

# DEMYSTIFYING 'TENURE' FOR HUMANITARIAN PRACTITIONERS



Town & farms in northern Mali along Niger River. 2015 © Alexandre Corriveau-Bourque

## OVERVIEW

The purpose of this guidance document is to:

1. Clarify the concept of 'Tenure', which is essential to a large proportion of NRC's programming, but remains somewhat misunderstood.
2. Demonstrate how tenure is a way for humanitarian actors to analyse, understand and engage with relationships within conflict-affected communities.
3. To provide teams with tools and best practices to improve the sustainability of interventions and to prevent conflicts.
4. Establish an outline for future training.

## Intended Audience

The **primary audience** of this note are NRC staff who implement (CC or thematic assistants, officers, team leaders, or coordinators) or supervise projects (Area Managers, CC/Thematic Specialists and Managers) that rely on the use of buildings, land, property, or natural resources.

The **secondary audience** include those who are responsible for communicating NRC's work to external audiences (Heads of Programmes, Country Directors, IPAs, Grants Managers, Advocacy staff, NRC's Senior Management Group).

## WHAT IS TENURE AND WHY IS IT IMPORTANT TO HUMANITARIAN PRACTICE?

Displacement is fundamentally a housing, land, property (HLP) and natural resource problem. Displacement is about people being forced from their homes, lands, and resources due to conflict or disaster. Whether while displaced, during integration, or upon return, people's survival often depends on having one or more of:

- A safe, healthy, and stable place to live (a home);
- Materials to build and maintain shelters and a consistent, renewable supply of cooking fuel;
- Consistent and reliable access to clean water for domestic consumption.
- Safe access and sustainable use of land, commercial spaces, and natural resources to produce food and build livelihoods;

Lands, buildings, properties, and natural resources are inseparable from peoples' relationships to them. These elements also reveal a great deal about the relationships between people and within communities. During conflict and displacement, these very relationships can weaken and break down. Sometimes, the breakdown of trust in the relationships and the institutions that govern housing, land, property or natural resources are contributing factors to the conflicts. Climate change and local environmental degradation only amplify many of these factors and reinforce barriers to return or integration.

Understanding the social dimension of HLP and natural resources is therefore essential for the effective delivery of humanitarian assistance in both emergencies and when establishing durable solutions. Tenure examines this social dimension – it **describes the relationship that people have over a particular parcel of land, a building (or a unit within a building), or a particular natural resource, such as water.**

The following tools can be used by humanitarian practitioners to better understand these relationships and, when relevant, play a role in strengthening those relationships for the future.



*Town & farms in Masisi Territory, DR Congo. 2015 © Alexandre Corriveau-Bourque*

## WHAT ARE TENURE AGREEMENTS AND HOW DO THEY WORK?

**A tenure agreement establishes the rights and the responsibilities of the different parties in relation to a particular parcel of land, building (or unit), property, or natural resource and for what duration.** There are many forms of tenure, in which the rights and the corresponding responsibilities between parties are combined in different ways.

Humanitarian practitioners regularly interact with tenure agreements and often play an important role in preparing and defining tenure agreements. Some common examples include:

- Agreements for the use of land, buildings, and facilities by humanitarian organisations and their partners.
- Agreements for the use of housing by displacement-affected communities.
- Agreements for the use of land, buildings, or natural resources for food production and livelihoods.
- Land and resource use agreements for settlements and camps.
- Rights-of-way agreements for transportation and access to specific places or resources, or to connect infrastructure systems.
- MOUs for the rehabilitation of infrastructure – including schools, health centres, water points, and sanitation.
- Management plans for communal resources such as boreholes, wells, irrigation systems, latrines, collective centres, settlements, or camps.
- Among many, many, others!

It is important to note that concepts like 'owning', 'squatting', 'occupying', 'leasing', and 'renting' are familiar to most people as tenure agreements, these terms do not have standard definitions – different communities and legal systems around the world have various ways of understanding them.

It is therefore important to clarify and contextualize what these words mean in a specific context to avoid imposing an inappropriate definition on tenure relationships. Instead, humanitarian practitioners should try to understand and clarify the different parts of tenure agreements rather than trying to 'label' the tenure relationship in a certain way.

Multiple different types of tenure agreements between different combinations of parties may be needed to accomplish the goals of a particular project.

### Tenure in legal systems

*The rules that govern tenure agreements are often found in written policies and laws (including religious texts). This set of rules is known as 'statutory' or 'formal' systems of tenure, and often require support from qualified legal professionals to navigate.*

*However, in most parts of the world where humanitarians work, tenure agreements tend to be governed through unwritten customs, stories, and practices that are widely known and accepted in the community. These different 'legal systems' are referred to as 'customary' or 'informal.' Understanding customary and informal tenure systems requires humanitarian practitioners to establish trusting relationships with local communities.*

*Statutory, customary, and even informal tenure systems may all be operating in the same community. In some cases, these different systems may play a role in governing some tenure agreements but not others. There are also situations where multiple systems of governance may affect tenure agreements. Again, understanding this interplay between governance systems requires humanitarian practitioners to establish trusting relationships with local communities.*

## COMPONENTS OF A TENURE AGREEMENT

### WHERE AND/OR WHAT?



- Identification of the parcel of land, building (or unit within), asset, or a natural resource that this agreement covers and their location.
- Sometimes, an agreement might include more than one, like land and a building, land and water, etc.
- This description can be very simple, especially if there is a physical address linked to a functional cadastre (e.g., 2 Prinsens Gate, 0152 Oslo, Norway)
- However, if the address is not available, this may require a description of the building or plot of land, especially in relation to other recognisable, permanent landmarks.
- Part of the description can include photographs, hand-drawn maps, or if necessary, a geo-located map with boundaries clearly delineated.

### WHO ARE THE PARTIES?



- Clearly identify the various people or institutions who have a relationship to the resource.
- It is typically better to be more inclusive when defining the parties and identify multiple individuals when relevant, even if they are from the same household.
- It is especially important to include women in tenure agreements. This way, they are clearly and unambiguously defined as a rights-holder and their ability to exercise their rights are not beholden to their relationship with a 'designated representative.'
- Of course, for resources where dozens of people may be users like a borehole or settlement, this description may simply say "members of X community, who are represented by an elected committee" but even there, make sure that this committee represents a cross-section of the community and especially includes historically marginalised communities.

### WHAT RIGHTS & RESPONSIBILITIES?



- Not every party will have the same set of rights and responsibilities – these vary based on the process through which these rights and responsibilities were acquired by the different parties.
- In some tenure arrangements, one party may have more power than others. For a tenure relationship to be healthy, rights and responsibilities have to be in balance with one another – if one party has more power, they should also have more responsibilities, and be held accountable for upholding those responsibilities.
- Humanitarian actors can help promote greater balance by going through the checklist of rights and responsibilities (BELOW) to make sure that they're clearly defined.

## FOR HOW LONG?



- *Some relationships are time-bound. Some relationships expire after a defined period of time, others must be periodically renewed. Other relationships are intended to last in perpetuity and are transferred from generation to generation.*
- *Long-term agreements are also the foundation for durable solutions since they provide stability and predictability.*
- *Of course, not all relationships can or should last forever, but in those cases, it is preferable to be clear about their duration so that parties can plan accordingly. Periodic intervals should be set where the parties must explicitly renew the relationship, which can allow adjustments to be made to the agreement, if necessary.*
- *A lot of conflicts emerge because impermanent relationships are vague about their duration, so when one party wishes to terminate the relationship, it can be very destabilising economically, socially, and psychologically to the other parties.*
- *The duration of an agreement may affect the way a party may manage or use the building, parcel of land, or resource in question and therefore has important implications for sustainability.*

## DISPUTE RESOLUTION









- *If one of the parties has been found to not upholding their responsibilities or infringes, encroaches, or attempts to extinguish the other's rights, there needs to be a system in place to ensure accountability.*
- *Also, one party may need to terminate the relationship before the defined period for the agreement has elapsed.*
- *In both scenarios, there should be a legitimate cause, adequate notice, and if appropriate, potential compensation offered.*
- *Oftentimes, parties can find a fair solution on their own, but if that isn't possible, a tenure arrangement should designate an accessible, fair, and impartial third-party institution or actor that they can fall back to help them find a resolution.*

Qualified humanitarian practitioners can play an important role by facilitating discussions between parties to improve the clarity of each component to strengthen the relationship and prevent future conflict.

## WHAT IS THE 'BUNDLE' OF RIGHTS AND RESPONSIBILITIES?

Within the tenure agreement, rights and responsibilities can be combined in different ways – to make this easier to understand, practitioners refer to this combination as a 'bundle.' Different parties within a tenure agreement may have a different bundle of rights and responsibilities. The following tool looks at the different rights and responsibilities that can be combined and considerations to find a balance between them. Qualified humanitarian practitioners can help facilitate participatory discussions about rights and responsibilities to ensure that these are clearly explained, and balanced.

|  | Best Practices  | Responsibility  |
|--|---|---|
| <p><b>ACCESS</b></p>                          | <p>This is the most basic right – the ability to enter or pass through a particular space safely and free from harassment.</p> <p>Access exists on a spectrum. Depending on the agreement, a party might be able to enter a particular space whenever they want, or might be only able to go to a place at certain times of the day, or under certain conditions.</p> | <p>This responsibility comes in the form of respecting others' rights to access and enjoy those spaces, assets, and resources – this includes respecting people's privacy and comfort, within reason.</p> <p>If one parties' access and use damages the building, parcel of land, or resource if for others, they're infringing on another party's rights.</p>  |
| <p><b>USE or BENEFIT</b></p>                  | <p>Use rights can include, or be limited to, or combine:</p> <ul style="list-style-type: none"> <li>▪ religious/cultural purposes,</li> <li>▪ domestic purposes,</li> <li>▪ small scale livelihood purposes,</li> <li>▪ or can be commercial/industrial purposes</li> </ul>   | <p>There is a responsibility to take care of the land, building, property, or resource to avoid damage,<sup>1</sup> decay, degradation or overexploitation.</p> <p>Depending on the tenure situation, some parties may need to provide payment for their use and access rights. Payment can be made with money, labour, or goods.</p>   |
| <p><b>EXCLUSION</b></p>                      | <p>This is the right to deny another party access to or use of a specific building/unit, a plot of land, or a resource.</p> <p>This is important for the protection of privacy, to prevent damage or misuse, and to defend against encroachment.</p>  | <p>There is a responsibility here to exercise exclusion equitably and carefully – to not do so to the detriment of weaker parties, who also need to access and use an essential resource.</p>   |
| <p><b>TRANSFER</b></p>                      | <p>This right cover both sides of the transaction – on one side, the recognized ability to transfer one's rights to another entity, and the other is the recognized ability to receive those rights from another party.</p> <p>Transfer can be done through sale, cession, loan, rental, gift, mortgage, or inheritance.</p>  | <p>Any transfer should not be done unilaterally – all affected parties should be appropriately consulted beforehand, especially if the transfer changes those other parties' rights and responsibilities.</p>   |
| <p><b>MANAGEMENT</b></p>                    | <p>This is the right to make decisions about how a resource can be accessed, used, maintained, or transferred.</p>  | <p>Those with management rights have a responsibility to adequately consult with affected parties before changing rules.</p> <p>Management also implies a responsibility to maintain a particular building, site, or resource to ensure that it is suitable for the designated use over a long period of time. Poor maintenance can infringe on other parties' full use and enjoyment of a building, parcel of land, or resource.</p> |
| <p><b>DUE PROCESS and COMPENSATION</b></p>  | <p>Parties have a right to have their case heard by an accessible, fair, and impartial third party if their rights are being infringed upon, encroached, or extinguished.</p> <p>If appropriate, they may be entitled to some form of compensation.</p>   | <p>All parties have a responsibility to approach the process in good faith and to not exercise unfair influence over its outcome.</p>   |

<sup>1</sup> Not all damage is preventable. Some assets depreciate over time with reasonable use, even with proper maintenance – users who have limited management rights & responsibilities and whose tenure is of short duration cannot be held responsible this. Users can only be held responsible for damages beyond what is considered to be reasonable 'wear and tear' – such as neglect and abuse.

Typically, the more 'complete' the bundle of rights and responsibilities, the more confident (or secure) a party will feel about the tenure arrangement. For example, if a person only has access and minimal and use rights and responsibilities over an undefined period of time, they will typically have very weak security of tenure.

### **Women's rights and responsibilities over housing, land, property, and natural resources**

*Women in many parts of the world face disproportionate challenges to claim and exercise rights and responsibilities beyond access and use of the houses, lands, properties, and resources they rely upon. Their rights to receive lands and houses through inheritance are frequently denied – often by their own family members. And while women may be allowed to buy land for themselves, economic barriers exacerbated by their lack of control over productive resources often makes this a virtual impossibility for most women. The rights to manage individual, household, and even community land, housing, and natural resources are often claimed men, who often fail to exercise their responsibility to meaningfully include women in decision-making. This also applies to governance structures, where women's voices are often unheard in the institutions that implement and enforce rules, and resolve disputes. When women do claim and defend their rights, these governance institutions often discriminate against them, and/or they face risks of sexual and gender-based violence.*

*Women who are unmarried, are divorced, are widows or have been abandoned by their spouse also often face important challenges to exercise their right to exclude others – which is essential to maintain privacy in their homes and to prevent the encroachment of others on their lands and resources.*

*Factors like class, race, caste, ethnic identity, sexual orientation, and displacement status may also all play significant roles in determining the range of rights and responsibilities women are able to claim and exercise.*

### **HOW DOES SECURING TENURE IMPROVE RELATIONSHIPS AND PREVENT CONFLICTS?**

Ultimately, **security of tenure is the certainty that a person's or parties' rights to housing, land, property or natural resources will be recognised and respected by others and protected when challenged (i.e., infringed, encroached, and/or arbitrarily extinguished).**

Security of tenure requires a conducive and enabling environment that includes the following dimensions, among others:

1. Contextually appropriate and clear agreements that fairly balance rights and responsibilities between parties.
2. Legitimate institutions are in place to protect rights and resolve disputes in a timely and impartial manner.
3. The sustainable and equitable governance of critical resources.

- **Infringed:** A right that is not being respected, or a responsibility not upheld that affects the enjoyment of rights.
- **Encroached:** A physical boundary that isn't being respected.
- **Arbitrary extinguishment:** Rights or responsibilities that are being terminated without due process, which includes, but is not limited to, forced evictions.

Having secure tenure is essential for parties to have peace of mind and to be able to plan for the future. Secure tenure has been linked to better physical and mental health outcomes.<sup>2</sup>

<sup>2</sup> CARE. 2020. Towards Healthier Homes in Humanitarian Settings. Proceedings of the multi-sectoral shelter & health learning day, 14th May, 2020.; Himmelstein & Desmond. 2021. Born Evicted: Eviction during pregnancy worsens birth outcomes and child wellbeing. Eviction Lab.

In situations where due diligence reveals that some parties' security of tenure is low because certain components of tenure arrangements are not clear, or that some rights and responsibilities are not fairly balanced between parties, qualified humanitarians can facilitate conversations between parties about these issues. These discussions can serve as a tool for conflict prevention by producing important and necessary **incremental improvements** to the clarity and fairness of tenure arrangements, especially to the benefit of marginalised populations like women. While the outcome might not be perfect, these changes may end up being **'secure enough'** for the context.

As previously noted, having secure tenure does not mean a total absence of tension – misunderstandings and disagreements happen. Securing tenure also means anticipating that these tensions may arise and giving people and communities the tools to resolve them.

| <b>Best Practices</b>   |  |
|---|--|
| <b>KEEPING RECORDS</b>  | <ul style="list-style-type: none"> <li>▪ <i>Helps ensure that tenure agreements will be respected</i></li> <li>▪ <i>Try to find the records that are currently being used – and see what works and what does not within existing systems. See the text box below for ideas on how to encourage people to use records for their agreements.</i></li> <li>▪ <i>While written agreements may often seem like the easiest way to keep a record, this may undermine some parties' perception that their rights are secure – especially if they are illiterate and cannot refer back to the content of their agreement on their own.<sup>3</sup></i></li> <li>▪ <i>Alternative tools to 'record' agreements between parties should be explored - including digital voice or video recorders on peoples' phones or asking for trusted third parties to act as witnesses to agreements. There is room to innovate here!</i></li> <li>▪ <i>If you see that having a written or digital record is an obstacle to an agreement<sup>4</sup>, do not impose.</i></li> </ul>   |
| <b>WORKING WITH THIRD PARTIES TO ASSIST IN DISPUTE RESOLUTION</b> | <ul style="list-style-type: none"> <li>▪ <i>When parties are often able to resolve misunderstandings and disagreements on their own, however, having a trusted third party identified can help prevent escalation if discussions break down.</i></li> <li>▪ <i>Since many tenure agreements are not recognised in formal law, government institutions are not always seen as the most legitimate to intervene in disputes over those kinds of arrangements. In humanitarian situations, it is essential to work with the institutions that are most relevant to those types of tenure agreements.</i></li> <li>▪ <i>Conflicts and displacement can often overwhelm and/or weaken existing institutions for dispute resolution. Investing in their financial, material, technical capacities as well as increasing their overall human resources (number of people delivering quality services) can be a crucial contribution toward durable solutions.</i></li> <li>▪ <i>Not all dispute resolution institutions are fair or transparent. Women and members of other marginalized communities especially face discrimination when claiming and defending their rights. Where possible, humanitarian actors should work with authorities to improve their fairness and transparency.</i></li> </ul> |

<sup>3</sup> This distrust is rooted in legitimate fears that they might sign a document that actually deprives them of their rights.

<sup>4</sup> Some rights holders may also worry that physical or digital records will increase their chances of being reported to authorities (especially those with informal status in a country, or who may not be paying taxes on rental properties).



Insecure tenure can also come from poor governance and the violation of rights by authorities. **When local authorities are the main violators of rights or abdicate their responsibility to protect rights, humanitarians have a responsibility to intervene to protect the rights of vulnerable parties.**

Lastly, poor governance can also lead to the over-exploitation and degradation of a resource or structure, causing scarcity. This can disproportionately harm more vulnerable rights-holders. Factors such as conflict, natural disasters, and climate change can accelerate these processes of degradation unless concerted action is taken by all affected stakeholders to halt and reverse these effects. These actions may require a reduction in usage and access rights, investments in restoration, and support to governance institutions to improve their capacities and performance.

### **From 'honour' to 'memory'**

*In many communities, verbal agreements are also rooted in people's sense of personal honour and suggestions to 'record' are seen as an affront to this value. One approach to overcome this barrier is to reframe the need for a record as one of fallible memory rather than distrust in their honour.*

*To do this, as you are encouraging parties to choose an appropriate recording method, you can ask them the following questions:*

- *Please try to identify a time where you mis-remembered the lyrics or tune of a song, or the colour of a friend's outfit at a wedding (change as appropriate, but make it low-stakes). In these situations, how did you realise that you had mis-remembered?*
- *What tools or 'records' did you use to correct your memory?*
- *What tools would you like to have at your disposal in the event that you forget or mis-remember a part of this agreement?*

In the case of housing markets, policies and regulations might also be restricting the supply of affordable housing, driving up prices, which negatively affects the security of tenure for the most vulnerable populations. Analyses of housing markets and regulations can therefore be used for advocacy to relieve some of these market pressures. Whether humanitarians are trying to improve governance of housing, water, land or another resource, working on governance issues generally requires a 'Nexus' approach – where humanitarian actors collaborate and work with specialized development actors.

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## SCENARIO

The following scenario is presented to provide readers with a glimpse of how multiple different relationships to housing, land, property, and other resources can overlap in the same space. It is a snapshot, that gives a good, but imperfect understanding of the different rights, responsibilities, and power dynamics at play. The scenario allows readers to imagine how these relationships could change, for better or for worse depending on changes within the circumstances – including the arrival of an NGO that might change part of this dynamic.

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Hamza and Celine are married and have two children, Flora and James. Flora is the eldest and James is the youngest. They live on four hectares of land which Hamza **inherited** when his father passed away. His father **permanent claim** to the land is **recognized through local custom** and the **parcel has been demarcated with fig trees** that were planted at the boundaries. Hamza's father is now buried near the oldest and largest fig tree.

Hamza works as a foreman at a local factory and as the local secretary of the national ruling party. Celine is an entrepreneur and agriculturalist. Through their joint income, they **built a house together** on the parcel of land for them to live in. They also built two more houses on the land so that both Flora and James will have houses of their own when they become adults and have families.



In the meantime, Celine's younger sister (Jacinta), her sisters' husband (Arvind), and three children have been invited to stay in one of the houses at no cost. However, Jacinta and Arvind have agreed to take **responsibility for all maintenance** of the house they are occupying and to assist Hamza and Celine with the upkeep and care of the other buildings and parts of the property. The two households are constantly visiting with one another and it is mutually understood that they can **enter each other's homes** without having to ask for permission. Jacinta and Arvind also understand that **in 15 years, they will have to cede the house** to James when he becomes an adult.

Hamza and Celine have decided that they will use the third house **to generate some income** for their family. They have invited Rosario, who is one of Hamza's employees at a local factory, to live in the house with her three children **in exchange for a monthly payment of 100 dollars**. Rosario is **responsible for keeping the house tidy and repairing any damages** that she or her children might cause, but that Hamza and Celine are **responsible for major structural maintenance** (e.g., fixing cracks in walls, or repairing a leaky roof). If Rosario wants to make any major structural changes to the house, she must **first ask permission** from Hamza and Celine and do so at her own cost. Rosario has also asked for the other households to respect her privacy – the other adults **may not enter her home** without her express permission (except in emergencies), although **the children** from all households **are welcome to come and go** since they often play together. They have not set a specific timeline for their agreement, other than the knowledge that in 13 years, **the house will be transferred** to Flora when she becomes an adult. They also have mutually agreed that if either party wishes to terminate the agreement before then, they should give the other party a **three-month notice**.



The three families share a common latrine which is located near Hamza and Celine's house. The **responsibility to clean the latrine** rotates between the three households once per month. Each household also contributes 1/3 of the money to pay when the time comes for a company to remove the waste. However, Hamza and Celine have the overall **responsibility to maintain the structure**.

Throughout the parcel, Celine has planted a variety of fruit trees. When the fruits are ripe, she and Jacinta **work together to harvest the trees and process** the fruits into juices and jams. They each **keep a share for their own consumption** and sell the rest of the juices and jams at a kiosk that Celine has built at the edge of the property by the road. They **share the proceeds of the sales** equally. All three households each have a small kitchen garden for vegetables, which they **separately maintain for their own household consumption**. They occasionally give surplus vegetables to one another or sell them at the kiosk. Each person keeps the **proceeds from the sales** of their own produce.



### Practice-based questions:

1. **What are the main tenure agreements in this scenario?**
2. **Within these different agreements are the parties' respective rights and responsibilities clear?**
  - *What could be clarified?*
3. **Are the parties' rights and responsibilities fairly balanced within the different agreements?**
  - *What aspects might be imbalanced?*
  - *Where would you need more information?*
4. **How do you think the different parties might perceive their security of tenure?**
  - *What factors might come into play?*
  - *How might perceptions of secure tenure vary between the women and men within the same households?*
  - *How might perceptions of secure tenure vary between women from the different households?*
  - *How might perceptions of secure tenure vary between men from the different households?*
  - *How might security of tenure change the parties if one of the parties became severely ill, or experienced a debilitating injury, or died? How would a similar incident affect different parties differently, based on their tenure?*
5. **How do you think these relationships would change if this community was hosting IDPs, and the government decided to settle some IDPs on the parcel of land described in this scenario?**
6. **How do you think these relationships would change if conflict came to this community and Hamza, Celine, Flora, and James were forced to flee and are displaced for an extended time?**
7. **How do you think these relationships would change if there was a flood or landslide that damaged or destroyed some of houses in this scenario, the kitchen gardens, and the some of the trees?**
8. **What institutions might need to play a role in resolving disputes that arise between any of these parties? Would these institutions be different depending on whom the dispute is between or what resource the dispute is about?**
9. **Even without displacement, let's say that an NGO has offered to build a borehole for the community and have identified that the ideal location for the borehole would be on this parcel. One of the fig trees on the boundary would have to be cut down, as well as several fruit trees.**
  - *How might that land be fairly and securely allocated for the whole communities' use?*
  - *What legitimate concerns and might the parties identified in the scenario have that would need to be addressed?*

# ANNEX

## Making Tenure “Work” For Livelihoods and Food Security

*This annex applies the various tools from the Demystifying Tenure document to a series of livelihoods scenarios, to demonstrate to LFS practitioners how to apply a ‘tenure’ lens to their practice.*

### SCENARIO 1

*Revisiting Hamza, Celine, Jacinta and Rosario.*

In the scenario from the main guidance document, two sets of relationships illustrate how tenure, livelihoods, and food security intersect. The first relationship is described as follows:

*“Hamza and Celine have decided that they will use the third house **to generate some income** for their family. [The goal is for their daughter, Flora to move into the house when she’s an adult] They have invited Rosario, who is one of Hamza’s employees at a local factory, to live in the house with her three children **in exchange for a monthly payment of 100 dollars**. Rosario also has a small kitchen garden for vegetables, which she maintains for her own household’s consumption. The families occasionally give surplus vegetables to one another or sell them at the kiosk. Each person keeps the proceeds from the sales of their own produce.”*

The nature of this agreement is not clear – it could be informal or they could have a written document that has been formally registered with the municipality. **This case is particularly interesting because the tenure to the same building (the house which Rosario lives in) and parcel of land (kitchen garden) is experienced in very different ways by the different rights-holders.** For Rosario, this building crucially represents a shelter in a town she has just moved to for work. Beyond a shelter, it also represents a place that could become a home for her and her children for the next several years, where they feel safe and part of a community. The kitchen garden is also a source of additional food security for Rosario’s household and a minor source of secondary income.

From Hamza and Celine’s perspective, the building is an investment toward securing their children’s future housing. In the interim, having Rosario occupy it and pay money for its use allows Hamza and Celine to, at minimum, cover the costs of maintaining the building until their child is old enough to move in. Beyond the maintenance costs, the revenue could also be used to recover the costs of building the structure – which would be particularly urgent if they took out loans that they need to repay. If these costs have been recovered, then whatever remains from the payment would be a supplement to their other sources of household income, and therefore **constitute a secondary livelihood**. At the moment, the parcel of land that Rosario uses for

her kitchen garden is 'surplus land' for Celine and Hamza. The tenure agreement between them never explicitly addressed whether the kitchen garden is part of the house Rosario is renting, or whether the use of the garden is separate from the house, but is simply at no extra cost.

**Understanding the different ways that the same building, parcel of land, or resource is experienced by different rights-holders is essential to understanding the relationship and what motivates them.**

Here is a snapshot of the second livelihoods and food security-based tenure relationship:

*"Throughout the parcel, Celine has planted a variety of fruit trees. When the fruits are ripe, she and [her sister] Jacinta **work together to harvest the trees and process** the fruits into juices and jams. They each **keep a share for their own consumption** and sell the rest of the juices and jams at a kiosk that Celine has built at the edge of the property by the road. They **share the proceeds of the sales** equally."*

For the trees and the kiosk, the tenure agreement between the two sisters seems to be informal but seems to be a centrepiece of both women's livelihoods. However, Celine's right to the trees and kiosk is intertwined with her and Hamza's shared rights to the land. Depending on the legal system (religious, customary, or formal) that governs marriage, whether the land is registered under those systems and if so, under whose names, may all have an impact on Celine's rights and responsibilities. The table on the **next page** examines the tenure agreement between Celine and Jacinta to illustrate how humanitarians can use this as a tool to analyze tenure relationships.

**Jacinta's security of tenure to the trees and the kiosks, and even the house she occupies are dependent on her relationship with her sister**, as well as Celine's good management of the trees and kiosk. As long as they have a good relationship, she may perceive her security of tenure to be strong. However, if the trees get sick, or the kiosk falls apart from neglect, then this might affect Jacinta's security of tenure and her income. If Jacinta starts to have disagreements with Celine and Celine wishes to extinguish Jacinta's right to use the trees and the kiosk, Jacinta does not have any legal protection because the agreement is informal. However, she may have social protections if a community member or a family member intervenes to resolve the dispute. Depending on that third parties' influence over both sisters, this may or may not be sufficient.

As previously mentioned, **the security of Celine's relationship to the trees and kiosk are connected less are deeply bound to her relationship with Hamza, more than with Jacinta.** If Hamza dies or if they get divorced, the way a woman's rights are recognized and protected by those legal systems could have major impacts on Celine's security of tenure and therefore on her livelihood. Of course, if Celine's security of tenure is weakened or threatened, this also has a direct impact on Jacinta's security of tenure as well.

**Practice-based guidance questions:**

*An NGO that supports women-owned business wants to work with Celine and Jacinta so that their processing of the fruits into jams and juices complies with government food preparation regulations. This would allow them to access a wider market than just the roadside kiosk, but would require building a commercial kitchen for them to use. There are two options for building the kitchen.*

*First option would be to build on the part of Celine and Hamza's land that is currently being used for the three household's gardens.*







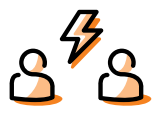
*The second option would be to build on a nearby lot which the government has reserved for commercial development projects. Building on the lot would require them to sign a minimum 10-year agreement (potentially renewable) with the government.*

*What land and natural resource tenure issues should the NGO take into consideration when counseling Celine and Jacinta on what steps to take? What should the own NGO's tenure-based criteria be to even go forward with the project?*

## ANALYSIS OF THE TENURE ARRANGEMENT

|               |   |                |
|---------------|---|----------------|
| <b>WHERE?</b> | The fruit trees on Celine & Hamza's land and the roadside kiosk |                |
| <b>WHO?</b>   | <b>Celine</b>   | <b>Jacinta</b> |

### WHAT RIGHTS & RESPONSIBILITIES

|  |  |  |
|--|--|--|
| <p><b>USE OR BENEFIT</b></p>                  | <ul style="list-style-type: none"> <li>Right to use of fruits for domestic consumption</li> <li>Right to transform and sell fruit products for income.</li> <li>Right to use the kiosk to sell products.</li> <li>Responsibility to equally share proceeds of sales with Jacinta.</li> <li>Responsibility to care for the trees (pruning, pest control, etc.)</li> <li>Responsibility to keep the kiosk clean and tidy.</li> </ul> | <ul style="list-style-type: none"> <li>Right to use of fruits for domestic consumption</li> <li>Right to transform and sell fruit products for income.</li> <li>Right to use the kiosk to sell products</li> <li>Responsibility to equally share proceeds of sales with Celine.</li> <li>Responsibility to care for the trees (pruning, pest control, etc.)</li> <li>Responsibility to keep kiosk clean and tidy.</li> </ul> |
| <p><b>EXCLUSION</b></p>                       | <ul style="list-style-type: none"> <li>Celine seems to have the right to determine who uses the trees and who does not.</li> </ul>   | <ul style="list-style-type: none"> <li>Does not seem to have exclusion rights nor responsibilities</li> </ul>  |
| <p><b>TRANSFER</b></p>                       | <ul style="list-style-type: none"> <li>Presumably, Celine intends to transfer the trees to her children through inheritance.</li> <li>If she wanted to transfer the land on which the trees are rooted to a non-family member, she would have to do so with Hamza's agreement, should consult Jacinta.</li> </ul>  | <ul style="list-style-type: none"> <li>Does not seem to have any transfer rights nor responsibilities.</li> </ul>  |
| <p><b>MANAGEMENT</b></p>                    | <ul style="list-style-type: none"> <li>Celine has the right &amp; responsibility to decide how to care for the trees, what species/varieties to plant, and if necessary, which ones to cut down.</li> <li>Celine also has the right and responsibility to maintain the structural integrity of the kiosk, through modifications, renovation, or even dismantling it.</li> </ul>  | <ul style="list-style-type: none"> <li>Might be consulted in management decisions.</li> </ul>  |
| <p><b>FOR HOW LONG?</b></p>                 | <ul style="list-style-type: none"> <li>Celine's rights to the trees and kiosk are not time-bound. Her rights to the land and therefore the trees are based on marriage with Hamza.</li> </ul>  | <ul style="list-style-type: none"> <li>Jacinta's use of the trees and kiosk seems tied to her occupation of the house on Celine and Hamza's land. However, there may be a possibility for Jacinta to be able to continue using and benefitting from the trees even once they leave the house, but this would have to be clarified.</li> </ul>  |
| <p><b>DUE PROCESS AND COMPENSATION</b></p>  | <ul style="list-style-type: none"> <li>Celine has a responsibility to consult her sister before extinguishing or reducing Jacinta's rights.</li> </ul>   | <ul style="list-style-type: none"> <li>Since this agreement is informal, Jacinta does not have an established right, but she should be consulted before her rights are reduced or extinguished.</li> </ul>   |
| <p><b>DISPUTE RESOLUTION</b></p>            | <ul style="list-style-type: none"> <li>There does not seem to be an established dispute resolution mechanism. Since they are related and the agreement seems to be informal, a relative or trusted community leader could presumably help resolve any issues that arise between Celine and Jacinta.</li> </ul>   |  |

## SCENARIO 2

After a few years of informally lending each other carpentry tools, a group of six friends who all work as day labourers in the construction sector and artisanal carpenters have decided to pool their equipment and resources into a shared workshop space to reduce their costs. Of the six, four are refugees (Jamie, Yolanda, Ekaterina, and Marcos) and two are from the host community (Fatima and Zura).

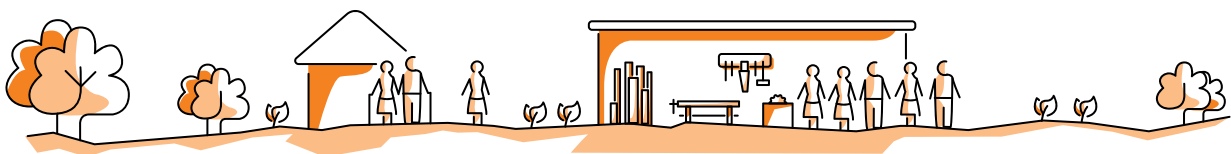
The group has decided to use Zura's workshop, which is located on a **property that has been in her family for generations**. The workshop is spacious and will allow them to store their tools and materials, as well as to use the space for their projects. Zura has **not asked for any fee** from the others for their use of the space, since she knows that she is benefitting from everyone's contributions to the common pool of tools. She has asked all of the others to **contribute to paying the electricity bill**, which shares a meter with the family home and to keep the workshop clean and tidy. She has also asked the others to keep to the workshop (not go into the yard of the house) and **to avoid working late at night** to not disturb her elderly parents.

To improve the speed and quality of their work, they have pooled money to buy a portable table saw and a workbench. Each of them **contributed equal funds to buy the material** – Yolanda, Ekaterina, Jamie, and Zura all contributed from their savings while Marcos and Fatima borrowed money from a micro-credit agency. They all agree to **maintain these and the other common tools** – and have set a schedule to evenly distribute the responsibilities for cleaning and sharpening the tools.

They still mainly use the space for their individual projects and sometimes encounter situations where more than one person needs the same tool at the same time, which can occasionally be a source of friction, but they **usually find a quick resolution themselves**.

They are considering registering their business in order to be able to bid on larger contracts together, acquire health insurance, and to be **eligible for bank loans** so that they can continue to upgrade the workshop and equipment to be more competitive.

Because of national employment laws, the four who have refugee status are not allowed to be employed – all of their previous jobs have been as informal contractors or as unregistered self-employed artisans with limited protections. As individuals who do not have permanent residency nor citizenship, they are also not allowed to **having permanent rights ('ownership') to immobile property such as land and buildings**. However, the laws do allow for non-nationals (the law does not specifically exclude refugees from this) to start and own their own businesses. For incorporated businesses, **at least 25% of the ownership shares** must be held by someone with citizenship from the host country.



## Practice-based questions:

An NGO that supports small and medium enterprises has identified them as good candidates for providing support to develop their business plan. Since their arrangement is currently informal, one of the first steps will be to formalize the business, which will also require the parties to formalize their rights and responsibilities to one another, and relating to the various assets that they are using.

Before considering how to formalize the business, the parties must follow some key steps, which include:

### 1. Clarifying their main objectives for this business. Are they looking to?

- a. Maximize their profit?
- b. Pool assets / offset individual costs?
- c. Create and control their employment status?
- d. Distribute risks?
- e. Access benefits like health insurance?

### 6. How do they want to make decisions and govern the business (and its assets)?

- a. Collaboratively/Equally?
- b. Based on contributions of equity?
- c. Based on contributions of labour?
- d. Alone?

### 5. Take inventory of the assets and liabilities they have and clarify if/how their relationship to these assets will change under the new structure. The assets thus far include:

- The tools they each individually bought before coming together. These are of variable value and quality.
  - The tools that they all purchased together (table saw and workbench). Jamie and Zura both have individual liabilities for the micro-loans they withdrew for their contribution to purchase the saw and workbench.
  - The workshop on Zura's family's land. This land is free from any mortgages.
- a. Will any of these assets and liabilities be transferred to the business entity or other parties (in the case of a partnership)?
  - b. Which assets will remain under the control of the individuals or other parties (such as Zura's family)?
  - c. Which of these can be used as collateral for future loans for the business?
  - d. How will assets that degrade/depreciate over time through normal use be replaced?

Based on the answers to these questions, the parties must then choose the most appropriate legal structure to organize themselves. Within the laws of the community where they will operate the business, there are four potential legal structures for the business:

**Non-incorporated:** The business is not registered as a rights-holding entity. The control of any assets in a non-incorporated business remains with the individual parties. Therefore, the parties must use their personal assets to access credit and remain personally liable for any legal risks.

- **Sole proprietorship:** This is a formal registration of self-employment. All of the businesses' assets are fully 'owned' or under the control of one individual. The individual enters into contracts with other parties to deliver services or can sell goods. All profits of the business go to that individual. Others may enter into contracts with the proprietor to use their services or their assets.
- **General partnership:** This is an association of persons who wish to enter into business together, including but not limited to mutualizing some common resources (such as a workspace, assets, or a shared administrative staff). Their partnership is governed by a legal agreement that determines the sharing of revenues, expenses, and responsibilities. The agreement can also clarify which parties control which assets and which are collectively controlled. Depending on the type of partnership, the partners may continue to offer services to different clients. However, liability is typically shared amongst the partners as individuals.



**Incorporated:** The business is a legal entity separate from its owners with distinct legal rights and responsibilities. The business can therefore legally control property, enter into contracts with other legal entities, take out loans, be taxed, and be held liable for damages or losses. Shareholders of incorporated businesses are more insulated from liabilities than owners of non-incorporated businesses.

- **Cooperative:** A form of incorporation where the members (workers and/or users of services) own the shares of the business. No one person can have a majority of shares, although some may own more shares than others based on the equity they contribute. Even if one party owns more than one share, they do not get more than one vote in decisions about the company or in the election of the board of directors – the objective of this structure is to be democratic and to increase accountability to members. Profits can be put into the companies' reserve for reinvestment into the company, and/or distributed as dividends or benefits for shareholders. Depending on how the business is organized, members may also be employees with a formalised employment status or may work for the business as contractors, in addition to being owners.
- **Private Corporation:** A form of incorporation where parties hold ownership shares proportionally to the equity they have contributed. Decision-making is also allocated based on the proportional control of shares, so one person who holds a majority of shares would have a more powerful vote than five people combined who hold a minority of shares. Profits can be re-invested into the company reserve and/or paid out to shareholders based on the proportion of shares they hold. Depending on how the business is organized, members may also be employees with a formalised employment status or may work for the business as contractors, in addition to being owners.

**Based on the available information – how would you counsel the members of the carpentry workshop regarding the various options they have for organizing their assets, liabilities (current and future), and governance?**

## KEY RESOURCES:

### Land, property, and natural resource tenure for rural landscapes:

- [Land, Property and Natural Resources in LFS landing page](#)
- [Exploring Property Rights and Tenure in Integrated Landscape Management](#)
- [What is Land Tenure? \(USAID\)](#)
- [Exploring the Concept of Water Tenure \(FAO\)](#)
- [Land Tenure in a Just Rural Transition: Restoring our Relationships to Land and Natural Resources](#)

### Ownership and internal governance of businesses:

- [Cooperative Equity and Ownership: An Introduction](#)
- [How to Choose the Right Business Structure](#)
- [Entrepreneurial Compass](#) (Available in French as well)