights Situation in South Sudan?

Even prior to the current conflict, South Sudan lacked a coherent, unified land administration system, with a largely unused land legislation co-existing with multiple customary as well as informal land rights systems. The overall land rights situation is hence characterized by great complexity, with multiple rules, procedures and institutions and authorities co-existing and frequently competing with one another. This leads to a confusing picture not only for outsiders but often also for the South Sudanese themselves. It also means that local context is key, as the land rights situation is likely to differ from one locality to the next, rendering it indispensable for shelter actors to find out what the situation is like in the exact location where they intend to implement their programs and activities.

Generally speaking, the land rights situation in South Sudan since independence has had the following main characteristics:

- **Progressive yet mostly not applied land legislation:** The Land Act of 2009 recognizes customary land rights, stipulates that land belongs to the community and decrees the decentralization of the land administration to the local level through the establishment of *County Land Authorities* (CLAs) and *Payam Land Authorities* (PLAs). Especially outside urban areas, the Land Act has remained largely unused – and hence irrelevant for day-to-day land management of land relations - in the absence of the required institutional framework and the governance problems that have plagued South Sudan since independence. In those areas, the land rights situation on the ground hence diverges strongly from the land rights situation described in the Land Act of 2009. The Land Act is currently considered void in opposition areas.
- **Customary land rights regulate the vast majority of the land in South Sudan:** Customary land tenure – i.e. rights to land deriving from community-based norms - continues to be the most important land administration system for the vast majority of South Sudanese. While multiple customary land tenure systems co-exist in South Sudan, their basic principles tend to be fairly similar among the different ethnic groups. Recurring rules include:
  - Land cannot be owned individually but belongs to the wider community;
  - Individuals possess usage rather than ownership rights and hence cannot sell the land;
  - These usage rights are passed on through inheritance (family ties) and land is usually managed by the elders of the family;
  - Community-elected local chiefs play a key-role in resolving land disputes, but tend to have more limited roles in land management which is taken care of at the family level.<sup>4</sup>

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<sup>4</sup> In some communities, there are additional special people charged with responsibility over land, such as rainmakers, or custodian of the hunting grounds (Mennen 2012).

- **Overlapping mandates and legal pluralism complicates matters in areas where the Land Act is applied:** In the areas where the Land Act of 2009 is applied and the formal state land management institutions are operational, formal and customary land rights systems co-exist in an uneasy relationship. Their co-existence generates land disputes as participants in both tenure systems and at the different levels of government (especially between the national government and the different states) interact with each other over land access and control.
- **Difficulty of accessing land rights for women and non-community members:** As customary systems inherently exclude non-tribe members, individuals and groups from outside the immediate community can be restricted from accessing and settling on community land.<sup>5</sup> Women's access to land is severely restricted in both formal and informal systems, and generally depends on their relationship to a man (usually their father or husband). This poses particular challenges regarding land access for female-headed households, divorcees and widows.
- **Limited land rights documentation and when it exists it is not always reliable:** While land commercialization was increasing steadily prior to the conflict, resulting in increased surveying and demarcation efforts, 84% of all land in South Sudan remains un-surveyed without formalized land deeds.<sup>6</sup> Moreover, due to problems of corruption related to the allocation of land deeds and common forgery of such land deeds, existing land documentation should be treated with caution and not taken as prima facie evidence of a legitimate land right.
- **The existence of layers of historical land grievances and unresolved disputes:** Disputes over land rights are one of the primary causes of conflict in South Sudan, where approximately 83% of the ethnically diverse population lives in rural areas as farmers, pastoralists and agro-pastoralists.<sup>7</sup> Claims to land also closely define social identity and sense of belonging of most South Sudanese, and played a defining role in the pre-independence wars as well as the current conflict. Disputes exist around border and boundary demarcations; competing access to natural resources; wide-spread allocation, occupation or expropriation of land for public interest without due regard to legitimate right-holders; and large-scale land acquisitions by foreign investors.<sup>8</sup>

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<sup>5</sup> Deng, D. 2014. South Sudan Country Report, Land Governance and Assessment Framework (LGAF), p.13.

<sup>6</sup> ibid

<sup>7</sup> Marzatico, F. 2014. Challenges of land governance in the making of a new nation: Experiences from South Sudan, p.3.

<sup>8</sup> Deng, D. 2011. "Land belongs to the community": Demystifying the "global land grab" in Southern Sudan, p.2.



## Land Issues in the Context of the ongoing Conflict

The current conflict has added a number of further complexities to the land rights situation in South Sudan. Important developments in this regard include:

- **Erosion of authority of customary chiefs** due to their involvement in political power struggles related to the current conflict; chiefs known to abuse their position to bypass the chief hierarchy and make land use decisions unilaterally, have resulted in decreasing trust among communities.
- **The increasing involvement of the military in land matters**, for example in dealing with local land disputes, especially in the conflict-affected areas. This militarization of society has rendered land administration systems even more prone to corruption by powerful local and national figures, which occurs in a context of impunity.
- **The adverse effects of existing gender inequalities in customary land rights systems have multiplied** due to the increasing number of displaced households headed by women who have been widowed or abandoned in the ongoing conflict.<sup>9</sup> The conflict has meant that an increasing number of women no longer have the relationship with a male required by customary law systems for them to have any land rights at all.
- **Emerging land tensions and disputes between and amongst IDPs, returnees and host communities.** In affected areas, the population influx has put stress on limited resources, and secondary occupation of IDP land and houses has become widespread, often by populations that are themselves displaced.<sup>10</sup> Many IDPs sheltering in more urbanized settings are unlikely to return to their rural homes in the medium to long term future, which carries a significant potential for a new set of land grievances and disputes to arise. New land conflicts are also caused by large scale movements of Dinka cattle herders from most conflict-affected states in the North into Central, Eastern and Central Equatoria.
- **Changes to the ethno-demographic landscape of conflict-affected areas**, with the conflict causing the formation of mono-ethnic blocks in areas that were multi-ethnic prior to the conflict. This can raise delicate questions for humanitarian actors providing assistance and especially shelter assistance in areas where (ethnic) demographics have considerably changed since the beginning of the conflict, as they may solidify and consolidate earlier acts of ethnic cleansing.
- **Stalling of the executive and legislative process for the implementation of the Land Act of 2009:** Since the beginning of the current conflict, the government has stopped working on land

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<sup>9</sup> NRC. 2014. Nowhere to Go: Displaced and returnee women seeking housing, land and property rights in South Sudan.

<sup>10</sup> According to a 2014 ACTED survey, 60% of registered IDPs in Mingkaman indicated the wish to remain and integrate locally.

issues and efforts to further implement the Land Act of 2009 have completely stalled.<sup>11</sup> The Land Policy (2011), a crucial piece of legislation to operationalize the Act, has been awaiting parliamentary approval since 2013 and no progress is expected any time soon. In February 2015, the Ministry for Lands, Housing and Physical Planning took over the NRC-led *Land Coordination Forum*<sup>12</sup>, which is now dormant.

It should be noted that, looking forward, the new administrative structures created in the opposition-held areas also have an impact on the land rights situation in those areas.

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<sup>11</sup> Deng, D. 2014. South Sudan Country Report, Land Governance and Assessment Framework (LGAF), p.11.

<sup>12</sup> Prior to the February 2015 take-over by the Ministry, the Land Coordination Forum was the main existing coordination mechanism among land actors in South Sudan (International Organizations, CSOs and NGOs and government). It was co-led by UN Habitat and NRC with the South Sudan Land Commission as its primary government counterpart under the Protection Cluster.

## I. Preparedness and Planning: Understand the Land Context in the Area of Operations

**Objective:** To ensure awareness amongst your shelter team about the interlinkages between the shelter activities you intend to carry out, including the due diligence approach to land and shelter and land rights in the area of operations, and to obtain an understanding of the land rights situation in the potential area of operations (which may differ from the land rights situations in other areas where you have worked before).

### A. Ensure Awareness about Interlinkages between Land and Shelter Including the Due Diligence Approach to Land and Shelter

All staff working on emergency shelter in South Sudan – including both acute and standard emergency shelter kit provision – should have a basic understanding of the interlinkages between land and shelter and should be familiar with the due diligence approach to land and shelter.

The following concrete activities could contribute to the activity:

- ▶ Distribution of these Guidelines amongst relevant national and international staff members
- ▶ Participation in training on the due diligence approach to land and shelter in South Sudan (*to be developed by the Shelter Cluster*)
- ▶ Ensure that knowledge about land issues in South Sudan and the area of operations amongst your local staff is used and shared within your shelter teams
- ▶ Encourage and participate in sharing experiences and lessons learned regarding shelter and land with other shelter actors active in the same areas of operations (*the Shelter Cluster could organize regular information sharing meetings where experience and lessons learned would be recorded for sharing with newcomers, and information sharing protocols regarding land issues with other shelter actors established. Partners should however carefully assess what case-specific information they make public, taking into account potential sensitivities involved*).

### B. Understand the Land Rights Situation in the Area of Operations and Know Who the Key Land Rights Actors are

Given the fact that the land rights situation in South Sudan differs from area to area (see above) – in some areas the Land Act of 2009 has been implemented with state institutions in place, in other areas there is a mixture of Land Act application and customary land rights systems in place, while customary land right systems themselves differ from location to location – it is paramount to get a basic understanding of what the land rights situation is in the area of operations. *All information obtained should be recorded in easily replicable templates to facilitate its sharing.*

### B.1. Build up a “who is who” of the land administration among host community

A key element of understanding the land rights situation in the area where you operate is to identify the actors who are involved in the confirmation and / or allocation of land rights in the area of operations (whether legally sanctioned or not). This can be usefully done by building up a “Who is Who” of land administration in the particular area and within the community or communities that inhabit that area.

The best approach thereby is to collect this information from a broad variety of actors, which in turn will provide you with a network of people that can help you with land issues as they arise throughout the different phases of the shelter programming. *Note that consultations on local level can only proceed with permission from the County Commissioner.*

Concretely, the following steps should be taken:

- ▶ Liaise with other shelter and protection actors active in your area of operations to find out what they already know about who the key actors regarding land issues are;
- ▶ Ask local staff to identify who they believe the relevant land actors and decision makers are in the areas of operation;
- ▶ Liaise with the Relief and Rehabilitation Commissioner (RRC) and the County Commissioner, and find out about the existence and functionality of *County Land Authorities*<sup>13</sup>;
- ▶ Identify government officials with land-related mandates on *payam/boma* level, e.g. respective RRC representatives and *payam* and *boma* administrators;
- ▶ Reach out to local community leaders, civil society organizations or groups to find out who they think are the key actors when it comes to land rights determination and allocation in the area of operation
- ▶ Develop an understanding of how the identified actors interact with each other, which will enable you to better understand and assess potential difficulties regarding land in the area (*actor mapping tool provided in Annex 4*)
- ▶ Record contact information of the identified key actors regarding land issues, and share list among your team and with the Shelter Cluster

! Obtain information about the ethnic dimensions of local leadership to understand the power structure in the area of your intervention, including possible demographic changes due to the ongoing conflict. This is especially important because shelter activities can easily be co-opted to reify land claims on the part of an incoming group.

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<sup>13</sup> An overview of the Institutional Framework is provided in Annex III

## *B.2. Build up a “Who is Who” of the land administration among beneficiaries*

To fully understand the institutions that administer land in the area of your shelter intervention, the leadership structures among identifiable groups of shelter beneficiaries have to be pinpointed. This allows an understanding of how land issues are managed both intra-communally and in relation to host communities.

In close coordination with the Relief and Rehabilitation Commissioner, representatives of shelter beneficiaries and local staff, this requires the following steps:

- ▶ Use your network of identified key actors regarding land rights to ascertain which leadership structures exist regarding land matters in the beneficiaries’ community.
- ▶ Ascertain whether the beneficiary community has seen conflict- and displacement-induced changes to their leadership structures. New community chiefs frequently command less authority and trust on the part of their communities, a dynamic to which your team needs to be attuned.

## *B.3 Establish whether community-based shelter support initiatives exist*

Given the fact that that conflict and disaster-induced displacement is such a common phenomenon in South Sudan, and communities might have developed strong inter-communal coping mechanisms pertaining to shelter solutions for displaced populations, do make sure that you find out whether any coping mechanisms exist in your area of operations that you can support with your own shelter activities.

- ▶ Use your identified local network of key land actors to ascertain whether any local agreements facilitating access to land for those in need of shelter do exist.
- ▶ If applicable, assess to what extent your shelter operation can support or learn from these existing shelter support initiatives (e.g. managing land use and land dispute resolution).

## *B.4. Find out about land disputes in your area of operations*

To ensure that shelter programming does not inadvertently aggravate existing land grievances, for example by being used to reify land claims, it is crucial that you assess the nature and scope of ongoing land disputes in your area of operations, and ensure that shelter activities proceed on the basis of the information obtained. The following steps should be followed to facilitate this step:

- ▶ Refer to your identified network of local land actors to obtain information on local land-related conflict dynamics (*Ensure to take into account seasonal conflict dynamics, such as increased as seasonal cattle movements and/or access to grazing land*)

- ▶ Identify local land-related practices that might threaten rights to access and use of land for marginalized groups, such as female-headed households (*Ensure to adequately consult women and other identified vulnerable groups in doing so*)
- ▶ Assess land dispute resolution mechanisms in place and establish contact with key actors in customary land dispute resolution (*Shelter cluster could develop tool for rapid assessment of existing land dispute resolution mechanisms*)
- ▶ Identify existing dispute resolution mechanisms among the beneficiaries' communities; in particular focusing on mechanisms concerning dispute settlement between communities
- ▶ Based on the obtained information, assess whether this is a situation where you should be intervening at all. If current dispute resolution mechanisms are extremely weak and the risk factors are high, you should not be afraid to say an intervention is inappropriate at this time.



## Checklist: Preparedness and Planning

- Have you distributed these Guidelines amongst your team and do they understand the purpose? Have you identified staff members who will be responsible for ensuring the Guidelines are applied?
- Do you understand the community make-up in your area of operations, and have you established whether or not there have been recent changes to that make-up (e.g. the removal of certain ethnic groups from the area)?
- Have you established a Who-is-Who on land rights and management and land dispute resolution in your area of operations (including, where relevant, both government and community actors, for the latter within both host and beneficiaries' communities), and do you understand the relationships between them?
- Do you feel that your relevant staff is reasonably aware of the land rights environment within your area of operations and do they know who they can bring in or refer to in case they are confronted with a land dispute or issue affecting your shelter work?
- Have you identified what the degree of land disputes in your area is (low, medium, high) and whether these disputes are likely to impede on your planned shelter activities, or even suggest that an intervention is inappropriate at this time?
- Do you know how local communities, in practice, resolve their land disputes, and what institutions (state or otherwise) they rely on to address their land grievances and disputes?
- Have you identified whether community-led initiatives regarding land access for displaced populations exist in your area of operations, and assessed how to accordingly adapt your shelter strategy?
- Have you identified the community chiefs among shelter beneficiaries?

## II. Before Shelter Construction: Ensure Sufficient Certainty around Land Rights over Shelter Land Plots for targeted Beneficiaries

**Objective:** To obtain the highest possible level of certainty that the beneficiaries do indeed have the right to use the identified land plots for shelter. This complements and builds upon the work carried out during the preceding phase and zooms in on the specific beneficiaries and the plots of land they will use for shelter.

Given the land rights situation in South Sudan, it will be impossible to obtain full legal certainty about whether or not beneficiaries have the right to use the identified land plots for their shelter. However, through obtaining a minimum of information about the particular land plots and holding discussions with relevant community leaders and government officials (where they are present) about the settlement of beneficiaries and building of shelters on the identified plots, it is possible to minimize the risk that beneficiaries are settling on land that is claimed by others. *This outreach effort is a crucial requirement for ensuring a Due Diligence approach regarding land in shelter activities, and has to be followed in all instances.*

! Part of a land-sensitive approach to shelter is the clear identification of the land on which the shelters beneficiaries are to settle, and those involved in management of the identified land, **prior** to the distribution of emergency shelter kits to beneficiaries.

### A. Look at Potential Land Issues in Pre-Intervention Assessments

As a first step, pre-intervention assessments should look at land issues in order to identify, as early as possible, potential land-related concerns regarding the land rights of your beneficiaries. Usefully, they would take into account:

- ▶ whether the shelter plots will be identified and allocated by government or by the community
- ▶ who is involved in the land management of the plots that have been identified for shelter, including community and/or government actors;
- ▶ whether there are any reported land disputes or potentially competing land claims over the land plots where beneficiaries will set up their shelter;
- ▶ whether the land identified for shelter is prone to conflict-related or natural hazards, such as proximity to cattle camps, grazing routes, or seasonal flooding, which can potentially obstruct safe land access and use;
- ▶ whether there are any groups amongst the intended beneficiaries that may be at heightened risk of eviction and/or denial of access to plots for shelter within the area of operations (e.g. due to ethnic background, gender, family and health status, age).

! Even if shelter beneficiaries come from the same ethnic group, complex intra-group dynamics often mean that land access cannot be readily assumed. In Bor County, displaced Bor Dinka generally manage to access land for shelter purposes within Bor Town. Dinka from Twic East and Duk County forcibly displaced to urban Bor however reported difficulties in accessing land, even for short-term shelter purposes. Many have moved onto the land of Bor residents who are themselves in displacement, including houses and land belonging to the local Nuer population now sheltering in Bor PoC. This prevalent secondary occupation is likely to cause further land disputes in the return phase.

## B. Ensure community-sanctioned allocation of land to beneficiaries

One of the best ways to avoid land disputes from arising around shelter, and to protect beneficiaries against forced evictions later on, is to ensure host community involvement in shelter programming. This is true even when the government has allocated the land for the shelter, as the host community may not be aware that this has happened.

The following steps should be followed:

### *B.1. Verify community involvement and agreement in land allocation and assess ownership patterns*

#### **If government-allocated land:**

- ▶ Verify, by working with the RRC and respective community leaders, that community consultations regarding the land allocation have indeed taken place.

Useful questions to ask the person on charge of the government land allocation include:

- Which process was followed in approaching the local community regarding the land allocation?
  - What kind of agreement regarding the land allocation has been found, and with whom?
  - Is the allocated land currently occupied? If yes, have the occupants agreed to the land allocation to beneficiaries?
  - Has the community been informed of approximate duration of shelter activities as well as other land-use plans, such a latrine and borehole drilling?
- ▶ In case of doubt, organize community consultations to inform them of the land allocation and capture potential concerns surrounding it, which you then need to address in your interaction with government officials before shelter activities can commence.

### **If community land:**

- ▶ hold community meetings and broker agreements between host community and beneficiary community regarding the land rights of beneficiaries over the shelter plots
- ▶ Establish whether the host community/ies in the place where the land plots are located appear(s) to accept the settlement of the beneficiaries and whether or not the provision of shelter support is likely to give rise to changing dynamics (e.g. revocation of land use agreement)
- ▶ Inquire whether there are any reported land disputes or potentially competing land claims over the land plots where beneficiaries will set up their shelters;
- ▶ Explore options of services rendered to host community in return for granting shelter (such as shelter beneficiaries to engage in community work such as road construction) to increase local willingness to cooperate in the longer term.

#### *B.2. Provide clear information on scope of shelter activities to the community*

- ▶ Ensure that the host community has comprehensive information on 1) envisaged land use plan, including communal/public borehole and latrine drilling plans and 2) expected duration of shelter activities
- ▶ Ensure that host communities and beneficiaries have a shared understanding of the borders of allocated land, as well as planned shelter activities and their duration.
- ▶ If possible, embark on site planning/plot allocation prior to shelter material distribution to avoid competition over land among beneficiaries

#### *C. Seek clear agreements in supporting beneficiaries' rights to shelter plots*

Given that land and property relations in South Sudan are largely managed without much or any formal documentation, establishing beneficiaries' land rights over the shelter plots is a particular challenge. It is paramount to establish a shared understanding between beneficiaries, hosts and the local government of how to best ensure and safeguard land access to beneficiaries.

### **Government-allocated land:**

- ▶ In the more formalized government context, you are strongly advised to seek a **written agreement** between host community leaders, beneficiaries representatives and the county commissioner guaranteeing land use rights for all beneficiaries on the allocated site, clearly stating GPS coordinates, envisaged duration of activities and land use, and guarantee of beneficiaries' ownership of shelter materials or tools provided (*Shelter Cluster could develop Standard MoU to this effect – see Annex 5 for examples*)

## Host Land:

- ▶ Certify land rights of beneficiaries already living among community by conducting a community validation (door-to door survey), whereby a shelter team member, a RRC representative and the local *boma* chief will subject each beneficiary households to a verbal land rights verification exercise.
- ▶ In the informal, customary context of land allocation by communities themselves, and where the use and meaning of a written agreement may is very doubtful, you need to obtain a clear verbal confirmation from the *payam* chief and *payam* administrator guaranteeing temporary land use rights to beneficiaries over allocated shelter plots, which should ideally be recorded. However verbal confirmation is only ever “Plan B” - if in any way possible to arrange for, a written confirmation shall always be the preferred option.

### **Box 4: Lessons learnt from the Land Allocation process in Mingkaman, Lakes State**

Mingkaman has seen a tremendous influx of displaced persons in a very short time. Following increasing complaints about overcrowding and disputes over access to grazing and fishing grounds, IDPs were being moved to three new sites on the outskirts of the existing town, allocated by the county government.

Local communities were not involved in the allocation of land, and the sites were not assessed regarding ownership claims. Neither was the allocated land subject to plot allocation planning, which caused issues among shelter beneficiaries when they first moved there and competed for the same areas of land, sometimes also with members of the host community. Beneficiaries living in one of the three sites soon experienced problems as the land was a designated grazing area and very close to a cattle camp. Due to the increased presence of guns and cattle destroying crops inside the site, tensions between cattle keepers and shelter beneficiaries mounted. The cattle camp was only moved after lengthy negotiations with the County Commissioner.

This case highlights the need for community-sanctioned land allocation as well as site assessments which take into account seasonal variability of land use patterns in the area. Prior community involvement would have likely resulted in taking these safety and security issues more firmly taken into account in official site selection. In addition, it highlights the responsibility of the Camp Coordination and Camp Management (CCCM) Cluster to ensure inclusive and transparent negotiations around land allocation to displaced populations.

## Checklist: Before Shelter Construction

- Have you clearly identified which land is to be used by beneficiaries, and confirmed that it is free of any competing ownership claims?
- Has the allocated land been assessed regarding its propensity to conflict-related or natural hazards?
- Have you identified any particular beneficiary groups at this point who you believe may face a heightened risk of forced eviction or other protection violations after their shelter is constructed?
- Is the land in question currently occupied? If yes, has a mutual and inclusive agreement with the current occupants been found regarding the use of the land for shelter beneficiaries?
- Have you verified full community involvement in land-allocation for beneficiaries, including in cases of government-allocated land?
- Have you fully informed the host community of all planned shelter activities, including if applicable non-residential land use (borehole drilling, cattle grazing) and approximate duration?
- Government allocated land: have you signed a written agreement with government representatives, community leaders and beneficiary representatives which guarantees land rights to beneficiaries for shelter purposes, including approximate duration and other land-use plans?
- Host Land: Has your team obtained a clear verbal confirmation from the *payam* chief and *payam* administrator guaranteeing temporary land use rights to beneficiaries over allocated shelter plots?



### III. During the Implementation of the Shelter Activity: Be Ready to Address Land Issues as they Arise

**Objective:** To ensure you are ready to address land issues as they arise during the implementation of the shelter activity. This requires the establishment of simple procedures to ensure that you receive information regarding those land issues as well as simple strategies to deal with them as they arise. The purpose is not to monitor and/or address all land issues that may arise in your area of operations, but simply to work on those that may adversely impact your shelter programming and/or the possibility for the beneficiaries to enjoy the shelter you have provided.

! Vulnerable beneficiaries, such as widows and female-headed households, should receive special attention in the monitoring around land issues.

#### A. Monitor for possible land issues during implementation by instituting clear reporting mechanisms

To ensure that you obtain information about the land issues that arise, you need to establish a monitoring process from the first shelter activity (usually the shelter kit distribution). Your team needs to be fully accessible to beneficiaries in reporting land-related issues they are confronted with during implementation, which in turn functions as an early warning system and allows your team to capture and react to grievances *before* land issues escalate.

This can be achieved through the following steps:

- ▶ Nominate (a) member(s) of your team who will be the focal point(s) to receive complaints about land issues from beneficiaries, host communities and/or government officials as they arise during the shelter implementation. It is thereby important to ensure that:
  - shelter beneficiaries, host communities and relevant government officials are aware about whom to contact if they are confronted with shelter-related land issues; and
  - your focal person(s) is/are familiar with the steps they need to take to address the land issues they are confronted with (See 3.B.) and is committed to remaining in this position throughout the course of the project.
- ▶ Identify beneficiary and host community representatives which are specifically asked to report shelter-related land issues to your focal point(s) if and when they arise, which should include women to not reinforce potential gender-based discrimination regarding land.
- ▶ In addition, it is useful for the focal point(s) to have regular meetings with representatives from the beneficiary and host communities and, where relevant, government officials, to find out

whether land issues and/or land-related concerns have arisen around your shelter program. This should be done cautiously, keeping in mind potential sensitivities around these issues.

**Box 6. The importance of beneficiary-centric reporting mechanisms**

In Mingkaman sites 1, 2 and 3, the camp management has established bi-weekly site monitoring meetings (open to all) and bi-weekly meeting local leadership meetings (open to government and community leaders) which give shelter beneficiaries and host community representatives the opportunity to discuss community concerns in the presence of the RRC and the shelter partners.

While this could provide a great platform to discuss land issues as they arise, land is not discussed very openly during these meetings due to the presence of representatives of the host communities. As a result, despite documented land issues on personal level (e.g. host community members pushing away shelter beneficiaries from the sites by moving into IDP compounds), land has so far only become an issue in connection of the host community's resistance to the drilling of new boreholes and latrines on the camp sites, despite the fact that community encroachment on shelter plots has been documented.

This highlights the need to create conducive environment for shelter beneficiaries to report land right-related challenges, for example through regular meetings exclusively targeting beneficiaries.

**B. Address Land Issues as they arise during Implementation:**

The most likely land issues to arise in the context of shelter programming are grievances over land use and/or disputes over the land on which shelter is built. In the most common scenario, shelter actors will not have the resources to mediate land disputes, although they may be in a position to address (minor) land grievances directly. For those issues that you cannot deal with yourself, it is important to have a referral system in place, whereby you call upon other actors to address the land issue at hand. *To facilitate this process, ensure that all instances of land issues are documented by your team.*

To avoid the creation of a parallel (and likely unsustainable) referral system, it is highly recommended to link up with the existing community structures regarding land administration and conflict resolution by appointing experienced focal points.

The following preparatory steps could be taken in this regard:

- ▶ Establish focal points for land issues on government level:

Report any major emerging land issue that emerges during implementation to the RRC. Through the RRC representatives on *payam* and *boma* level, the RRC is well-equipped to decide which level of response is needed.

- ▶ Identify Focal points for land issues on community level:

Identify *Payam* or *boma* chiefs among the host community who would be willing to act as focal points regarding land issues between beneficiaries and community members, and inform them of any inter-communal land-related dispute that is being reported to the shelter team.

- ▶ Identify focal point for land issues on beneficiary level:

Identify *payam* chiefs among beneficiaries who would be willing and able to be responsible for eventual shelter-related negotiations between beneficiaries and the host community.

- ▶ Reach out to other shelter actors, protection actors, NGOs or other civil society organisations operating in the area, as they have likely faced land issues before and may have found appropriate solutions also of benefit to your beneficiaries.

! Be attuned to the likelihood of increased (land) disputes between hosts and IDPs in the rainy season, as mobility of both people and cattle becomes restricted during that period. As a result, communities are more isolated and cut off logistically which accentuates inter- and intra-communal disputes.

### C. Information-Sharing

When land issues arise during shelter activities, you should bring them to the attention of the Shelter Cluster. Such efficient information sharing among all shelter actors ensures that shelter programming in South Sudan is as sensitive to land rights issues as possible and best practices regarding land rights and humanitarian shelter can be comprehensively documented and disseminated among all members of the Shelter Cluster, particularly as the situation continues to evolve.

- ▶ Each shelter actor should document and share the difficulties encountered regarding land and shelter, as well as the steps taken to address the situation, with the Shelter Cluster (*Shelter Cluster could develop reporting form to facilitate and standardize exchange of information*)
- ▶ The Shelter Cluster should consolidate, compile and disseminate Best Practices and Lessons Learnt regarding Land Rights in Humanitarian Shelter.

! Before sharing any case-specific information, assess each instance separately to determine what level of detailed information you can provide without the disclosure posing a potential risks to beneficiaries or partners on the ground. In sensitive cases, the need to protect information may override the prerogative to share it.

## Checklist: During the Implementation of the Shelter Activity

- Have you appointed a focal person among your team to deal with land issues as they arise during the shelter project and will this person remain in the position for the duration of the project?
- Have you identified beneficiary and host community representatives tasked to report shelter-related land issues to your focal point?
- Is your team keeping records of land issues that emerge during shelter construction, including steps taken to resolve the issues and the ensuing outcomes?
- Have you put in place strong referral mechanisms for land issues by identifying focal points on government, community, and beneficiary levels?
- Have you reached out to other shelter actors, protection actors, NGOs and civil society who operate in the area and provide assistance in resolving land issues?
- Do your relevant staff members know who to refer what land issues to?
- Have you brought land issues arising during shelter activities to the attention of the Shelter Cluster for information-sharing?

## IV. Evaluation

Once shelter actors stop their engagement regarding a shelter site, land issues may of course still arise and adversely affect the beneficiaries for whom the shelter was constructed. For example new actors may come and claim the land or challenge a shelter beneficiary's right to stay in the shelter, while existing actors may come back on their earlier commitments or the agreements put in place before the shelter was constructed.

**Objective:** To ensure that actors who work on land rights' issues in the area where the shelter was constructed are fully informed about the shelter project, and know the steps that were taken to obtain and ensure legal certainty regarding the land rights over the shelter plot and the legal status of the beneficiaries as regards the shelter. This will enable them to do their respective jobs and will ensure that beneficiaries are aware of where they can go if they are confronted with land rights' issues regarding their shelter or the plot on which the shelter was built.

The following steps can be taken in this regard:

### A. Integrate questions regarding land tenure security in existing post-distribution monitoring tools

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

Pertinent questions include:

- ▶ Have any shelter-related land issues arisen between and/or amongst beneficiaries and host communities since the shelter program was ended?
- ▶ Is the suitability of the shelter plots still guaranteed (especially taking into account seasonal dynamics)?
- ▶ Are beneficiaries identified as most vulnerable still able to exercise property rights over their shelter plot?
- ▶ Have any other concerns regarding land right related issues emerged since the distribution?

### B. Outreach to other actors working on land rights issues in the area

Reaching out to other actors that work on land right issues in the area upon ending your own engagement can considerably reduce the risk that beneficiaries will subsequently suffer from land rights related issues.

- ▶ Ensure that other shelter actors, protection actors, and/or other organizations that work on land rights in the area are fully informed about the shelter project, and know which step your team has taken to ensure land rights for beneficiaries

- ▶ Consider sharing documentation regarding land rights arrangements made during the shelter project so that external partners are positioned as best as possible to safeguard those arrangements
- ▶ Inform beneficiaries which other actors are working on land right issues in the area you have identified in order to ensure their awareness of where they can go if confronted with land rights related issues

### **Checklist: Evaluation**

- Has your team fully integrated questions related to land-related concerns in existing post-distribution monitoring tools?
- Have you fully informed other actors that work on land right issues in the area of your shelter project?
- Have you considered whether it is useful to share documentation regarding land rights arrangements made during the shelter project?
- Are beneficiaries aware who to contact if they are confronted with land issues after you leave the area?



## Glossary

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

**Land Tenure:** the set of relationships with respect to housing and land, established through statutory law or customary, informal or religious arrangements

**Security of Tenure:** the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land or the benefits that stem from it

**Customary land tenure:** refers to the systems that most rural African communities operate to express and order ownership, possession, and access, and to regulate use and transfer. The norms of customary tenure derive from and are sustained by the community itself rather than the state or state law

**Freehold:** Any interest in real property which is a life estate or of uncertain or undetermined duration (having no stated end). In South Sudan, freehold rights are held in perpetuity and include the right to transfer the land temporarily or permanently.<sup>14</sup>

**Leasehold:** An estate, interest, in real property held under a rental agreement by which the owner gives another the right to occupy or use land for a period of time. In South Sudan, Leaseholds can be obtained for customary and freehold land, and can be granted for up to 99 years.<sup>15</sup>

**Private land:** Land owned by individuals and considered by law to be registered freehold land, leasehold (for a specified duration of time) and any other land declared by law as private land.<sup>16</sup>

**Public land:** Land “owned collectively by all people of Southern Sudan and held in trust by the appropriate level of government”.<sup>17</sup> Public land comprises land “used by government offices, roads, rivers and lakes for which no customary ownership is established, and land acquired for public use or investment.

**Communal land:** Land owned and regulated by the community according to the customary law of the community.<sup>18</sup> Customary land rights have equal legal standing with freehold or leasehold rights.

**Payam:** A payam is the second-lowest administrative division, below counties, with a minimum population of 25000. They are further subdivided into a variable number of bomas.

**Boma:** A Boma is the third-lowest administrative divisions, below payams, roughly corresponding to village level.

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<sup>14</sup> USAID. 2013. South Sudan Country Profile: Property Rights and Resource Governance, p.8.

<sup>15</sup> USAID. 2013. South Sudan Country Profile: Property Rights and Resource Governance, p.8.

<sup>16</sup> Marongwe, Nelson. 2013. Land Administration Challenges in post Conflict South Sudan, P.6.

<sup>17</sup> Marzatico, F. 2014. Challenges of land governance in the making of a new nation: Experiences from South Sudan, p.9.

<sup>18</sup> Marzatico, F. 2014. Challenges of land governance in the making of a new nation: Experiences from South Sudan, p.7.

## Further Reading

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- World Bank. 2014. Land Governance in South Sudan: Policies for Peace and Development

**Alternatively, please contact [HLP@sheltercluster.org](mailto:HLP@sheltercluster.org)**

**Disclaimer:** Whilst every effort has been made to ensure that this document is accurate and representative of the experiences of shelter cluster members, it may be revised at a later date.

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Cover picture: Man putting up shelter in Bor Town, Jonglei State, May 2015 ©IOM 2015 / by Ina Rehema Jahn

## Annex 1. Interview Partners

### Shelter Partners

- Norwegian Refugee Council
- INTERSOS
- Humane Development Council
- Catholic Relief Services
- ACTED

### NGOs and Academia

- University of Juba, Centre for Peace and Development
- South Sudan Land Alliance
- South Sudan Law Society
- Nonviolent Peaceforce
- Associates in Rural Development
- PACT
- International Rescue Committee
- REACH

### International organisations/delegations :

- EU Delegation to South Sudan
- UNHCR
- UN-OCHA
- USAID

### Government

- County Commissioner for Bor, Awerial and Akobo County
- RRC for Bor and Awerial County, RRA for Akobo County
- Ministry of Land, Houses and Infrastructure
- Ministry of Agriculture
- South Sudan Land Commission

## Annex 2. Legal Context

<i>Legislation</i>	<i>Description</i>	<i>Content</i>
<b>The Land Act (2009)</b>	Main legal framework for current land-related issues.	<ul style="list-style-type: none"> <li>▪ Land is “owned collectively by all people of Southern Sudan and held in trust by the appropriate level of government”<sup>19</sup></li> <li>▪ Land classified into public, private and communal land; and in customary, freehold and leasehold tenure systems</li> <li>▪ Customary rights are recognized as formal property rights on the same level as freehold and leasehold.<sup>20</sup></li> <li>▪ Decrees decentralized system for land management</li> <li>▪ Land administration must consult with communities concerned prior to any land decision whether in urban or rural areas.<sup>21</sup></li> <li>▪ Cements the rights of traditional authorities “within a specific community... [to]... allocate customary land rights for residential, agricultural, forestry, and grazing purposes” in consultation with community</li> <li>▪ Requires that state authorities provide approval for land acquisitions above 250 <i>feddans</i> (105 hectares).<sup>22</sup></li> <li>▪ Explicitly provides the right of women to own and inherit land in South Sudan</li> </ul>
<b>Local Government Act (2009)</b>		<ul style="list-style-type: none"> <li>▪ Reinforces the provisions of the Land Act requiring the government to consult local communities on decisions about community land.</li> </ul>

<sup>19</sup> S.10.1

<sup>20</sup> S. 15

<sup>21</sup> s. 41 (3).

<sup>22</sup> *Ibid*, p.11

<p><b>The Land Policy (2011)</b></p>	<p>Operationalizes the Land Act</p>	<ul style="list-style-type: none"> <li>▪ Is to propose: <ul style="list-style-type: none"> <li>Community Land Act</li> <li>Town and County Planning Act</li> <li>Land Survey Act</li> <li>Land Valuation Act</li> <li>Land Registration Act</li> <li>Land Information Act</li> <li>Mortgage Act</li> </ul> </li>   <li>▪ Creation of a new position of Deputy Minister of Lands in the Ministry of Lands, Housing and Physical Planning, responsible for promoting the reforms called for in the Land Act and fostering greater coherence among land governance institutions.</li>   <li>▪ Presented to the government in 2012, still waiting for approval by the National Assembly</li> </ul>
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### Annex 3. Institutional Framework

According to the Land Act and the Local Government Act, land issues in South Sudan are to be managed on the three levels of government: national, state and local. The local level is itself subdivided into county, *payam* (district level) and *boma* (village level) administration.<sup>23</sup> In addition, customary authorities are co-responsible for the management of customary land on county, *payam* and *boma* level. The Land Act stipulates the merging of these systems by the creation of *County Land Authorities* and *Payam Land Councils*, staffed by local government officials, local chiefs and CSO representatives – yet only a few pilot County Land Authorities initiatives exist, while no Payam Land Council has yet been created.<sup>24</sup>

Customary land systems are recognized, but no clear relationship between them and the envisaged formal land administration structures has been outlined. In general, evidence suggests that customary land rights enjoy more legitimacy in the eyes of local community members than statutory rights.<sup>25</sup>

The land administration system as set out by the Land Act has the following structure:



<sup>23</sup> Marzatico, F. 2014. Challenges of land governance in the making of a new nation: Experiences from South Sudan, p.10

<sup>24</sup> Deng, D. 2014. South Sudan Country Report: Findings of the Land Governance Assessment Framework, p.25.

<sup>25</sup> NRC. 2014. Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan.

## State Level: Technical Assistance

### High Court

(Land Act decrees a separate Land Division, but not yet established)

### State Ministry of Physical Infrastructure

#### Surveying Department

#### Department of Land and Town Planning

## Local level: Day to Day Land Management and Administration

### County

**Relief and Rehabilitation Commissioner**  
(first point of contact for humanitarian actors)

**County Commissioner Office**

**County Courts**  
(only statutory courts available outside Juba)

**Customary Court ("C" Court -**  
Appeals from the 'C' Courts are made to the County Court, thereby entering the statutory justice system)

### County Land Authorities

Power to "[h]old and allocate public lands vested in it with the approval of the Concerned State Ministry in the State "

Formed by respective county commissioner

Comprised of appointed Payam Administrator , Executive Chief of each Boma within Payam, and community members



## Boma

Administrative unit in South Sudan under Payam administration

Relief and Rehabilitation  
Commission  
representative

**Customary Court**  
("A" Court – no jurisdiction  
over land disputes)

Community-elected  
sub-chief and executive community

## Village

Administrative unit in South Sudan under Payam administration

Community-elected  
Boma sub-chief

Community-elected village head-man

## Annex 4. Actor Influence Mapping Tool<sup>26</sup>

### Actor Mapping

Actor mapping is a visual method which helps to identify and understand key actors and their interrelationships in relation to an identified problem. By visually mapping out key actors who have a potential or real impact on the problem being analyzed, and highlighting paths of influence between them, the interaction amongst such actors can be better understood. As a result, the best entry points to exercise influence in any given scenario are highlighted, while simultaneously allowing a look at the “bigger picture”. As such, Actor Mapping is a useful tool for an informed and strategic approach to the planned shelter activities.

It is a low-cost and low-tech method and at the minimum only requires the following:

- Large sheets of paper for network map
- Coloured pens for drawing links (different colors according to different links).
- Coloured “Post-its” as actor cards (different colors for different kinds of actors).

For the mapping exercise, the following steps should be followed:

#### ▶ **Step 1: Identify the problem**

Determine the land-related shelter issue that you wish to map out, such as power brokers in the local land administration systems or key figures in existing conflict resolution mechanisms. Ideally, the issue should be framed as a concrete question. You should then define links and assign them a pen colour (e.g. red for disturbance and disagreement, green for cooperative relationship, yellow for mistrust, etc.).

#### ▶ **Step 2: Identify actors involved**

Identify the central actors which are involved in the land-related shelter issue you wish to map out by referring to your “Who is Who” list of relevant actors you have identified in the planning stage. Important actors will likely include the county leadership, existing land authorities among the local government, the community chiefs among host and beneficiary populations on the payam and boma levels, and/or international agencies and local shelter partners. Each actor identified as relevant to the issue at hand should be represented by an accordingly labeled post-it.

#### ▶ **Step 3: Establish actor interests**

Conduct an analysis of your identified, relevant shelter or land actors and their interests and aspirations. Questions to be asked include:

- Which actors hold what specific interests?

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<sup>26</sup> Adopted from Actor Mapping Tool provided at ProCap training in Oslo, March 2015.

- What are the allegiances among the identified actors?
- What are the different actors trying to achieve?
- What are the different actors afraid of?

**Example:** Your organization has moved into a new area of operations, but has encountered difficulties in identifying the power brokers in the local land administration system. Your objective is to find out who you can trust and should cooperate with in negotiating and drafting an agreement guaranteeing temporary land use to beneficiaries, and to understand the different motivations and interests of the actors involved, e.g.:

- Local political leadership: powerful land actor, links to army and wealthy elite, emphasis on recognition of its official roles, good interaction with local chiefs
- Host community chiefs: In position to grant land use to beneficiaries, wary about more newcomers, but interested in humanitarian assistance
- Beneficiaries: strong leadership structures still in place, ethnically affiliated with host community

► **Step 4: Identify inter-relationships**

Now consider what the relationship is between the actors by asking the following questions:

- Who needs whom? For what?
- Who supports whom? Why?
- Who has the greater power?
- What might be points of leverage?

Explicitly define these relationships on your network map by drawing the links between the actor post-its one by one (“who threatens whom? Who cooperates with whom?”, etc.). This helps to think about why actors are interacting in the way they do and can provide valuable ideas for how to influence the situation.

► **Step 5: Grow the map**

Add other important stakeholders and for each one consider the attributes of that actor and the relationship with the central actors and other stakeholders.

- Be specific – for example talking about the local political leadership is not specific enough; referring to the pervasive mistrust or corruption among the leadership helps to better define the situation at hand
- At times it may be appropriate to identify individuals – for example where they have power or where personal motivation may be a significant factor, such as community chiefs dealing with land issues or dispute resolution
- It is useful practice to identify local actors first and then international actors who can often be a “second layer”, when they act by influencing other actors.

► **Step 6: Add yourself**

Add the position and influence of your own organization and its key partners. Doing this as the last step before finalizing the network map allows you to see how the picture fits together without your influence, and how it changes as you add your own organization and its linkages with other identified actors.

- What are your relationships with the prior identified actors?
- What is your potential role and/or response to the issue at hand, and how does this position you vis-à-vis the other identified actors?
- How are the different actors useful to you (e.g. decision-making power, access, information)?
- Do state and community actors have the willingness and capacity to address the problem?
- What are your points of leverage, and how do they fit in the bigger picture?

► **Step 7: Situational Analysis:**

The situational analysis is the final step of the actor mapping exercise: By linking all actors on the network map according to the information you possess on their interests and motivations - including your own - will produce a more comprehensive picture of the situation and enable you to look at the “bigger picture”. In planning your program strategy regarding land issues in your shelter operations, ask yourself some of the questions below as you look at the map.

- How are different actors useful to you? (decision-making power, access, information).
- Do state actors have the willingness and capacity to address the issue of land access for beneficiaries?
- Do other powerful actors, such as host and beneficiary community chiefs, have the willingness to influence and cooperate regarding land access for beneficiaries? What is their relationship with present state actors?
- What are your points of leverage, and how do they fit in the bigger picture?

## Annex 5. Example of relevant Agreements and Standard Operating Procedures (SOPs)

The following examples are intended to indicate ways in which to design your own land in shelter agreements. They serve demonstration and guidance purposes only and shall not be copied verbatim.



January 26, 2015

### Letter of agreement- Land allocation for IDP cultivation

This letter is to formalize the agreement between the County Authority and the IDPs of Mingkaman regarding land allocated to IDPs for cultivation.

Two areas have been identified and agreed upon by the Commissioner, the Department of Land and the RRC. These areas are represented on the attached map (areas A, B, C, D and Q, R, S, T only) and are specified based on the below GPS coordinates:

<p>1. Maper</p> <p><b>A</b> 6.01495 31.503808  <b>B</b> 6.005554 31.503874  <b>C</b> 6.005775 31.525163  <b>D</b> 6.01504 31.521888</p>	<p>2. Ahou 1</p> <p><b>Q</b> 6.071861 31.505683  <b>R</b> 6.071956 31.51064  <b>S</b> 6.062824 31.510747  <b>T</b> 6.062527 31.506034</p>
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FSL cluster members and Site Management will share key messages to the community through radio and community meetings, including

- Locations of land
- Plot guidelines per household
- Referral mechanism for issues / questions on the land – Land Department, Commissioner’s office
- Recommendation to peg plot parameter

The following government and community representatives sign in agreement of the stipulations above:

<p>_____</p> <p>County Commissioner Awerial County</p>	<p>_____</p> <p>RRC Executive Director Awerial County</p>	<p>_____</p> <p>Director of Agriculture Awerial County</p>
<p>_____</p> <p>Director of Land Awerial County</p>	<p>_____</p> <p>IDP Representative Acting Paramount Chief Greater Bor</p>	<p>_____</p> <p>Host Community Payam Chief Puluk Payam</p>



## Building Transitional Shelter in Haiti

### Agreement CARE – Beneficiary

Municipality: \_\_\_\_\_ Area / site: \_\_\_\_\_ File No: \_\_\_\_\_

Name of the Family Chief: \_\_\_\_\_

Address of Plot/Land: \_\_\_\_\_

Coordinates- GPS: N \_\_\_ ° \_\_\_ , \_\_\_ W \_\_\_ ° \_\_\_ , \_\_\_

The present agreement defines the mutual responsibilities regarding the availability of a land as well the construction and use of a transitional shelter. It is also a donation certificate, without any kind of payment.

Through this agreement, the beneficiary family certifies that it has an available piece of land, appropriate for the installation of this transitional shelter. If this piece of land/plot is not the property of the beneficiary family, this one certifies that it has contacted the legal owner and obtained his/her formal agreement for:

- The installation of a transitional shelter on this piece of land/plot,
- Staying on this land/plot for a period of 36 months minimum,
- The recognition of the transitional shelter as a mobile property according to Haitian Law not connected to the land/field where the transitional shelter is installed, so it remains the exclusive property of the beneficiary family without any limit in duration. These principles are officially recognized by the Municipality, according to a Memorandum of understanding signed with CARE regarding the question.

By certifying that it has obtained the authorization from the legal owner of the land/plot, the beneficiary family undertakes all legal responsibilities regarding the legal owner of the land/plot for the construction and use of the transitional shelter. In no case, the construction and use of the transitional shelter can be considered as a title of property of the plot/land. CARE doesn't have any responsibility in case of conflict with the owner of the plot/land.

The responsibility of Care in this agreement is the following:

- Providing the required materials for construction of a transitional shelter.
- Technical support for assembling the transitional shelter

The transitional shelter, of an area of 18 square meters, has a Timber (wood) structure and a sheet metal roof. It has been designed to resist to natural disasters and has a life- time of 3 years minimum.

The beneficiary family is responsible for all other aspects of the preparation of the plot, the construction of the shelter and its maintenance, namely:

- To flatten the plot
- Heighten the level of the plot with rubble and/or dig trenches to protect the field against flood risks
- Provide labour to assemble the T shelter with the support of CARE technicians and provide sand, gravel, land and water for concrete for foundations.
- Build the ground of the T shelter with its own resources
- Use the T shelter as living space and eventually undertake responsibilities for repairs, maintenance and improvements.

Name of CARE representative: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature:

Name of Beneficiary: \_\_\_\_\_

ID No: \_\_\_\_\_

Birth date: \_\_\_\_/\_\_\_\_/\_\_\_\_

1) The beneficiary accepts to respect the terms of this document of agreement :

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature:

2) The beneficiary certifies reception of a T shelter kit:

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature:

3) The beneficiary certifies that T shelter assembling is finalized/completed:

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature:

If the beneficiary is not the owner of the plot, ask and obtain if possible the written validation of the legal owner regarding terms of this agreement:

Name of the owner: \_\_\_\_\_

ID No: \_\_\_\_\_

Birth date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature:

Name of the Municipality representative: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature and stamp:



NORWEGIAN  
REFUGEE COUNCIL

EUROPEAN COMMISSION



Humanitarian Aid and Civil Protection

**NRC PAKISTAN SHELTER PROGRAMME**

**HANDOVER CERTIFICATE**

SHELTER IDENTIFICATION NUMBER: .....

PROVINCE: ..... DISTRICT:..... UNION COUNCIL:.....

TEHSIL:..... VILLAGE:.....

**SCOPE OF WORKS:**

Single Room Shelter with attached Kitchen and Toilet

(One 14'x14' Permanent Room, One 8'x5' Permanent Kitchen, One 6'x4' Permanent Toilet)

This certificate confirms that, today (.....) the beneficiary  
..... has received shelter assistance from the Norwegian  
Refugee Council – Pakistan as part of shelter project **PKFS 1107**, Year **2011/2012**.

NRC Representative:.....

Signature:.....

The Beneficiary:.....

Signature: .....

Community Representative:.....

Signature: .....

“NRC bears no liability for any costs or damages incurred after this handover date, including outstanding taxes, or direct or indirect effects of malfunction of the structure. The receiving party cannot sell, donate, sublet or lend the structure to any third part for a period of three (3) years without consent of the NRC. The beneficiary is to ensure the safety, use and maintenance of the infrastructures above mentioned shelter assistance.”

This Project is funded by the European Commission Humanitarian Aid “ECHO”





NORWEGIAN  
REFUGEE COUNCIL

## NRC PAKISTAN SHELTER PROGRAMME

### HLP AFFIDAVIT TEMPLATE SAMPLES - NRC ICLA Pakistan

***District: Kohat***

#### **Affidavit of Land Ownership for Shelter Purposes (for widows)**

I, ....., Widow of ... am a bonafide resident of ....., U C ....., district Kohat.

I solemnly affirm on oath that my house measuring 01 kanal is bounded by the fields of one namely .... to the east, a plot owned by one namely ... to the west, a house of one namely .... to the north and a house owned by one namely ... to the south.

I solemnly affirm on oath that on my aforementioned 01 kanal property, which is my personal property as per private partition, a shelter including a kitchen and bathroom will be constructed.

I solemnly affirm on oath that I enjoy all residential and easement rights over the aforementioned property and that no one has the right to forcefully eject me or my family from the said property.

I further solemnly affirm on oath that I along with my family will reside in the mentioned shelter on my property which was transferred to me traditionally from my husband's share and that the aforementioned property is in my sole ownership/possession and that no other family member who so ever has any objection over the said construction of the shelter along with kitchen and bathroom.

I solemnly affirm on oath that nothing has been concealed in the above statement.

Dated.....

Name: ...

CNIC# ...

Signature/Thumb impression

Attested by Oath Commissioner

*District & Sessions Courts Kohat*

**District: Dera Ismail Khan**

**Affidavit Land Ownership for Shelter Purposes**

I \_\_\_\_\_ s/o \_\_\_\_\_, resident of \_\_\_\_\_, solemnly declare on oath that the land, I occupy and on which the NRC will build/ has built a shelter for me is my personal property and I have purchased it lawfully. In accordance with local culture, I made this transaction verbally and have no written documents of the said transaction. I further declare that I am the lawful purchaser of the said property and that the shelter will be/ has been constructed on my own property/share and there is no dispute or claim by anyone, of any kind regarding the said property. I certify that the above mentioned information is true to the best of my knowledge and belief.

Dated: \_\_\_\_\_

Deponent: \_\_\_\_\_

Witness 1: \_\_\_\_\_

Witness 2: \_\_\_\_\_

NAME: \_\_\_\_\_

Name: \_\_\_\_\_

CNIC No: \_\_\_\_\_

CNIC No: \_\_\_\_\_

***District: Bajaur***

**Affidavit: Agreement between landlord/khan and shelter tenants**

I, Mr ..... (owner of land.....)                      son of .....

Resident of ....

Tehsil ....., Bajaur Agency, hereby affirm that Mr ..... (tenant) is my tenant. NRC (Norwegian Refugee Council) wants to build a one room shelter for him. I hereby agree that I will not eject my said tenant within 5 years; otherwise I will pay the market value of the said one room shelter to my tenant. I will abide by this agreement and sign in presence of two witnesses.

Dated:

Deponent: (Person who provides the statement)

Witness 1:

Signature:

Witness 2:

Signature:

***District: Mohmand***

**Affidavit Land Ownership for Shelter Purposes**

I \_\_\_\_\_ s/o \_\_\_\_\_ resident of \_\_\_\_\_ Tehsil \_\_\_\_\_, Mohmand agency, FATA, CNIC \_\_\_\_\_ affirm on oath that I am the sole owner of the land excluded from the share of other, upon which the Norwegian Refugee Council NRC is constructing a shelter for my assistance, which will be wholly and solely for my use and residence. The affidavit is dated \_\_\_\_\_ as evidence of the above.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Witness 1: \_\_\_\_\_

Witness 2: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

CNIC: \_\_\_\_\_

CNIC: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_



## **NRC SOMALIA SHELTER PROGRAMME** **LAND AGREEMENT**

**NORWEGIAN  
REFUGEE COUNCIL**

This Land Agreement is entered into this (date) \_\_\_\_ day of (Month) \_\_\_\_\_ (Year) 20\_\_\_\_\_

**Between Mr/Ms/Mrs** \_\_\_\_\_ hereinafter referred to as the **LANDOWNER**

**And**

The **LOCAL AUTHORITY** of \_\_\_\_\_ District: \_\_\_\_\_ Region in Somalia (South & Central, Puntland or Somaliland) for the benefit of and use by **INTERNALLY DISPLACED PERSONS (IDPS)** residing at \_\_\_\_\_ settlement located in \_\_\_\_\_ District in \_\_\_\_\_ region of South and Central Somalia or Puntland or Somaliland (**Tick Location**).

- i. The LAND OWNER shall mean any individual ,persons, body or authority donating, offering or leasing land to the beneficiaries for settlement, including the construction of Shelters
- ii. The term SHELTER shall mean T shelter, temporary shelter, transitional or permanent shelter
- iii. The term BENEFICIARY shall refer to displacement affected populations including and not limited to Internally Displaced Persons
- iv. That the LANDOWNER has offered the land measuring \_\_\_\_\_ to LOCAL AUTHORITIES for the benefit of IDPs residing at the above mentioned location for the construction of shelters.
- v. That the LANDOWNER has entered into an agreement with the LOCAL AUTHORITIES on behalf of the IDPs hereinafter referred to as BENEFICIARIES
- vi. That the LOCAL AUTHORITIES subsequently offered the land to the BENEFICIARIES for, settlement use, including the construction of SHELTERS by the Norwegian Refugee Council (NRC) hereinafter referred to as the Implementing agency
- vii. That this agreement is for a period of \_\_\_\_\_ years with the possibility of extension for a period of \_\_\_\_\_ years
- viii. That during the subsistence of this LAND AGREEMENT, the BENEFICIARIES shall enjoy quiet possession of the Housing, land and property considerations allocated by this offer without any interference from the LANDOWNER or LOCAL AUTHORITIES
- ix. That the LAND OWNER or LOCAL AUTHORITIES shall not levy any land related fees and neither shall the BENEFICIARIES pay any monies or fees for occupying the said land during the subsistence of this agreement.
- x. The BENEFICIARIES of the SHELTERS shall be provided with a handover and occupancy certificate following the construction of the shelters on the said land
- xi. That this LAND AGREEMENT shall be used to process LAND TITLES issued by the LOCAL AUTHORITY for purposes of securing LEGAL LAND TENURE for the BENEFICIARIES at Household level.

- xii. The BENEFICIARIES shall have the right of use to the house, land and property erected on this land during the subsistence of the Land Agreement and shall have the right to move the construction materials during relocation and upon termination of the agreement
- xiii. The BENEFICIARIES shall have the right to other basic services such as education, livelihood opportunities, water, sanitation and hygiene implemented on the said land.
- xiv. That the Implementing agency, BENEFICIARIES and LOCAL AUTHORITIES shall have a joint responsibility in the design and layout of the settlement, hygiene, sanitation and other services provided in the settlement upon which the said SHELTERS are established.
- xv. In the event of breach of any of the terms of the land agreement, the LAND OWNER shall compensate the BENEFICIARY for any losses and damages incurred as a result the breach.
- xvi. **DISPUTE RESOLUTION:** Any disputes arising out of this LAND AGREEMENT shall be resolved amicably by all parties hereto and Collaborative Dispute Resolution mechanisms shall be applied. Legal Action shall be a last resort.
- xvii. **TERMINATION:** This contract shall terminate upon expiry of the LAND AGREEMENT and that the LAND OWNER shall provide one year of legal notice to both the LOCAL AUTHORITIES and BENEFICIARIES if he/she does not intend to extend Land tenure agreement.

In **WITNESS HERETO** the parties to his LAND AGREEMENT append their signature on the dates first mentioned above.

1. Name: \_\_\_\_\_

Designation: **LAND OWNER**

Signature \_\_\_\_\_

2. Name: \_\_\_\_\_

Designation: **LOCAL AUTHORITY REPRESENTATIVE**

Signature \_\_\_\_\_

3. Name: \_\_\_\_\_

Designation: **IDP REPRESENTATIVE**

Signature \_\_\_\_\_

4. Name: \_\_\_\_\_

Designation: **WITNESS**

Signature \_\_\_\_\_