Housing, Land and Property Rights: 12th UK Shelter Forum

Briefing note prepared by Laura Heykoop and Fiona Kelling

The UK Shelter Forum is a community of practice for individuals and organisations involved in shelter and settlement reconstruction activities supported by twice yearly meetings (Shelter Forums), a website and LinkedIn group. The twelfth UK Shelter Forum was hosted by Habitat for Humanity Great Britain and Oxfam GB on the 22nd February 2013. It was attended by more than 60 participants from humanitarian and development organisations, academia and the private sector. To download presentations and minutes from the event please visit the website: www.shelterforum.info Please contact lauraheykoop@gmail.com and fionakelling@gmail.com if you have comments on this paper.

The theme for the 12th UK Shelter Forum was 'Housing, Land and Property Rights' (HLP), a topic of particular relevance to the community of practice. In the context of the UK Shelter Forum, which focuses on humanitarian shelter responses to disaster, HLP can be understood as access to land and housing integral to disaster risk, response and recovery. This document is intended to capture discussions from the UK Shelter Forum in a concise format for dissemination. The presentations and discussions from the day have been framed within current HLP discourses and structured under three main headings: **Aims** - defining what we as a sector are trying to achieve in relation to HLP (Section 1); **Approaches** - conversations around different approaches to HLP issues (Section 2); and **Sectoral capacity** - conversations around capacity and skills required in order to carry out HLP activities effectively (Section 3). Each section first presents the question and an outline of the presentation relevant to the topic. The discussion points raised in the breakout groups in response to the question are then summarised. Future directions are then identified from the plenary discussion (Section 4). References to additional sources of information and ongoing initiatives and definitions of key terms are presented in boxes throughout the text.

Framing the discussions

HLP are a small collection of letters that actually cover a wide range of topics and varying rights. Although a useful contraction, by using the term HLP we risk simplifying the broad range it encompasses and viewing HLP as a homogenous entity as opposed to a collection of topics or 'bundle of rights' that can be disaggregated and separated as well as being addressed together. As such it was suggested that this combination of letters needs to be slowly and methodically unpacked in order to be better understood.

A series of pecha kucha style presentations, listed below, addressed a variety of recent HLP-related projects and highlighted key questions for discussion:

Jim Kennedy, *Independent*	*Shelter and HLP*
Lisa Stead, *Habitat for Humanity GB*	*Urban land and property rights in LAC*
Fiona Kelling, *Independent*	*Tenure (in)security*
Rachel Hastie, *Oxfam*	*Protection and HLP*
Rumana Kabir, *Independent*	*The shelterless landless*

The questions identified by these presentations were then discussed in six breakout groups and presented in plenary.

Aims

"How can we demarcate the limits of HLP objectives within the context of humanitarian response?" or in other words, what is it that we as sector or as organisations are trying to achieve through engaging with housing, land and property rights and how far can we go as humanitarian actors?

In his presentation ***Jim Kennedy*** listed the seven elements within the Right to Adequate Housing which address housing at the settlement as well as household level. Security of tenure is one of these elements; the others being availability of services, affordability, habitability, accessibility, location, and cultural adequacy. The right to adequate housing underpins the work that shelter actors engage in.

Jim highlighted that HLP rights cover all types of property, not just individual or private. They include a range of statutory and customary rights relating to the right to use, control, transfer and enjoy land and property across the full spectrum of tenure systems. False oppositions simplify tenure security to binary's such as written/unwritten, legal/illegal or secure/insecure. An incremental approach, however, looks to recognise legitimacy in order to achieve robust *enough* tenure security (Figure 1), without aiming for 'perfect' solutions straight away. It also reflects non-disaster construction norms.

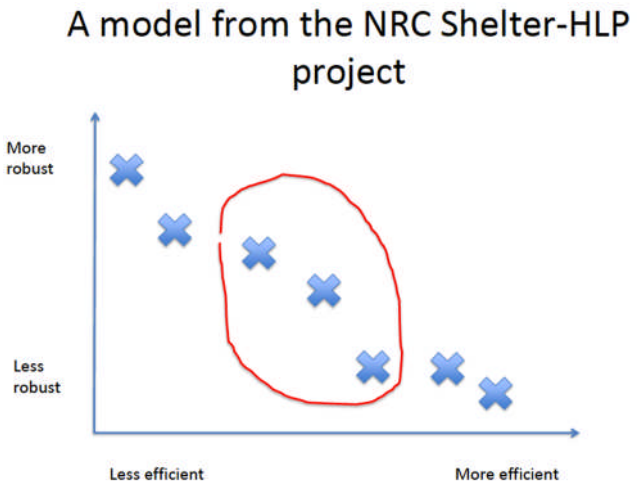

Figure 1: Tenure security instruments
(Image: James Kennedy)

Land tenure: The relationships among people, as individuals or groups, with respect to land and associated natural resources. Land tenure systems determine who can use what resources for how long and under what conditions. Land tenure includes both rural and urban tenures and ownership, tenancy and other land use arrangements.

UN Habitat, *Land and Natural Disasters* (2010)

Jim challenged assumptions of solely associating tenure with individual ownership rights, and reinforced the multiplicity of tenure forms that may offer solutions to those seeking durable housing. However, it is important to recognise that engaging with land is a long-term issue and therefore question the limits of humanitarian response actors. Is HLP addressed, for example, as a means to accessing land for shelter construction? Or is it considered as part of a larger question related to disaster risk reduction, resilience, or even social and spatial justice? What is the role and restrictions of humanitarian organisations engaging in this?

In the breakout group it was noted that the aims of addressing housing, land and property rights are different for different actors, and depend on their mandates, capacities and resources, as well as context specific circumstances and timeframes involved. These differences require increased and improved partnerships to be built in order to improve coordination and continuity, and macro and micro approaches to be taken at the same time.

It was also mentioned that in addition to a person's access to land impacting their potential to receive some forms of shelter assistance, it is widely recognised that humanitarian responses can have longer lasting impacts on housing, land and property rights, which go beyond the timeframes and mandates of humanitarian organisations. This reflects the findings from Levine:

"Humanitarian responses in turn can have an impact on housing, land and property rights in the longer term by encouraging certain settlement patterns, supporting (or not supporting) resettlement, encouraging certain claims to land, giving de facto legitimacy to land claims and supporting, bypassing or undermining the institutions involved in land tenure. Understanding the relationship between humanitarian response and these rights is therefore crucial." (Levine 2012: 5)

Approaches

Three of the questions discussed in breakout groups were related to approaches to HLP within shelter programming.

"How can we support 'soft', less visible approaches (e.g. advocacy, legal assistance, education on rights) in humanitarian response yet still ensure continued funding?"

Lisa Stead's presentation from Habitat for Humanity GB provided an example of HLP programmes funded by DFID in Bolivia and Brazil.

The projects addressed informal subdivision and selling of land as urbanisation occurred, leaving many inhabitants vulnerable to eviction and violence, particularly women. Although women legally hold the same rights as men in Bolivia, culturally their access to land and property is limited. She highlighted the lack of municipal capacity to manage the process as well as to now deal with the consequences. HFHGB worked to train women on land rights and skills to advocate for and engage with the process of pursuing them (Figure 2). HFHGB have also been involved in mapping plots in preparation for a regularisation and provided training to local authorities on urban growth, governance, land management tools and land markets.

In Brazil, HFHGB worked with two low-income communities to identify the barriers they faced regarding housing and land. Lisa highlighted that a key problem was inefficient judicial processes and questioned how both humanitarian and development actors could work with or to reform ineffective judicatory processes and help to overcome capacity limitations in municipal government. As this example was from a development project, she also posed when this process should start.

Figure 2: Working with communities in Bolivia to strengthen land rights (Image: Lisa Stead)

The breakout group discussed how the examples mentioned could be adapted and implemented in humanitarian contexts if funding were available. The discussion around this question asked whether there is a false assumption that donors are unlikely to want to support 'softer' approaches to addressing HLP issues. Have organisations tried and failed to get funding from donors for this, or is it that this has not been tried enough? Is it true that donors are only looking for 'hard' outputs? It was suggested that as a sector we can and should encourage donors to consider funding in 'softer', less visible approaches and ensure that every shelter programme is designed to include HLP components.

"How can we, as external humanitarian shelter actors, support an incremental approach to the 'disaster affected populations' accretion of the right to adequate housing?"

Fiona Kelling's presentation built on the information from Jim's presentation and questioned the ways in which NGOs may provide a catalyst to take incremental steps forwards, specifically looking at clarifying property rights at an early stage. Fiona talked about the research she had carried out after working in Haiti to try to identify how informal documents provided during the response have increased security of tenure and how we ensure they are more than token gestures.

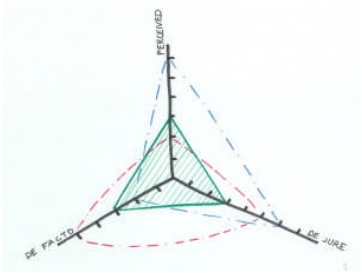

Figure 3: Tripartite security (Image: Fiona Kelling)

Fiona mentioned the wide body of work that has been carried out over the past 20 years that can be drawn upon, and discussed the concept of tenure security as being tri-partite, that is, an interplay of *de jure* (found in law) *de facto* (in reality) and perceived security (Figure 3). She also highlighted not only the need to address informal settlements that already exist, but to look at ways of increasing access to land for those migrating to cities, if any headway is to be made in disaster risk reduction.

If an organisations aim is to increase tenure security, it is more important to identify where threats are coming from and address them directly, rather than assuming security is found in a piece of paper or that it can provide the basis for future steps to be built upon. Fiona highlighted that for interim documents to be useful, organisations had to be clear about what they were trying to achieve and therefore the purpose for providing them.

Security of tenure: The degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the benefits that flow from it; the certainty that these rights will be recognized and protected in case of specific challenges; or, more specifically, the right of all individuals and groups to effective government protection against forced evictions.

UN Habitat, *Land and Natural Disasters* (2010)

Using an incremental approaches can set a pathway for increased tenure security and improved services by enabling us to not only ask the question of what needs to be done in the early stages of response and recovery to enable effective shelter assistance, but also what strategic moves can be made in order to contribute towards longer term change. Specifically focussing on HLP in the early stages has the potential to increase people's access to land and address tenure insecurity.

In the breakout group, NRC's work in Myanmar was cited as an example of incremental approaches to increasing tenure security in a humanitarian context. The discussion group noted that incremental approaches often mirror housing norms in non-humanitarian contexts, as illustrated in Figure 4, and that this could provide a basis for future knowledge transfer. In addition, significant examples and documentation exist on incremental approaches to securing tenure within developmental practice (see box below).

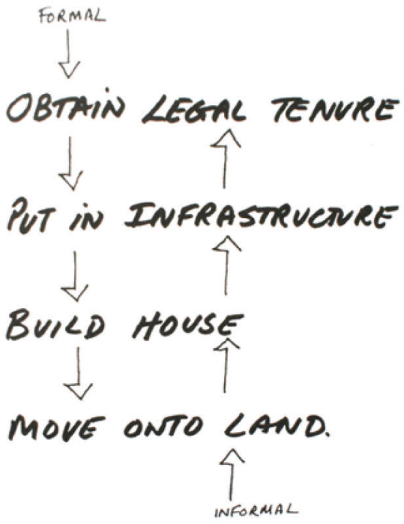

Figure 4: Formal and informal housing processes (Image: Nabeel Hamdi 2010)

Existing work on land and housing rights

Significant examples and documentation exist on incremental approaches to securing tenure within developmental practice and there are a number of resources that can be drawn upon by humanitarian workers, which can form a basis for ongoing progress on HLP in the shelter sector:

- Global Land Tool Network - **GLTN**
- UN-Habitat **Land and Housing** resources
- FAO **Multilingual thesaurus on land tenure**
- Geoffrey Payne - **www.gpa.org.uk** - ***Land Rights and Innovation; Urban land tenure and property rights in developing countries: a review of the literature; The Urban Housing Manual***
- Alain Durand-Lasserve and Lauren Royston - ***Holding their Ground***
- Slum and Shack Dwellers International - **sdinet.org**
- Urban Landmark - **urbanlandmark.org.za**

It was also noted by the breakout group that incremental approaches can enable HLP action to be initiated at a more local level. For example, enumeration processes or the construction of key infrastructure can create a stronger platform from which to advocate for claims to land to be more formally recognised.

"How can we provide landless families, renters and squatters with shelter assistance in disaster?"

Rumana Kabir presented a variety of examples from a range of different disaster responses featuring different 'land' problems, highlighting the issue that perhaps we should think more in terms of living 'space'. She asked whether we had really understood what the problem was and highlighted how in every situation the challenges were different (Figure 5). She highlighted that shelter assistance does not always need to take the form of a shelter, but could be cash or information.

Figure 5: Lack of documentation is a barrier to shelter assistance (Image: Rachel Hastie)

Much of what was discussed in the breakout group related to advocacy. Participants asked how we can better support and work closer with governments on issues of exclusion and marginalisation, and if required, how as a sector we can use our combined strength to advocate to donors and governments on these issues.

This links back to the initial question about our aims, as well as to the previous two questions on 'soft' approaches and incremental approaches. Is it just a matter of ensuring that these groups are not excluded from shelter assistance .e.g cash for renters? Or are we also trying to address some of the root causes of people being landless or squatters?

Sectoral Capacity

"How can Protection actors and Shelter actors work together to have a more effective and coordinated response?"

Rachel Hastie from Oxfam gave an insight into protection, explaining that it could be understood both as an approach and as a sector or area of programming of its own. Protection as an approach is a cross-cutting issue and the responsibility of all humanitarian actors. Protection programmes can either be 'mainstreamed', where specific protection activities or projects are integrated into a larger humanitarian programme, or where they are of sufficient scale and scope, projects and programs that have specific protection objectives could be considered 'stand alone'. Although protection is often associated with conflict, shelter and protection have strong links because of HLP, which is an Area of Responsibility in the Global Protection Cluster.

Figure 6: Information as a key protection activity (Image: Rachel Hastie)

Protection activities can include international advocacy and campaigning as well as local advocacy and negotiation and where relevant, capacity building of authorities. Organisations can also provide direct assistance disseminating information (Figure 6) and helping people have their voices heard. Rachel was concerned with how generalists and HLP specialists can build on each other's strengths to increase effectiveness.

The breakout group discussed the possibility of identifying more tangible activities in shelter programmes, advocating to donors to increase funding for protection activities in shelter programmes, and supporting traditional processes, such as *gacaca* in Rwanda. They also discussed the difficulties faced by organisations with distinct or neutral mandates and questioned how they could engage with these activities. They expressed frustration at how HLP easily fell through the cracks but also at romantic notions of working together which are much more difficult in reality.

"How can we create technical guidelines for implementing HLP in shelter programmes?"

"Humanitarian agencies have made progress in recognising and understanding land rights in humanitarian crises, and improving their capacity to deal with the ways in which land issues arise in, exacerbate and interact with humanitarian emergencies". (Levine 2012: 5)

This breakout group highlighted that although progress is being made, a better understanding is needed of what already exists, as well as the different stakeholders involved in HLP, what their roles are and how they can better work together. The group mentioned that there are gaps in existing guidance on HLP in natural disasters, and that more guidance is required on the processes involved in HLP activities and customary practices. They mentioned that a lot of information is available in Spanish but that it is not used much by Anglophones. Also, as HLP is very context specific, it was suggested that more guidance should be aimed at the local level in order for it to be more relevant to actors on the ground and highlighted the need for increased time to be spent consulting beneficiaries.

Existing initiatives on HLP in shelter

Some notable examples of recent work within the shelter sector are:

- The publication of **Land and Natural Disasters** by UN Habitat
- Deployment of HLP specialist to Shelter Cluster in Haiti
- The Shelter Cluster 2012 **HLP working group**
- IISD Agency Survey on **Addressing Land Ownership after Natural Disasters**
- IFRC – **Regulatory Barriers** Project
- NRC one day Shelter and **HLP training course**, piloted the day before the UK Shelter Forum
- ALNAP **Urban Humanitarian Response Portal**

In regard to the amount of individuals with specific land expertise, Levine has noted that *"the Haiti response showed that the capacity available was nowhere near enough." (Levine 2012: 5)* While there is currently an increase in initiatives to improve shelter practitioner's knowledge of HLP, this quote highlights the need to ask whether there are in fact enough HLP specialists and if not then what can be done in order to increase the number of HLP specialists working in humanitarian response and recovery?

Future directions?

Often the discussions generated more questions than answers, but this highlights the importance of continuing to engage with and unpack HLP in shelter response. In plenary a number of groups mentioned that better links were needed between development and humanitarian practice. Rather than this being a reference to linking relief and recovery, it was emphasised in regard to learning from developmental approaches and the capacities and skills that already exist within the development sector in relation to HLP.

The final discussions addressed the critical mass of the shelter sector that could be harnessed to illicit change and the need for more research into the impacts that humanitarian interventions have in the longer term, specifically on issues relating to housing, land and property rights. This type of research could also provide an evidence base to support the importance of HLP activities in relation to recovery and resilience building.

References

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