

## Chapter 3: Specific groups and tenure



*Tenure security can vary depending on gender or age, whether the location is urban or rural, whether property is owned or rented, and whether a natural disaster or conflict has affected tenure. Insecure tenure is not a one-size-fits-all problem. This chapter seeks to explore secure tenure within these specifics.*

## Tenure security: How it affects women and children<sup>29</sup>

Improving tenure security for women is important for several reasons. First, traditional protections for women are failing in many parts of the world. Historically, customs in many countries gave women access to land through their relationship to a male family member, a husband or father. Under pressure from extreme poverty, crumbling traditional family structures, urbanization, death and illness due to HIV/AIDS, and rising urban land values, customary rules that once helped to protect women's access (if not their right) to land and housing in the past are often weakened. Sometimes this happens because women lose their connection to a male family member (e.g., the husband dies of AIDS, migrates to the city, or divorces his wife). Extreme poverty often prevents birth families from taking in female relatives who have lost housing with their husband. In other cases, men unilaterally decide to sell the family's house and land to profit from rising land values. This means that in many countries, a woman's access to housing through a household male's rights to that housing is less secure now than ever before.

Second, households headed by females—especially single mothers, girls, widows, divorcees, wives of migrant workers and women who are older or have a disability—are considered among the most socially and economically vulnerable. These households are at an even greater disadvantage if they lack secure tenure to their housing.<sup>30</sup>

Third, women often experience the damage from insecure tenure and inadequate housing more deeply than men. Women without secure tenure have fewer economic options making them and their children more likely to face homelessness, poverty and violence. Poverty can also encourage high-risk behavior such as having unsafe sex for money, housing, food or education.<sup>31</sup> Women who are unlikely to receive rights to their land and housing upon divorce or separation are more likely to remain in abusive relationships.<sup>32</sup>

Fourth, improving tenure security for women gives children added security to their home. Research shows forced eviction wreaks havoc on the physical, mental and emotional health of children, creating a level of trauma similar to that experienced in war. Unfortunately, evictions often strategically take place when women and children—but not men—are likely to be at home. When women have strong tenure security, children are less likely to be evicted and more likely to benefit from improvements to the home and land made by their mother. Children are also more likely to have better access to healthy and adequate food and educational opportunities when women control the household's economic assets, including housing.

## Discrimination in inheritance, divorce

Customary laws and practices often discriminate against women in inheritance of housing rights. In some parts of Africa, for example, even where formal laws require women take some portion of the housing estate upon death of the husband or father, customary practices and social pressure usually preclude this. Under many customary practices in the region, in-laws evict a widow from her house upon death of the husband. Muslim traditions typically allow women to inherit housing rights although in smaller shares than those designated to comparable male heirs. Both formal laws and customary norms in many countries discriminate against women in the event of divorce, separation or desertion.

## Law and practice toward women

Written laws often fall short of adequately protecting women's tenure rights. Often countries that protect women's housing rights in their constitutions or laws do so only partially, leaving many ambiguities and contradictions to undermine these rights.<sup>33</sup> For example, legislation often excludes from protection large groups of women, including unmarried women, women in cohabitation, and women married under certain religious or customary regimes.<sup>34</sup> The lack of representation by women on decision-making bodies and courts often perpetuates discriminatory practices. In many developing countries, the "head of household" is the person legally designated to manage and transact household business with the greater community. Under written, customary and religious laws, this head of household is almost always male. Although formal laws giving authority to the head of household may appear gender-neutral on their face, they in fact bestow authority within the household exclusively to the husband.<sup>35</sup> Rights held by a household may not be rights held by the woman of the house.

In some countries, formal national laws explicitly discriminate against women. In Swaziland, for example, laws prohibit a married woman from registering a title in her name. The laws in some countries consider married women "minors," unable to enter contractual obligations without an accompanying male relative. In other cases, laws prohibit married women from entering into contracts without authorization of the husband or other male relative.<sup>36</sup>

Where formal, written laws do establish women's housing rights, they are seldom enforced for a variety of reasons. Women may be illiterate or unaware of their rights, and policymakers may fail to disseminate laws to reach women. Even if women do recognize their rights, they are often not able to assert them. Women frequently lack access to lawyers, legal aid and unbiased courts and are unable to seek redress even if they know that a right has been violated.<sup>37</sup>

Land and housing reform and improvement programs, including regularization and titling, can jeopardize women's housing rights. Women's housing rights and access are at risk in at least three housing and land rights "improvements": (1) individualization of communal property rights that may have benefited women; (2) titling programs granting property rights to the head of household (or allowing for



co-ownership or joint ownership but requiring consensus by both spouses or some other condition that in practice keeps women from benefiting from enhanced rights); and (3) slum upgrading programs that occur in a liquid housing market, because men are more likely to unilaterally decide to sell the family home in this circumstance.<sup>38</sup>

### **Disasters often worse for women**

In post-disaster rehabilitation and reconstruction, women face particular hurdles to secure tenure and shelter. Women usually stay in temporary shelters and camps for a longer time, often lacking basic shelter and being subjected to violence. Women are not fairly represented on relief teams and reconstruction policies, explaining why very little rehabilitative efforts adequately reflect women's concerns. Not surprisingly, compensation for damaged or destroyed shelter seldom reaches entitled women, but is allocated instead to male relatives. Furthermore, rights to land and housing allocated through shelter reconstruction programs are sometimes transferred to the male head-of-household, leaving the women of the household without any formal rights. This may be true of housing donated by assistance organizations, and of land rights from the government. In Aceh, Indonesia, for example, the Reconstruction of Aceh Land Administration System project, designed and supported by the World Bank, allowed for but did not require joint titling of land parcels.<sup>39</sup> Initial reports indicate that less than 5 percent of the 20,000 land parcels transferred to individual households by May 2007 were recorded in the name of both husband and wife.<sup>40</sup> Most are recorded in the name of the man only.



# Renters and insecure tenure



The private rental market is an important option for the poor in many parts of the world.<sup>41</sup> In most regions, rentals offer less expensive housing, are nearer to urban centers and are more flexible for households in the midst of a rural-urban transition or that need mobility to make a living.<sup>42</sup> For those living in extreme poverty, owning a house will probably never be a viable financial option. Renting or shared housing increasingly may become the only options to the poor in fast-growing urban centers due to the rapid decrease in “free” or inexpensive land on which to build informally. For example, in Nairobi, Kenya, and Cairo, Egypt, poor families cannot afford even the cheapest illegally subdivided plot, and squatting is no longer an option.<sup>43</sup>

While ownership generally offers more tenure security than renting, renting can provide an acceptable protection given the right political and legislative environments. Also, long-term rental agreements can provide some of the same tenure security benefits of ownership, such as the stability to invest in a home-based business. Healthy housing markets will contain a number of secure options, including ownership and renting.

**Table 2: Percentage of renters by region<sup>44</sup>**

Region	% of renters
Southern Africa	16 %
Rest of Africa	30 %
China	2%
East Asia and Pacific, excluding Australia	26%
South and Southeast Asia	31%
Middle East	28 %
Western Europe	19 %
North America and Australasia	10 %
Latin America and the Caribbean	17 %
World	17 %

The percentage of the population that rents varies considerably in different regions of the world, with rates especially high in urban centers. The percentage of renters in some major urban areas in developing countries is more than 70 percent.<sup>45</sup> Prevalence of one form of tenure over another does not necessarily correspond with the overall wealth in a given city or country. While many of the world's poorest rent, so do some of the world's most well-off. Renting attracts a significant portion of the housing market in some of the world's richest cities.

In the developing world, most rental housing for the poor exists in the informal sector, where it operates without regulation. Landlords seldom use contracts or pay taxes on rental income and what legislation does exist is not enforced. In this context, tenure security for renters often depends on the social relationship between landlord and tenant. While perceived and actual tenure security may be quite strong among tenants of small-scale landlords,<sup>46</sup> the opposite is often true among tenants of large-scale absentee landlords or "slum lords".

In rental markets, one of the greatest challenges to improving secure tenure for the poor is how to do so and keep rent affordable. Low rental market prices reflect the lack of regulation and security in these markets, especially in the informal sector. If tenure security improves without a corresponding improvement in the income level of the poor, rising prices are likely to displace the poor from their current rental homes. For example, if a landlord must pay for the increased tenure security through titling and registration requirements, he will more than likely pass those costs on to tenants.

Programs and policies to improve tenure security have focused almost exclusively on housing ownership, rather than on renting. In some instances, efforts to improve tenure security for homeowners have come at the expense of renters, who may be displaced as home values rise.<sup>47</sup>

### High costs keep low-income renters from city centers<sup>48</sup>



Although low-income households in many developed countries enjoy a relatively high level of legal protection for tenure security,<sup>49</sup> they are increasingly excluded from urban centers due to soaring urban land values.

When the supply of private rental housing constricts, low-income households are the first to lose out. For example, the combination of high urban land values and low home mortgage rates in many U.S. cities in the last decade has fueled the massive conversion of rental apartments to condominium units, leaving low- and middle-income people with few affordable rental options near city centers.

In affluent countries in Asia and the Pacific region, such as Australia, New Zealand and Japan, low-income people face increasing difficulty in the private rental sector. A 2002 parliamentary report from Australia notes that housing affordability is at an "all-time low," resulting in a continuing decline of low-income housing stock, which affects private sector renters most severely. Other consequences include homelessness and overcrowding.

# Rural poverty feeds tenure problems



Research into the causes and dynamics of rural poverty frequently confirms a close correlation between secure land access and poverty levels around the world. In fact, about half of those living in rural areas suffer from some form of tenure insecurity. Because land rights underpin most rights to other resources, access and security of tenure is at the heart of the rural poor's ability to subsist, earn an income and overcome poverty.<sup>50</sup>

Pastoralists and indigenous people, two rurally based groups generally living on or using communal lands, common property or open access areas, are especially affected by tenure insecurity. These and other groups living in rural areas in developing countries are at the mercy of the following trends which continually derail their chances to strengthen their tenure :

- Large-scale projects like dams and mining result in the loss of homes and livelihoods and can also lead to forced evictions and forced migration.
- Globalization has increased the sphere of private property and private responsibility while decreasing government's role with respect to the private sector and civil society.<sup>51</sup>
- Decentralization, which has devolved land management to local authorities in rural areas, can undermine the tenure security of the rural poor when it doesn't lead to accountable, representative local institutions or transfer meaningful power to them.<sup>52</sup>
- The rural poor's ability to participate in decisions that affect their lives is often limited by more powerful and politically connected parties with interests in the same land resources.
- Overlapping claims, land grabbing and conflicts over land abound.

## Secure tenure—a way out of poverty in India



Almost 80 percent of the Indian poor live in rural areas. India has the largest number of poor people on the planet, as well as the greatest concentration of rural households—17 million in total—that are totally landless. Research by the Rural Development Institute (RDI) in India has shown that house-and-garden plots as small as 1/15th of an acre can produce substantial benefits for formerly landless families, including improved nutrition and health, increased income, access to credit, and community status.

Jiyappa and his family live on a 5,400 square foot house-and-garden plot they have owned since 1993 in the Indian state of Andhra Pradesh. Jiyappa is a former bonded laborer—an indentured servant who lived and worked in his master's house and farm fields in exchange for basic food, a primitive shelter and 700 rupees (US\$16) per year. That was before he was hired by the Deccan Development Society (DDS), a local NGO working to economically empower the poorest of the rural poor. In 1993, the DDS employee's association helped Jiyappa and fellow DDS workers purchase small house-and-garden plots of about 1/10th of an acre.

Jiyappa, his wife and three of their six children now live in a small house they have constructed on the plot. The plot produces 90 percent of the family's annual vegetable and fruit needs, plus 6,000 rupees (US\$133) a year from the sale of what they can't eat themselves. The 20 chickens the family keeps on the plot help feed the family and earn about 3,000 rupees (US\$67) a year from the sale of poultry and eggs. When their teak trees begin to reach maturity, the wood from each tree will fetch at least 25,000 rupees (US\$556), giving the family's 42 trees a total value of roughly 1,050,000 rupees (US\$23,333) in today's rupees/dollars—an enormous sum for a poor, rural family in India.

Through micro-ownership of house-and-garden plots, agricultural laborers throughout India have been able to increase their income, family nutrition and status. Strong supporting evidence on the benefits of owning small house-and-garden plots exists from such diverse settings as Russia, Indonesia, and the Caribbean as well.

*Source: The Rural Development Institute*

# The urban challenge: Unprecedented growth



The year 2007 marked a turning point in human history: for the first time ever, more people lived in cities and towns than in rural areas. Many—if not most—new urban residents live in slums.<sup>53</sup> In fact, nearly one-third of the people living in cities around the world live in slums. In some countries 90 percent of the urban populations live in slums.<sup>54</sup>

Tenure security for the urban poor is deteriorating; as land values within cities continue to increase, affordable land becomes increasingly scarce, and housing solutions are increasingly left to market forces. Urban population densities, land values and competition over land rights are much higher than in rural areas—increasing the potential for disputes and heightening the risk of conflict.

Additionally, the attitudes of local and national governments toward the urban poor are becoming increasingly intolerant. Many governments are receiving pressure to “beautify” their cities in order to become more competitive in the global economy—an economy in which the gap between the rich and poor has

widened and the price of land has increased drastically. More and more, the poor are being forcibly evicted and pushed to the edge of cities to unplanned and poorly serviced areas.<sup>55</sup>

Evidence also indicates society-wide economic growth can make it more difficult for the poor to access secure and affordable housing. The economic boom in China, for instance, has significantly reduced secure tenure for urban residents. Some 50 million urban residents (not including migrant workers), are subject to eviction from affordable homes they have occupied for decades and are unable to find, much less afford, new housing.<sup>56</sup> In metropolitan Manila in the Philippines, a formerly successful state poverty housing and tenure security program is no longer viable in highly urbanized areas due to the scarcity of affordable land.<sup>57</sup>

The number and form of evictions varies throughout the world. The magnitude of urban evictions is currently highest in sub-Saharan African cities where outdated colonial laws prohibit many of the housing practices most often used by the poor to live in the city.

In Asian cities, strong civil society action and better laws have improved the tenure status of slum dwellers; however, globalization pressures exist in many of the more economically successful cities and land and housing prices are escalating, which could lead to further evictions and socio-economic exclusion.

In the cities of Latin America, progressive slum upgrading and regularization programs have increased the tenure security of the urban poor, but evidence suggests that the most vulnerable groups are not being reached.<sup>58</sup>

Because the formal housing market in urban areas is neither affordable nor accessible to the urban poor, an increasing number of people have no choice but illegal or informal land markets. Many governments now accept the inevitability of the informal settlements much more than ever before.

Many international finance institutions and aid agencies have emphasized urban development options that meet the interests of governments and formal private investors, primarily through regularization programs that involve the allocation of property titles.<sup>59</sup> Yet examples from around the world show that formal titling is just one option, and not necessarily the best option, for helping the urban poor gain secure tenure. While titling has benefited many slum communities, it has not lifted them from poverty. In many cases, incremental approaches based on the right to a secure livelihood have proven to be more effective in the long-term.<sup>60</sup>



# Natural disasters add to tenure insecurity



Natural disasters affect about 188 million people each year.<sup>61</sup> Poor and marginalized communities, including those without secure tenure to their homes, are among the most vulnerable. In a recent survey of humanitarian and development professionals conducted by the International Institute for Sustainable Development, respondents agreed “clarity over private and communal land ownership is key to the effective reconstruction of disaster-affected regions.”<sup>62</sup> Having a secure “sense of home” helps disaster victims deal with psychological trauma and allows individuals and communities to focus on rebuilding their homes and their livelihoods. Secure tenure also helps people to more quickly move away from life in refugee camps and dependency on humanitarian assistance.

Unfortunately, the poor seldom realize the benefits of secure tenure in the wake of a natural disaster. Rather, tenure insecurity prior to a disaster often compounds the disaster in poor communities. Tenure insecurity following a disaster can slow or prevent shelter assistance and the long-term development potential for affected families and communities.

**Because the poor cannot afford regulated, tenured housing markets in urban areas, they are more vulnerable to death, injury or housing loss from natural disasters.**

Poor people living in unregulated squatter settlements are more prone to death, injury and loss of housing after a disaster for a variety of reasons. First, squatter settlements are often located in areas vulnerable to natural disasters, such as steep slopes and flood plains. Squatters on the banks of the Lyari River in Karachi, Pakistan, for example, lose life and property to frequent flooding, as do the people living in 300 slums alongside waterways in Colombo, Sri Lanka.<sup>63</sup> Informal settlements are often located on marginal lands not included in government surveys and disaster risk assessments.<sup>64</sup>

Second, housing in informal settlements most often does not comply with construction and safety standards and is usually unable to withstand the force of a natural disaster. When one

of these disasters strikes, it commonly affects a high number of people because informal settlements have no density regulations and are usually overcrowded due to the high demand for affordable housing.

Third, when clear and strong land rights exist, people are encouraged to invest in disaster mitigation measures for their house and land. Such measures include constructing windbreaks, building flood barriers and using better materials and sound construction methods for their homes.<sup>65</sup> When people live with the threat of eviction, they are less likely to invest in these life- and property-saving measures.

### **Disasters bring new fear of eviction**

Because the poor often lack documented, registered tenure rights to land and housing, disasters often bring new threats to their underlying claims and they may not be able to access critically needed shelter assistance.<sup>66</sup>

The 2004 Indian Ocean tsunami killed more than 180,000 people and left at least 1.8 million people homeless.<sup>67</sup> Most of the damage occurred in Indonesia, Sri Lanka, India, Thailand and the Maldives. Many of the affected families had lived for years along the coastlines of these countries in fishing villages without formal, registered tenure rights. Of the 300,000 land parcels affected by the tsunami in Aceh and North Sumatra, Indonesia, only 60,000 were titled.<sup>68</sup> When families finally returned to their coastal lands to begin rebuilding, they were faced with yet another threat, this time to their tenure security. In some cases this threat came from de jure, or legally recognized, owners of the land who saw damage and destruction of houses built by squatters as an opportunity to permanently evict them. In other cases the threat came from the government, in the form of a “coastal building regulation zone,” prohibiting families from rebuilding their houses on land within a specified distance from the coastline. In Thailand, Sri Lanka and India, these regulations resulted in plans to evict many of the poorest coastal communities.<sup>69</sup>

Due to the fear of displacement, people often try to remain on, or return to, their land after a natural disaster. Following the tsunami, many coastal people disregarded safety





warnings and returned to their land in order to establish a physical presence of some sort and reduce the chances of eviction. In northern Pakistan, approximately 70,000 people remained in their “devastated and remote” villages in the mountains following earthquakes in Bam (2003) and Kashmir (2005) for as long as possible in order to defend their property rights.

**Destruction of tenure rights documentation and registration services can slow shelter recovery following a disaster.**

Sometimes disasters destroy records of tenure by physically wiping out registration documents, personal identification documents, physical boundary markers and even the institutions charged with keeping track of tenure rights.<sup>70</sup> This was the case in the Indian Ocean tsunami, which killed up to 30 percent of the staff of the National Land Registry (BPN) offices in Banda Aceh, left four BPN offices severely damaged and two BPN offices completely destroyed.<sup>71</sup>

**Tenure insecurity may delay or prevent needed shelter assistance in post-disaster reconstruction.**

Individuals and organizations choosing to rebuild on land with shaky tenure rights in a post-disaster environment risk increased vulnerability.

If communities rebuild on land to which they have weak legal claim the land may later be taken away—leaving them worse off than before. And if government, humanitarian and development agencies are not aware of or ignore such local land ownership systems, they risk increasing disaster vulnerability.<sup>72</sup>

The absence of secure tenure has the potential to delay or shut down post-disaster shelter assistance. Perhaps the worst impact of tenure insecurity for disaster victims is that it may prevent them from getting needed aid. Governments and assistance organizations often condition aid on proof of secure land ownership. Also, some programs offering credit to households for reconstruction exclude those who cannot offer documented tenure rights as collateral.<sup>73</sup> Women may suffer most profoundly from the use of land and housing

rights as leverage for reconstruction aid, since they often lack clearly defined rights within their household.<sup>74</sup>

Not surprisingly, renters and squatters typically cannot get permanent shelter assistance in post-disaster reconstruction efforts and remain in temporary camps for long periods of time because finding housing is difficult due to the reduced supply of affordable rentals.<sup>75</sup>

When a disaster damages or destroys tenure records, or when these records were not well-documented to begin with, governments, aid organizations and communities must act quickly to reestablish land rights. While systematic titling may prove useful in the long term, it is far too cumbersome and time-consuming to use as a prerequisite to post-disaster housing reconstruction.<sup>76</sup> A better approach may be community mapping, creating a visual representation of tenure rights. This process is most effective when trained surveyors are used and community members support their work. This approach helped provide a threshold level of tenure security in some communities in Aceh and Nias, Indonesia, after the 2004 tsunami.<sup>77</sup>

