



**NRC**

NORWEGIAN  
REFUGEE COUNCIL



**Consolidating  
Gains**

Displaced Women's Housing Land  
and Property Rights in Africa



## **NRC'S WORK WITH THE AFRICAN UNION**

In 2013, NRC signed a comprehensive Memorandum of Understanding (MoU) with the African Union Commission (AUC) to closely collaborate on humanitarian issues. The signed MoU articulated the role that the AUC and NRC could play jointly, inter alia, enhancing the capacity of the AUC, African Union (AU) member states, and the Regional Economic Communities (RECs) to reduce risk of humanitarian disaster situations, respond to humanitarian emergencies, document displacement related issues and situations, strengthening policy on the rights of the displaced, and strengthening international dialogue on displacement related issues. It also specified modes of information exchange and consultation. The Pan African Liaison Office in Addis Ababa, Ethiopia led NRC's harmonised and coordinated approach to regional institutions and partners in Africa between 2013 and 2019. The Pan African liaison Office also ensured and oversaw the attainment of the objectives as outlined in the signed MoU between 2013 and 2019. This office closed in 2019, and the operations thereof have since been moved to the NRC regional office in East Africa and Yemen.

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# Consolidating Gains

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Norwegian Refugee Council (NRC)

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Lami fled with her husband and five children to Niger when Boko Haram attacked her town in November 2014. Photo by Hajer Naili/NRC

### INSIDE COVER

Khot and her three months old baby named Dau, after his grandfather. Photo by Tiril Skarstein / NRC

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The Norwegian Refugee Council (NRC) is an independent, international, humanitarian non-governmental organisation which provides assistance, protection and contributes to durable solutions for refugees and internally displaced people worldwide.

## PART I.

## INTRODUCTION

Globally women still own less land and have less secure rights over land than men. Women make up on average less than 20 percent of the world's landholders, but make up an estimated 43 percent of the agricultural labor force.<sup>1</sup> Worldwide, more than 400 million women work in agriculture. In sub-Saharan Africa, 60 to 70 percent of employed women work in agriculture.<sup>2</sup> Yet despite women's crucial role in land-based livelihood, women's land rights or access to land to enable them to monitor and enforce their rights remains a challenge. These difficulties are exacerbated by displacement, conflict and fragility, overwhelming institutional and host community capacity, - and all impede inclusive development. An important component of addressing these challenges remains an important facet of the treatment of housing, land, and property (HLP) – who has access to it, who controls it, how, – and this report seeks to ensure that the needs and voices of displaced women are heard, and included in the land agenda - moving forward.

Globally women still own less land and have less secure rights over land than men. Women make up on average less than 20 percent of the world's landholders, but make up an estimated 43 percent of the agricultural labor force.

Additionally, displaced women and girls in Africa are mostly discriminated due to inadequate and patriarchal influenced legal frameworks. Some customary law and cultural practices remove women from enjoying economic rights and challenges their livelihood through ripping off the rights to own housing, land or property (HLP). This is prevalent, when relevant registrations and personal documentations are lost during flight and the means to retrieve such deeds are either weak or non-existent. These rights are essential to promote durable solutions, as majority of the displaced populations want to return home after peace resolutions are signed. However, the confidence in the available legal systems for protection are very low. NRC through its country offices has been closely engaged in the provision of information, counselling and legal assistance (ICLA) to displaced people, mostly IDPs. More importantly, the available services also provide guidance on how displaced persons can claim rights and continuously advocate for promotion of HLP rights among displaced women.

In 2019, the African Union commemorated the 10<sup>th</sup> Anniversary of the Kampala Convention, a binding legal instrument on the protection and rights of internally displaced persons (IDPs), by dedicating to 2019 an annual theme titled 'Refugees, Returnees and IDPs- Towards the attainment of Durable Solutions'. The Kampala convention in addition to the protection of IDPs have entailed a particular provision to displaced women. Thus, member states are endowed with specific obligations to protect women, children and other vulnerable persons against Sexual and Gender Based Violence (SGBV), avail sexual and reproductive health services, provide general protection and assistance, and facilitate access to registration and personal documentation under Article 9 and 13 respectively. Beyond these legal frameworks, however, there is lack of effective linkages with the existing national laws and customary practices during the domestication process.



## A. SUMMARY

Supporting displaced women to change their lives through land governance as well as property rights are critical in securing economic independence. The analysis of the HLP rights of displaced women indicates the need for major work within societies in order to address the discrimination that displaced women undergo from enjoying their land rights that paves the way for protection of their socio-economic rights. Although efforts have been devoted to addressing gender concerns in policies and programs, much more work is needed.

In 2011, NRC embarked on a five-year initiative aiming to increase displaced women's access to housing, land and property (HLP) rights through national and international advocacy. The project provided well-researched legal, policy and practical recommendations for the humanitarian community, including practitioners, donors, governments and civil society. The project's evidence base was drawn from NRC's extensive operational experience of more than 15 years as a provider of information, counselling and legal assistance ("ICLA") activities related to HLP rights in over 20 countries, afflicted by or recovering from conflict. The analysis and recommendations were based both on assessments of NRC's legal cases and commissioned country research.

Further to this, in 2019, the NRC African Liaison Office (NRC – AULO) initiated a project to build onto the progress made by the 2011 Displaced Women's HLP project that was premised on the Kampala Convention, and a 2015 report titled 'the Kampala Convention: Make it work for Women'.

In response to promoting a gender-sensitive approach to humanitarian assistance and early recovery, NRC-AULO reviewed existing policies and recommended practical solutions to African governments in which challenges were observed. This initiative sought to consolidate the gains made, and to document challenges faced by displaced women living in Africa in exercising their HLP rights. Further still, the report offers realistic

and practical recommendations for stakeholders to better understand and support displaced women's HLP rights, and enable them to find durable solutions to displacement.

The evidence for the project was generated from the countries in which NRC is currently or has been operational. NRC's research and legal assistance work in many of the African countries has uncovered several unseen challenges for women, both from discriminatory laws as well as those within the family context. The lessons gathered from various ICLA projects list the hurdles that displaced women face in the existing national laws. It also highlights the need to engage women and local communities to better understand how customary and religious law intersects with traditions and how to support women within this sphere.

Since the complexity of challenges faced, and the means to resolve them are different in various countries and can rapidly change through times, incorporating a detailed policy review has enhanced previously observed conclusions and recommendations. The outcome of the policy review provides updates on how to integrate best practices into the existing national laws or practices to ease challenges faced by displaced women. Thus, the report identified the major policy burdens faced by displaced women in selected African countries where NRC is currently operational. The identified practices have been reviewed from a legal perspective and through a gender lens, - guiding the development of recommendations on how to promote the protection of displaced women, - and respect for the right to housing, land and property (HLP).



**Caption:** Nyedine, a widow who has 3 children and fled to Makien town, South Sudan due to conflict. Photo by Maheder Haileselassie / NRC

## B. METHODOLOGY

This report was originally commissioned to look specifically at the interventions of the Norwegian Refugee Council (NRC) Information Counselling and Legal Assistance (ICLA) work in Africa, thus their work is referred to throughout. A subsequent decision was taken to publish the research externally, in hopes that it can contribute to global programmatic and advocacy responses to help women overcome the obstacles they face in exercising their HLP rights.

Information for this report was gathered through a combination of desk study of existing literature and a review of the organization's programmatic files and documents. While access to people and areas was unfortunately limited due to time, COVID -19 restrictions and security concerns, in efforts to capture the many different contexts and realities of displacement in Africa, the study is drawn from East Africa, Central Africa and West Africa. Focus countries included, Central African Republic, Cote D'Ivoire, Ethiopia, Nigeria, Somalia and South Sudan.

The analysis included Displaced Women's HLP reports that had been developed using both qualitative and quantitative methods of data collection, involving extensive field work; focus group discussions with host community and displaced persons; specifically, women, - and in-depth individual interviews with government, civil society, program staff and partners, and other key stakeholders.

A few limitations of this research should also be noted: where this study references information reported, it is important to understand that this is how the author perceived the situation; and it is unsurprising that there were at times conflicting accounts from different contexts and people. This is due in part to the wide variety of contexts that exist in Africa, but is also to be expected in a situation where gendered perceptions of norms and rights have begun to evolve during the highly disruptive periods of displacement. Further still, COVID – 19 restrictions limited travel and consequently affected triangulation of some of the data, eventually excluding it from the final report. Finally, as the report is largely based on Displaced Women's HLP projects implemented by a single agency, the NRC, the findings are largely drawn from similar contexts affected by displacement, and where humanitarian response programmes are being implemented. Hence a survey, to complement information based on our findings should be conducted across the continent.

Despite these limitations, the report offers an understanding of the HLP rights of displaced women in Africa, challenges and opportunities, and recommendations for improvement and learning, which builds on existing evidence on women's HLP rights in Africa, and will be used to inform advocacy, - and policy reform.



**Caption:** Kugar, lives in a grass thatched house located at the Southern part of Mankien in Mayom county, Northern Liech State, South Sudan.  
Photo by Ingrid Prestetun / NRC

## PART II.

## LEGAL AND POLICY FRAMEWORK

Women's Housing Land and Property (HLP) rights are provided for in several sources, including statutory, customary, and religious regimes. Considering international norms and rights, and local, regional or national policies are needed to address HLP rights. These frameworks allow enforcement and enable the implementation of women's HLP rights. While changing or formulating a policy for enabling women enjoy and access HLP, it is also important for national, regional or local governments to adapt progressive legal and policy frameworks. Without a sound legal framework, the policies will be unfeasible, and vice versa.

The legal framework is a powerful and crucial tool to support the advancement of women's HLP rights on all levels, necessarily going hand in hand with the formulation or change of policies. Legislation may be reformed to include the core elements of displaced women's HLP rights and to support the policy objectives of a national, regional or local government. The legal framework should emphasise principles in support of women's land rights. It is therefore important that HLP policies and legal frameworks are supported by a stable institutional framework that ensures their establishment, and facilitates and exercises stakeholder participation. The role of laws on Housing Land and Property is to implement and enforce policy, and provide effective administrative and regulatory mechanisms at appropriate levels.

The legal framework should emphasise principles in support of women's land rights. It is therefore important that HLP policies and legal frameworks are supported by a stable institutional framework that ensures their establishment, and facilitates and exercises stakeholder participation.



**Caption:** Oumou and Awaou sit with their mother Roukaya in the compound of their house in Berberati. Photo by Itunu Kuku / NRC



## A. INTERNATIONAL & REGIONAL LAW

### i. ICCPR, ICESCR, & CERD

Central Africa Republic, Côte d'Ivoire, Ethiopia, Nigeria and Somalia are party to several international instruments that require the State to protect and promote women's HLP rights, and to penalise persons who use violence against them: these include<sup>3</sup> the International Covenant on Economic, Social & Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). A detailed discussion on the importance of these instruments to women's rights is readily available elsewhere<sup>4</sup>, this section only briefly highlights some of the most salient points.

The right to adequate housing (which includes the component of security of tenure) is protected by Article 11(1) of the ICESCR, and includes an obligation on the part of states to, at a minimum, refrain from violating such rights through their actions, and to take reasonable measures to prevent foreseeable violations by non-state actors.



**Caption:** Clementine speaks to displaced women gathered in Mora, Far-North Region of Cameroon during a discussion organised by NRC on housing, land and property rights. Photo by Itunu Kuku / NRC

**In General Comment No. 4, the Committee on Economic, Social and Cultural Rights, specifies that the right to adequate housing consists of the following elements<sup>5</sup>:**

1. Legal Security of Tenure (which guarantees legal protection against forced eviction, harassment and other threats);
2. Availability of adequate services, especially water and sanitation;
3. Affordability;
4. Habitability;
5. Accessibility;
6. Location; that provides access to employment opportunities, education and health services and social facilities and;
7. Cultural Adequacy.

Additionally, the right to tenure security cannot be subject to any form of discrimination, further underscored by the Convention on the Elimination of Racial Discrimination (CERD). This protection applies to a broad spectrum of tenure forms, including ownership, rental, informal settlements, and customary usage.<sup>6</sup> The Convention Against Elimination of Discrimination Against Women (CEDAW) is another influential instrument protecting women's rights.

The Universal Declaration of Human Rights also has many relevant provisions, which are the basis of the ICCPR, ICESCR and CERD, but as a Declaration, is not subject to ratification, and therefore not legally binding<sup>7</sup>. Of particular relevance to a discussion on women's HLP rights in Muslim contexts are the Universal Islamic Declaration of Human Rights<sup>8</sup> (1981) and the Cairo Declaration on Human Rights in Islam<sup>9</sup> ("Cairo Declaration") (1990), widely recognised as the Islamic response to a "Western" notion of human rights.

## ii. Universal Islamic Declaration on Human Rights (1981)<sup>10</sup>

The Islamic Declaration emphasises both equality of all persons, and thus both men and women, as well as the right to own property: Every individual and every people has the inalienable right to freedom in all its forms, physical, cultural, economic and political – and shall be entitled to struggle by all available means against any infringement or abrogation of this right; and every oppressed individual or people has a legitimate claim to the support of other individuals and/or peoples in such a struggle.<sup>11</sup>

All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.<sup>12</sup>

Every person is entitled to own property individually or in association with others. State ownership of certain economic resources in the public interest is legitimate.<sup>13</sup>

Given the importance of the family unit in Islam, the Declaration pays specific attention to family matters: Art. xix. Right to Found a Family and Related Matters; (b) Each of the partners in a marriage is entitled to respect and consideration from the other, (c) Every husband is obligated to maintain his wife and children according to his means, (d) Every child has the right to be maintained and properly brought up by its parents ..., (h) Within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives and, (i) No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.

Article xx provides for the rights of married women. Every married woman is entitled to: (a) live in the house in which her husband lives, (b) Receive the means necessary for maintaining a standard of living which is not inferior to that of her spouse, and, in the event of divorce, receive during the statutory period of waiting (iddah) means of maintenance commensurate with her husband's resources, for herself as well as for the children she nurses or keeps, irrespective of her own financial status, earnings, or property that she may hold in her own rights, (c) Seek and obtain dissolution of marriage (Khul'a) in accordance with the terms of the Law. This right is in addition to her right to seek divorce through the courts, (d) Inherit from her husband, her parents, her children and other relatives according to the Law, and (e) Strict confidentiality from her spouse, or ex-spouse if divorced, with regard to any information that he may have obtained about her, the disclosure of which could prove detrimental to her interests.

And a similar responsibility rests upon her in respect of her spouse or ex-spouse.

The Islamic Declaration emphasises both equality of all persons, and thus both men and women, as well as the right to own property: Every individual and every people has the inalienable right to freedom in all its forms, physical, cultural, economic and political.

### iii. Cairo Declaration on Human Rights in Islam (1990)

The Cairo Declaration was adopted by 45 members of the Organisation of Islamic Cooperation (“OIC,” formerly the Organisation of the Islamic Conference), including Somalia and Nigeria, which is one of our countries of focus. The OIC is comprised of 57 member states across 4 continents, and describes itself as “the collective voice of the Muslim world, and ensuring [sic] to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world;”<sup>14</sup> Somalia has been a member since 1969.<sup>15</sup>

While the Cairo Declaration has created significant controversy among the human rights community, it affirms many of the same rights described in the UDHR, and includes the following relevant protections for women’s HLP rights: (a) all human beings are God’s subjects, and the most loved by Him are those who are most useful to the rest of His subjects, and no one has superiority over another except on the basis of piety and good deeds.<sup>16</sup> A Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.<sup>17</sup> Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most-High.<sup>18</sup>

Additionally, everyone shall have the right to legitimate aims without monopolisation, deceit or harm to oneself or to others.<sup>19</sup> Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership, without prejudice to oneself, others or to society in general. Expropriation is not permissible except for the requirements of public interest and upon payment of immediate and fair compensation. Confiscation and seizure of property is prohibited except for a necessity dictated by law.<sup>20</sup> All individuals are equal before the law, without distinction between the ruler and the ruled. The right to resort to justice is guaranteed to everyone.<sup>21</sup>



**Caption:** Young female IDP woman who attended an evictions forum in Baidoa, Somalia. Photo by Abdulkadir Abdirahman/ NRC.

#### iv. The Pinheiro Principles

The Pinheiro Principles underscore the importance of women and women's rights in the process.

They are a set of guidelines on how to address the complex issues around housing, land and property restitution. The Pinheiro Principles provide restitution practitioners, as well as states and UN and others agencies, with a consolidated text relating to the legal, policy, procedural, institutional and technical implementation mechanisms for housing and property restitution. As such, the Principles provide specific policy guidance regarding how to ensure the right to housing and property restitution in practice and for the implementation of restitution laws, programmes and policies, based on existing international human rights, humanitarian, refugee and national standards.



**Caption:** Afro-vet group in Twic East, South Sudan ready to start a business. Access to land is key to sustainable livelihoods. Photo by Tiril Skarstein / NRC

**Principle 2- The right to housing and property restitution:**

- 2.1: All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.
- 2.2: States shall demonstrably prioritise the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled.

**Principle 3: The right to non-discrimination:**

- 3.1: Everyone has the right to be protected from discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.
- 3.2: States shall ensure that de facto and de jure discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law

**Principle 4: The right to equality between men and women:**

- 4.1: States shall ensure the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.
- 4.2: States should ensure that housing, land and property restitution programmes, policies and practices recognise the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach.
- 4.3: States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

**Principle 5: The right to be protected from displacement:**

- Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.
- 5.2: States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.
- 5.3: States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.
- 5.4: States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

Principle 3 introduces the general overarching recognition of the right to non-discrimination and the rights of displaced persons to equal treatment, while Principle 4 hones in more closely on ensuring gender equality. Together, these two principles affirm that not only must the restitution process not discriminate, but, - that states must actively ensure gender equality.

Principle 4.2 explicitly recognises joint ownership rights of both male and female heads of households, the importance of which is stated in the Handbook on Implementing the Pinheiro Principles:

This provision is meant to combat sex discrimination which may occur when only male 'heads of households' are informally recognised as rights holders or when they are provided with formal title to housing or other property ownership rights, leaving women without legal control over what should also be treated as their property. This bias is often most visible when women are regarded as the 'head of the household' only if they are single or otherwise unaccompanied by a man. To avoid this, the Principles call for recognition of joint ownership rights within families. As such, restitution programmes should seek to implement a gender strategy, in particular where the status quo effectively discriminates against women's right to ownership, either in law or in practice. This can be ensured by conferring equal rights to women and/or joint ownership rights when restitution claims are considered by the relevant judicial bodies.<sup>22</sup>

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#### v. African Charter for Human Rights (Banjul Charter) & the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

Most African countries have assumed obligations under regional agreements, including the African Charter on Human and Peoples' Rights (the Banjul Charter) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).<sup>23</sup> The Maputo Protocol notes that despite the ratification of the Banjul Charter by States, women in Africa still continue to be victims of discrimination and harmful practices, and includes strong substantive provisions for the protection of women's rights, as well as provisions to ensure greater representation of women in decision-making processes.

The Maputo Protocol emphasises the importance of land and natural resources to women: Article 15 requires States to provide women with access to water and land as part of the right to food security, and Article 16 guarantees the right to adequate housing. Article 19 goes further, mandating that States promote "women's access to and control over productive resources such as land and guarantee their right to property" and "women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women."

#### vi. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("the Kampala Convention")

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (The Kampala Convention), adopted by African governments in 2009, entered into force on December 6, 2012, and stresses that states bear primary responsibility for protecting and assisting IDPs within their borders. The Kampala Convention reflects the norms outlined in the 1998 UN Guiding Principles on Internal Displacement, and provides clear objectives and responsibilities which include the responsibility to promote national measures to “prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions,”<sup>24</sup> and confirms the state’s obligations to prevent arbitrary displacement, and ensure the protection of the human rights of IDPs, including humane treatment, non-discrimination, equality and equal protection of law.<sup>25</sup>

Notably, the Kampala Convention uses broader definitions of arbitrary displacement, and recognises that people may be displaced for reasons other than armed conflict. Article 4 makes clear that the prohibited categories of arbitrary displacement also include “displacement as a result of harmful practices” and “displacement caused by ... violation of human rights.”<sup>26</sup> A recent report from NRC discusses specific examples from its work on this issue, such as: eviction of widows, denial of marital property rights, exclusion from inheritance, and lack of access to justice for violations of HLP rights.<sup>27</sup> As applied to the circumstances faced by women in Africa, the state has the obligation to prevent them from being forced from their homes and/or land because of harmful customary practices and violations of their human rights.

However, if women are displaced, the Convention specifically addresses the state’s responsibility to “take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security.” Article 9 explicitly acknowledges that women often require special assistance, and stipulates that the states will provide special protection and assistance to IDPs with special needs, such as female heads of households and mothers with children, and will take special measures to ensure reproductive and sexual health of IDP women, as well as providing “psycho-social support for victims of sexual and other related abuses.”<sup>28</sup>



**Caption:** Community members in Ituri Province of the Democratic Republic of Congo line up patiently to receive the cash assistance that they will use to construct houses.  
Photo by Itunu Kuku / NRC

## vii. The Sustainable Development Goals (SDGs) and the 2030 Agenda

In October 2015, the General Assembly adopted the 2030 Agenda for Sustainable Development to resolve poverty and hunger, combat inequalities, build peaceful, just and inclusive societies, protect human rights and promote gender equality and the empowerment of women and girls; and ensure the lasting protection of the planet and its natural resources. The 2030 Agenda creates conditions for sustainable, inclusive and sustained economic growth, shared prosperity, and decent work for all, considering different levels of national development and capacities. These are known as Sustainable Development Goals (SDGs), and the resolution consists of 17 SDGs with 169 associated targets. The countries in focus in this report have been working towards the implementation of the 2030 Agenda and the SDGs with consideration for their country's specific context.

**Table 1: Summary of the status of International and Regional Instruments**

International Instrument	Country	Status
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Central African Republic (CAR)	Signature 8 May 1981. No Ratification/ Accession.
	Cote d' Ivoire	No signature. Ratification/Accession 26 March 1992.
	Ethiopia	No signature. Ratification/Accession 11 June 1993
	Nigeria	No signature. Ratification/Accession 27 & 29 July 1993.
	Somalia	No signature. Ratification/Accession 24 Jan 1990
	South Sudan	No signature. No Ratification/Accession
International Covenant on Civil and Political Rights (ICCPR)	Central African Republic (CAR)	No signature. Ratification/Accession 8 May 1981.
	Cote d' Ivoire	No signature. Ratification/Accession 26 Mar 1992
	Ethiopia	No signature. Ratification/Accession 11 Jun 1993
	Nigeria	No signature. Ratification/Accession 29 July 1993
	Somalia	No signature. Ratification/Accession 24 Jan 1990
	South Sudan	No signature. No Ratification/Accession
Convention on the Elimination of Racial Discrimination (CERD).	Central African Republic (CAR)	Signature March 7 1966. Ratification/Accession 16 Mar 1971
	Cote d' Ivoire	No signature. Ratification/Accession 14 Jan 1973
	Ethiopia	No signature. Ratification/Accession 27 Jun 1976
	Nigeria	No signature. Ratification/Accession 16 Oct 1967
	Somalia	Signature 26 Jan 1967. Ratification/Accession 26 Aug 1975
	South Sudan	No signature. No Ratification/Accession
Convention Against Elimination of Discrimination Against Women (CEDAW)	Central African Republic (CAR)	No Signature. Ratification/Accession 21 Jun 1991
	Cote d' Ivoire	Signature 17 Jul 1980. Ratification/Accession 18 Dec 1995
	Ethiopia	Signature 8 Jul 1980. Ratification/Accession 10 Sep 1981
	Nigeria	Signature 23 Apr 1984. Ratification/Accession 13 Jul 1985
	Somalia	No signature. No Ratification/Accession
	South Sudan	No signature. Ratification/Accession 30 Apr 2015





**Caption:** Displaced women gather in Mora, Far-North Region of Cameroon for a discussion organised by NRC on housing, land and property rights. Photo by Itunu Kuku / NRC

International Instrument	Country	Status
African Charter for Human Rights (Banjul Charter) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)	Central African Republic (CAR)	Banjul Charter Signature 4 Feb 2002. Ratification 27 Jul 1986. Maputo protocol Signature 17 Jun. 2008. No Ratification.
	Cote d' Ivoire	Banjul Charter Signature 30 Aug 2005. Ratification 6 Jun 1992. Maputo protocol signed 27 Feb 2004 and ratified 5 Oct 2011.
	Ethiopia	Banjul Charter No Signature. Ratification 15 June 1998. Maputo protocol Signature 1 Jun 2004. Ratification 18 Jul 2018.
	Nigeria	Banjul Charter Signature 31 Aug 1982. Ratification 22 Jun 1983. Maputo protocol Signature 16 Dec 2003. Ratification 16 Dec 2004.
	Somalia	Banjul Charter Signature 6 Feb 1986. Ratification 31 Jun 1985. Maputo protocol Signature 23 Feb. 2006. No Ratification.
	South Sudan	Banjul Charter No Signature. Ratification 23 Oct 2013. Maputo protocol Signature 24 Jan 2013. No Ratification.
	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("the Kampala Convention")	Central African Republic (CAR)
Cote d' Ivoire		Signature 12 Nov 2009. Ratification/Accession 20 Dec 2013
Ethiopia		Signature 23 Oct 2009. No Ratification/Accession
Nigeria		Signature 23 Oct 2009. Ratification/Accession 17 April 2012
Somalia		Signature 23 Oct 2009. Ratification/Accession 26 Nov 2019.
South Sudan		Signature 24 Jan 2013. Ratification/Accession 26 Sep 2018

## B. DOMESTIC STATUTORY, SHARI'A AND CUSTOMARY LAW

### i. Central African Republic (CAR)

**Central African Republic's family law (Code de la Famille, 1997)** regulates HLP issues such as inheritance.

In case a couple is legally married without a prenuptial agreement then the legal regime<sup>29</sup> of *la communauté réduite aux acquêts* applies.<sup>30</sup> In 2010, it was estimated that 95 per cent of legally married couples did not have an official prenuptial agreement.<sup>31</sup> It is important to note that one characteristic of a community property system is equality. The recognition of the principle of equality between husband and wife means equal ownership of community property, regardless of the actual economic contribution each spouse makes to the community. Thus, regardless of each spouse's contribution, the equality principle also includes equality of distribution at the termination of the marriage, whether by death or dissolution.

Property acquired during such a marriage is considered to belong to both spouses (with a few exceptions<sup>32</sup>) and the wife or husband has the right to half of the estate of the deceased spouse. Any possessions acquired before the marriage belong to the owning spouse. In the division of these possessions (and succession in general), the surviving wife or husband is third in line (after the children and parents). No distinction is made between sons and daughters in the question of succession and inheritance.<sup>33</sup>

Article 780 of the Code de la Famille confirms the right of the surviving spouse to stay in the main residence for at least two years after the demise of the deceased spouse until succession arrangements have been finalised. Article 254 stipulates that the husband is the head of the household. The wife replaces her husband as head of the family in case he is incapacitated, absent, separated from his family or has voluntarily abandoned family life. Article 1059 stipulates that a surviving spouse is not obliged to marry a member of the deceased spouse's family. Furthermore, it confirms that the surviving spouse is the legal guardian of the couple's minor children.

In 2010, the Ministry of Social Affairs, National Solidarity and Family initiated a process to compare the family law with relevant national and international legislation and highlight possible contradictory or discriminatory provisions. Several challenges were identified and discussed at two workshops in Bangui in 2010. Since the law allows polygamy,<sup>34</sup> this was discussed at length and amendments were proposed. Provisions on succession and inheritance were not deemed to be discriminatory against women. However, the high number of co-habiting couples and lack of legal protection of partners was highlighted as a concern.<sup>35</sup> The status of proposed amendments to the law is currently unclear.<sup>36</sup>



**Caption:** Female refugee who fled her village in Central African Republic to seek refuge in Cameroon poses for a photo at the reception centre. Photo by Itunu Kuku/ NRC.



**Caption:** Zara, a displaced woman in Mora, Far-North Region of Cameroon shares her experiences during a discussion organised by NRC on housing, land and property rights. Photo by Itunu Kuku / NRC

## ii. Cote d' Ivoire

Land governance in Côte d'Ivoire reflects colonial history, post-independence economic development policy and policies of recent governments. The institutions that govern land are divided into two groups: the statutory system, based on statutory law and the customary system. This has been described as “an extreme form of legal pluralism” in which customary and statutory systems overlap and sometimes collide.<sup>37</sup> Land registration has proved to be a huge challenge in Côte d'Ivoire and not only because the conflict disrupted the process. While the government had hoped to register all land by 2013 (later extending the deadline to 2023), this target is unlikely to be achieved because of insufficient local resources.<sup>38</sup>

**The 2000 Constitution of the Republic of Côte d'Ivoire** guarantees all people the right to property. It also affirms rights set out in the 1948 Universal Declaration of Human Rights and the 1981 African Charter on Human and People's Rights, both of which assert equality between women and men.<sup>39</sup> Until 2013, the Civil Code in Côte d'Ivoire stated that men were the head of their family, and could choose where the family lives. The head of the family also had the right to manage and to dispose of marital property.

**The 2013 revision of the code** states that marital property is managed jointly between spouses. Despite the amendments to the law, NRC has observed that husbands continue to administer marital property. This is due to the lack of awareness and understanding of the new law, as well as women's reluctance to request more control over marital assets. Most significantly, this law only applies to statutory marriages, which are

the minority, particularly in rural areas. Thus in most households the ownership and management of property, by custom, falls to men.<sup>40</sup>

Additionally, article 1 of the **law concerning rural land** specifies that: “only the State, public authorities and national citizens of Côte d'Ivoire are permitted to become landowners” of land belonging to the rural land domain. However, this law states that non-Ivoirians can access land through rental agreements or long-term leases.<sup>41</sup> The law also provides guidance on the conversion of customary rights into statutory rights. Specifically, it states that land ownership is established through land registration and obtaining a land certificate, and later a title deed, which can be an individual or collective document. Unfortunately, this is, almost without exception, not implemented.<sup>42</sup>

Under the inheritance law, both girls and boys have a right to inheritance, regardless of sex.<sup>43</sup> In terms of order of succession, according to the 1964 inheritance law, the surviving spouse is not the primary heir.<sup>44</sup> The law establishes village land management committees (Comités Villageois de Gestion Foncière Rurale) to investigate land claims. However, they only exist in certain places, and are often non-functional.<sup>45</sup> In addition, the committees are not representative, generally lacking guidelines for composition of membership and there are no quotas for women, autochtones or allochtones.

Further still, the **1998 Rural Land Law** has not prevented land sales, extra-legal land allocation, or the allocation of land under flexible or unclear terms.<sup>46</sup>

### iii. Ethiopia

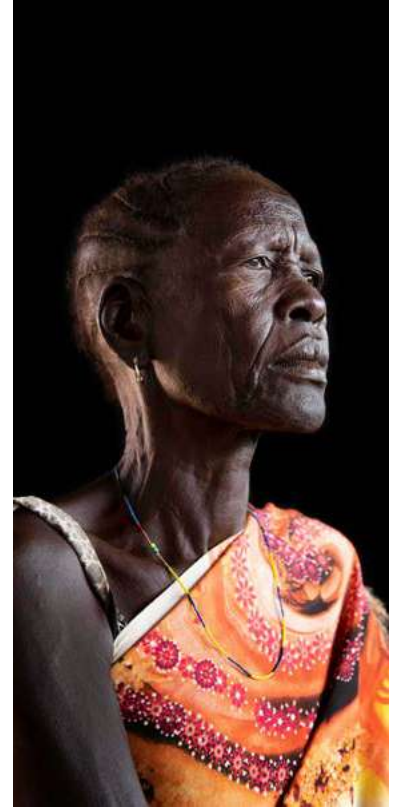
While ownership of land stays with the state, Ethiopian citizens are guaranteed the right to the use of land, free of charge, and protected against eviction and displacement. Key federal instruments are the Constitution of the **Federal Democratic Republic of Ethiopia and the Federal Rural Land Administration and Land Use Proclamation No. 456/2005**.

The 1995 Ethiopian Constitution is the primary source of Ethiopian land rights. The Right to Property is provided for under the 1995 Constitution,<sup>47</sup> which provides: (1) Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise, (2) "Private property", for the purpose of this article, shall mean any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common.<sup>48</sup>

The **Federal Rural Land Administration Proclamation No. 89/1997** made clear that "Land is a common property of the nations, nationalities and peoples of Ethiopia [and] shall not be subject to sale or to other means of exchange," but also stipulated that regional land laws must ensure the free assignment of holding rights to all citizens, and guarantee protection against eviction and displacement from all grounds except for a redistribution of holdings. Holding rights were defined as the right to use rural land for agricultural purposes, and could be leased or bequeathed to family members.<sup>49</sup> This proclamation was subsequently repealed by Proclamation No. 456/2005.

The **Federal Rural Land Administration and Land Use Proclamation No. 456/2005 repealed Proclamation No. 89/1997**, and provides greater detail about categories of holding rights. Proclamation No. 456 defines minimum private, communal, and state holding as specific categories of land use rights, and references both holding certificates and land registration, in a clear indication of intent for citizens to have documentary evidence of their use rights, records of which are to be kept by some government administration.<sup>50</sup>

While ownership of the land remains with the state, the use right itself can be leased, used as collateral, or transferred via inheritance.<sup>51</sup> These rural land use rights held by farmers, pastoralists, and semi-pastoralists have no time limit, and any holder who is evicted for a public purpose must be compensated for any improvements made to the land.<sup>52</sup>



**Caption:** Nyamay, a mother of five is from Walgak town, South Sudan. Photo taken at Nguenyiel camp in Gambella, Ethiopia. Photo by Maheder Haileselassie / NRC

#### iv. Nigeria

Following independence, the Nigerian State implemented property rights reforms that aimed to integrate the various sources of rights that existed across its territory, ranging from customary rules, religious laws, and British colonial institutions. **The Land Tenure Law of Nigeria, 1962** identified lands in Northern Nigeria as “native” and gave power over property rights to the Minister for Lands and Surveys.<sup>53</sup>

The 1978 Land Act vested control over land in the Governor of each of Nigeria’s federal states, with significant powers granted to local governments.<sup>54</sup> The right to privately acquire and own immovable property is protected by Article 43 of the 1999 Nigerian Constitution. Subsurface rights<sup>55</sup> remain with the state (Article 45). Private property is protected from dispossession except for reasons prescribed by the law, and in such cases an individual is entitled to both compensation and a legal process (Article 44(1)).

The **1999 Constitution of Nigeria** guarantees equal rights, obligations and opportunities to all citizens and prohibits discrimination on the basis of sex.<sup>56</sup> While this appears to satisfy Nigeria’s obligations under the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW), in practice the situation is more complex.

Customary rules and practices are used to resolve disputes and govern everyday life throughout the country, but they are not formally incorporated into statutory law.

In many instances, individuals cannot enjoy de jure protections provided by statutory law given the de facto legal system operating at the local level. This is particularly true for women seeking to exercise HLP rights.



**Caption:** Aissata from Tori village in Mali, fled to Bankass with her three children when armed men attacked her village. Photo by Vinabé Mounkoro/NRC

## v. Federal Republic of Somalia

The three regions of the Federal Government of Somalia; Somaliland, Puntland, and South Central – have significantly different histories and contexts. Somaliland is a self-proclaimed state, unrecognised by the international community, but has functioned fairly independently since 1991. Puntland functions autonomously, but is not seeking independent statehood like Somaliland. South Central is a collection of troubled regions, including the capital of Mogadishu.

Despite these differences, the types of HLP rights that are theoretically available to women throughout the country are fairly similar. The Provisional Constitution of the Federal Republic of Somalia, the Constitution of Puntland, and the Constitution of Somaliland, are all based on and cannot contravene Shari'a law; thus, Islamic rights and a significant part of customary norms as pertains to women's HLP rights are the same throughout the country. These include family laws (in particular laws related to marriage and divorce), inheritance laws, and land and property laws. Such laws determine who has control over assets, who has the ability to make economic decisions in their own name, and who can own, administer, transfer or inherit property. In general, all three constitutions affirm women's rights to equality before the law, the right to life and dignity, the right to be free from discrimination, and the right to own property. Excerpts of relevant provisions from the Federal, Somaliland, and Puntland Constitution are included below.

Under the **Federal Republic of Somalia, Provisional Constitution (adopted August 1, 2012)**, women must be included, in an effective way, in all national institutions, in particular all elected and appointed positions across the three branches of government and in national independent commissions.<sup>57</sup> All citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth, or dialect shall have equal rights and duties before the law.<sup>58</sup> Every person has the right to personal security, and this includes: the prohibition of illegal detention, all forms of violence, including any form of violence against women, torture, or inhumane treatment.<sup>59</sup> Every person has the right to own, use, enjoy, sell and transfer property.<sup>60</sup> It shall be ensured that

women, the aged, the disabled and minorities who have long suffered discrimination get the necessary support to realise their socio-economic rights.<sup>61</sup>

The state shall promote the positive traditions and cultural practices of the Somali people, whilst striving to eliminate from the community customs and emerging practices which negatively impact the unity, civilisation and wellbeing of society.<sup>62</sup> The law shall provide for adequate procedures for redress of violations of human rights. Redress of violations of human rights must be available in courts that the people can readily access.<sup>63</sup>

Land is Somalia's primary resource and the basis of the people's livelihood. Land shall be held, used and managed in an equitable, efficient, productive and sustainable manner. The Federal Government shall develop a national land policy, which shall be subject to constant review. That policy shall ensure: (a) equity in land allocation and the use of its resources; (b) the guarantee of land ownership and registration; (d) that any land and property dispute is resolved promptly and satisfactorily for all; and (f) that the land and property market is regulated in a manner that prevents violations of the rights of small land owners.<sup>64</sup>

The **Puntland Constitution**<sup>65</sup> ensures women's rights of independence, socio-economic and political rights are protected in accordance with the Islamic Shari'a. The Puntland State shall protect the women's rights in this Article.<sup>66</sup> All citizens of Puntland State are equal before the law. No one can be discriminated by colour, religion, citizenship, origin, financial status, opinion, political attitude, language and ethnicity. The constitution safeguards the rights of the minority groups.<sup>67</sup> Every person shall have the right to display free expression of his/her opinion.<sup>68</sup>

Every citizen shall have the right to have his/her own property, within the framework of the law. Any unlawful act is prohibited. No personal commission or property levy may be imposed that is not in compliance with the law.<sup>69</sup> Every person shall have the right of securing his body and personal dignity.<sup>70</sup> The Constitution ensures the rights and liberty of every person.<sup>71</sup>

Every person shall have the right to institute legal proceedings, under conditions of full equality before lawfully constituted courts.<sup>72</sup>

Additionally, the **Puntland Policy Guidelines on Displacement**<sup>73</sup> commit to protecting all citizens against arbitrary displacement; promoting the search for durable solutions to causes of displacement; and facilitating either the voluntary return, resettlement, integration or re-integration of IDPs. Specifically, the Guidelines guarantee to do so in a manner that is equitable and does not discriminate against women, and that responds to the particular needs of vulnerable categories: Article 4.1 The Puntland Government has the primary duty and responsibility to prevent and protect people from arbitrary displacement, to mitigate its consequences, to provide protection and humanitarian assistance and to identify durable solutions for IDP women, girls, boys and men in an equitable manner. Derived from this duty, IDPs have the right to request and to receive protection and assistance from the Puntland Government. Under article 4.2 IDPs shall enjoy the same rights and freedoms as all other nationals and, in particular, should not be discriminated against in the enjoyment of any rights and freedoms on the grounds that they are internally displaced. Measures undertaken to address particular assistance and protection needs of specific categories of IDPs, such as children, especially separated children, expectant mothers, female-headed households, persons with disabilities and older persons, do not constitute discrimination if, and to the extent that, they are based on specific needs.

The **Somaliland Constitution**<sup>74</sup> ensures that all citizens of Somaliland shall enjoy equal rights and obligations before the law. Precedence and discrimination on grounds of ethnicity, clan affiliation, birth and residence is prohibited; and at the same time programmes aimed at eradicating long lasting bad practices shall be a national obligation.<sup>75</sup>

In order to ensure that the economic system does not lead to the exclusive enrichment of a group or a small section of the public, and to avoid the creation of economic classes consisting of those who are prosperous and those who are not, and the widening of the economic gulf between the urban and rural communities, the state shall ensure that social benefits and economic opportunities

are provided in a just and equitable manner.<sup>76</sup> The articles which relate to fundamental rights and freedoms shall be interpreted in a manner consistent with the international conventions on human rights and also with the international laws referred to in this Constitution<sup>77</sup>.

Further still, every person shall have the right to have his dignity, reputation and private life respected.<sup>78</sup> The rights, freedoms and duties laid down in the Constitution are to be enjoyed equally by men and women save for matters which are specifically ordained in Islamic Shari'a. The Government shall encourage, and shall legislate for the right of women to be free of practices which are contrary to Shari'a and which are injurious to their person and dignity. Women have the right to own, manage, oversee, trade in, or pass on property in accordance with the law. In order to raise the level of education and income of women, and also the welfare of the family, women shall have the right to have extended to them education in home economics<sup>79</sup> and to have opened for them vocational, special skills and adult education schools.<sup>80</sup>

The **Draft Somaliland IDP Policy Framework** echoes the protections of its Constitution, and further includes ambitious measures to guard against arbitrary displacement, protections to prevent forced evictions, and recognises that women affected by displacement have specific needs that the government pledges to address. In this Draft Policy, the government also commits to protecting the right of all IDPs, including women, to own land and property, to be assisted with property registration, dispute resolution, and restitution, and to be assisted with improving living conditions and finding durable solutions.<sup>81</sup>

Article 4 of the **Somalia Interim protocol on Land distribution for housing refugees, returnees and IDPs, 2019** provides for priority in land allocation,<sup>82</sup> when allocating land, priority shall be given to vulnerable groups, including but not limited to, refugee- returnees and IDPs with disabilities, the widowed, the elderly, or chronically ill persons.

In addition to this, article 4 of the **Somalia National Eviction Guidelines, 2019** provides safeguards in undertaking eviction<sup>83</sup>. All evictions shall be subject to the following safeguards: (a) evictions shall not render individuals, groups of persons or communities homeless or vulnerable to violation of their human rights guaranteed

under the Constitution, other applicable national laws and international human rights instruments; and (b) appropriate measures shall be taken to ensure that adequate alternative shelter is made available to those unable to provide for themselves and, in particular, women, children, persons with disabilities or chronic illness, and the elderly.<sup>84</sup>



**Caption:** IDP woman sorting grains at Xasilinta IDP Camp, Mogadishu Somalia. Photo by Abdirahman Yusuf / NRC





**Caption:** Duom who lives in Twic East in Jonglei, South Sudan farming her land, an indication that land is vital for sustainable livelihoods. Photo by Tiril Skarstein/ NRC

## vi. South Sudan

South Sudan has adopted very progressive legislation protecting women's HLP rights. The Transitional Constitution 2011, amended 2013, the Land Act and the Local Government Act, all explicitly recognise women's rights to own and inherit land and property. The Constitution also calls on all levels of government to enact laws to combat harmful customs and traditions, which undermine the dignity and status of women.

The **Constitution** has several articles that are relevant for the protection of women's HLP rights. Article 14, recognises that "all persons are equal before the law and entitled to equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status". This provision of the Constitution prohibits discrimination on the basis of sex and makes it clear that men and women are equal before the law. Article 16, deals specifically with rights of women. It reinforces article 14 by stating that "women shall be accorded full and equal dignity of the person with men" and it also calls on all levels of government to "enact laws to combat harmful customs and traditions which undermine the dignity and status of women".<sup>85</sup>

Finally, it explicitly recognises women's rights to property: Women shall have the right to own property and share in the estates of their families and deceased spouses.<sup>86</sup> The Constitution also recognises in article 28 that "every person shall have the right to acquire or own property as regulated by law". This provision applies to women and men equally. Article 34 of the Constitution further recognises the right for "every citizen to have access

to decent housing" and that "no one shall be evicted from his or her lawfully acquired home or have his or her home demolished save in accordance with the law". This provision protects both men and women's security of tenure by providing protection from forced evictions. In addition, it obliges the government to take measures to achieve the progressive realisation of the right to housing for all, regardless of sex, and does not require a woman to rely on her husband or male relatives for shelter.

**The Land Act (2009)**, passed by the Southern Sudan Legislative Assembly in 2009,<sup>87</sup> regulates land tenure and protects land rights in South Sudan. It recognises that "all land in Southern Sudan is owned by the people of Southern Sudan and its usage shall be regulated by the Government". The Land Act explains the different land tenure systems in South Sudan and classifies different types of land into three broad categories: 1) public land; 2) private land and 3) community land. As mentioned earlier, public land is owned collectively by the people of South Sudan and is held in trust by the government, typically in freehold. Private land is owned by individuals in freehold (full-fledged ownership) or leasehold (for a specified duration of time).

Community land is held jointly by the community and regulated by the community chief, leader, elders and/or king according to local customary law. Each type of land is regulated by different rules and administered by different actors, making the land tenure systems complex and often difficult to understand.

The Land Act includes many of the same provisions as the Constitution. Section 8 of the Land Act confirms that “every person shall have the right to acquire or own property as regulated by law and as stipulated in article 32 (1) of the Constitution”. In addition, section 5 (F) of the Land Act indicates commitment to: facilitating the reintegration and resettlement of internally displaced persons, returnees and other categories of persons whose rights to land were or are affected by the war.

In terms of women’s HLP rights, section 13 of the Land Act affirms that: Women shall have the right to own and inherit land together with any surviving legal heir or heirs of the deceased as stipulated in Article 20 (5) of the Constitution. This is the most important article within the Land Act for women as it clearly states their right to own and inherit land. Significant weight is given to this via the linkage to the Constitution included at the end of the section. The Land Act therefore provides a basis for the protection of women’s right to own and inherit land and calls for the facilitation of reintegration and resettlement processes for IDPs and returnees. However, it has been criticised for not incorporating sufficient protective mechanisms for vulnerable populations, including women, returnees and IDPs (particularly on the issue of land and property).

Most recently, there has been an attempt to address these shortcomings in the Land Policy which is to provide guidance on how to make land rights a reality for all South Sudanese. The draft Land Policy addresses gender bias and discrimination. It states that despite the existence of legal provisions recognizing the equal rights of women to land, widespread knowledge, recognition and protection of those rights, remains limited throughout Southern Sudan.

Women’s land rights remain largely conditional, derived through their marital or childbearing status and dispossession of widows, daughters, and divorced women is common. There is tension between competing notions that customary rules and practices should adapt to changing socioeconomic circumstances and those who resist change, fearing its impact on tradition and cultural identity, leading to a significant gap between the law and practice, particularly in rural areas.



**Caption:** Kuang is milking a cow in Twic East, South Sudan. HLP rights are key for one to be able to set up a farm. Photo by Tiril Skarstein / NRC

### C. SHARI'A LAW

This section seeks to highlight significant HLP rights that are accorded to all women under Islam, and operates from the pragmatic position that, - in Muslim contexts; Islamic teachings are one of the most respected sources of rights and truth by Muslim men and women alike; and the majority of women practicing Islam want the rights Islam accords them. However, as with many other rights, the existence and acknowledgement of rights are but the first step; the real challenge lies in the ability of the rights-holders to access those rights. Further still, within Islamic jurisprudence, three Quranic verses in the fourth sura are frequently cited as providing guidance on property rights matters in Muslim contexts. These verses, together with the writings of Islamic jurists provide an inheritance framework that clearly favours men. See citation below:

Islamic teachings are one of the most respected sources of rights and truth by Muslim men and women alike; and the majority of women practicing Islam want the rights Islam accords them.

*Allah chargeth you concerning (the provision for) your children: to the male the equivalent of the portion of two females, and if there be women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then the half. And to each of his parents a sixth of the inheritance, if he has a son; and if he has no son and his parents are his heirs, then to his mother appertaineth the third; and if he has brethren, then to his mother appertaineth the sixth, after any legacy he may have bequeathed, or debt (hath been paid).*

*Your parents and your children: Ye know not which of them is nearer unto you in usefulness. It is an injunction from Allah. Lo! Allah is Knower, Wise. And unto you belongeth a half of that which your wives leave, if they have no child; but if they have a child then unto you the fourth of that which they leave, after any legacy they may have bequeathed, or debt (they may have contracted, hath been paid). And unto them belongeth the fourth of that which ye leave if ye have no child, but if ye have a child then the eighth of that which ye leave, after any legacy ye may have bequeathed, or debt (ye may have contracted, hath been paid). And if a man or a woman have a distant heir (having left neither parent nor child), and he (or she) have a brother or a sister (only on the mother's side) then to each of them twain (the brother and the sister) the sixth, and if they be more than two, then they shall be sharers in the third, after any legacy that may have been bequeathed or debt (contracted) not injuring (the heirs by willing away more than a third of the heritage) hath been. ... They ask thee for a pronouncement. Say: Allah hath pronounced for you concerning distant kindred. If a man dies childless and he have a sister, hers is half the heritage, and he would have inherited from her had she died childless. And if there be two sisters, then theirs are two-thirds of the heritage, and if they be brethren, men and women, unto the male is the equivalent of the share of two females. Allah expoundeth unto you, so that ye err not. Allah is the Knower of all things.*

These verses provide a general framework for women's inheritance, which is clearly specified, although dependent on their position with regard to other relatives and the number of children they have. The standard justification across all scholarship is that Islamic jurisprudence provides a greater inheritance share to men because of the responsibility they must take for female family members.

Another argument is that Islamic law provides for inheritance, where other legal frameworks and local (customary) practices may specifically exclude women. In **Somalia**, article 2 of the Federal Constitution of Somalia states that "No law can be enacted that is not compliant with the general principles and objectives of Shari'a." Article 5 of the Constitution of Somaliland reads, "The laws of the nation shall be grounded on and shall not be contrary to Islamic Shari'a." The Constitution of Puntland is also based on Shari'a, and Article 18 stipulates that "This Constitution ensures the women's rights of independence, socio-economic and political rights that is not forbidden in the Islamic Shari'a," (which also implicitly

protects women's rights that are explicitly mentioned in Shari'a). Thus, all statutory laws in Somalia also support women's HLP rights under Islam. It is important to note that a significant number of Shari'a precepts and practices have been assimilated into the customary law system,<sup>88</sup> - and yet, the official position is often that the teachings of the Qur'an (rather than customary law) must be followed.

Notably, key Islamic legal materials generally support women's right to acquire, hold, use, administer, and dispose of property. Sait explains: Muslim women—unmarried, married, divorced, or widowed—have extensive independent rights to property under Islamic law and human rights. There is the explicit recognition in the Qur'an of women's rights to property acquired through purchase, inheritance, mahr (property transferred to the wife from the husband as security for marriage), and other transactions. There are no restrictions on the property a muslim woman can purchase out of her earnings, on the gifts she may receive from her natal family or her husband's family, or on the endowment she may enjoy as a beneficiary of a Waqf. In all these respects, she is entitled to equal treatment with male members of the family.<sup>89</sup>

Additionally, Islamic law provides significant protections for women's inheritance rights: inheritance rules which provide women within the family of the deceased with their own specific share, support more general rights for women in Islamic law to gain, retain and manage their own land and wealth. Despite barriers and constraints on women's access to inherited land and their lesser shares in comparison with men, inheritance remains an important source of access to land for women.<sup>90</sup> Additionally, widows are granted explicit protection: "If any of you die and leave widows, make a bequest for them: a year's maintenance and no expulsion from their homes [for that time]." (2:240).

There is the explicit recognition in the Qur'an of women's rights to property acquired through purchase, inheritance, mahr (property transferred to the wife from the husband as security for marriage), and other transactions.

#### D. CUSTOMARY LAW

Whilst the right to practice one's culture, including through application of customary laws are recognised in international human rights law, there is also a growing realisation that customary law, customs and practices if not closely scrutinized can lead to the infringement of human rights, especially women's rights. For example in **Somalia**, Xeer is the set of rules and obligations developed between traditional elders to mediate conflicts and maintain peaceful relationships amongst Somalia's clans, and has the capacity to change and evolve based on the circumstances and needs of a particular time and place.<sup>91</sup>

However, Somalia is a largely male-dominated society, and women do not have equal political rights with men. They have little to no role in forming and interpreting customary law,<sup>92</sup> which continues to include many discriminatory practices such as: *dumaal* (where a widow is forced to marry a male relative of her deceased husband), *higsiiian* (where a widower is given the right to marry his deceased wife's sister) and *godobtir* (the forced marriage of a girl into another clan as part of a compensation payment or inter-clan peace settlement).<sup>93</sup>

On the other hand, in **Nigeria**, customary rules, norms and practices around HLP rights vary by geographic location and ethno-linguistic group. As in many countries, the relationship between statutory (written) law, religious law, and customary laws, including norms, rules and practices

perpetuated by community-level authorities is varied and complex. The majority of individuals who identify as members of the Kanuri Shuwa Arab, Hausa, and Fulani ethno-linguistic groups reveal that even between communities, the degree to which women exercised HLP rights prior to the conflict depends on the norms within that community and variation between families. In some cases, gender norms that restrict other aspects of women's lives, including freedom of movement, work outside the home, education, made it challenging for them to exercise HLP rights.

In **Cote d' Ivoire**, customary institutions and laws dominate land matters, especially in rural areas characterised by the "virtual absence of state law and unpredictable interventions of administrative authorities."<sup>94</sup> Customary rights were rescinded in 1935 when the state became the owner of unregistered land "concerning almost all of the pastoral and agricultural land; and the dispenser of private property (by licensed registration) and the dispenser of rights of land usage (by concession)". Since then statutory law alone has governed all forms of land transaction and transfer.<sup>95</sup>

However, despite the 1935 decree, customary law continues to govern land rights in the majority of the country, particularly in rural areas. A rural land law (loi relative au domaine foncier rural)<sup>96</sup>, passed in 1998, set out to incorporate customary law into statutory law after these customary land tenure systems proved unable to manage the increasing number and intensity of land-related conflicts.<sup>97</sup> The law included two very important provisions that have shaped the nature of land governance ever since: It provides landowners with a ten-year period in which they can assert their claim to their customary rights and register their property (acquiring legal title deeds), and it also extends the possibility of land ownership to all citizens of Côte d'Ivoire, but excludes all non-Ivoirians.<sup>98</sup>

In **Central African Republic**, women seek access to justice for HLP disputes from customary systems. The chief of the locality is generally accepted as the authority for disputes of a civil nature. Interviewees confirmed that women at risk of being (or having been) evicted sometimes approach the local chief. However, this varies significantly, depending on the chief's personal views on the matter. Some chiefs do not allow in-laws to evict a wife/ partner under any circumstances, explaining that times have changed or citing gender equality or the need to protect women. Others consider the number and age of the couple's children or the duration of the time they had spent together. The result of the chief's intervention depends on the level of authority he asserts in the community since he has no means to enforce his decision. Majority of chiefs accept this practice and believe that the family council has the final say.

In the case of a non-legalised marriage, options for an evicted wife/ partner are mostly limited to filing a complaint with the local chief. Non-legalised marriages and co-habitation in Central African Republic are not recognised by law, making it extremely difficult to claim any rights over property that was purchased by the husband or built by the couple, but generally considered the property of the husband. In the absence of a marriage certificate, a wife or partner seeking to claim ownership over property will depend on her ability to demonstrate proof that she contributed to the purchase or construction of the house. Clearly, this is often extremely problematic.



**Caption:** Two women pose for a photo after cash distribution exercise for construction of houses.  
Photo by Itunu Kuku/ NRC

## PART III.

## KEY FINDINGS

This report documents the complexities faced by women in Africa in accessing Housing, Land and Property (HLP). It details NRC's experience on women's HLP rights. Women have a range of HLP rights under the mix of statutory, customary, and Islamic regimes used in different countries, and while there are several initiatives attempting to support their endeavors to exercise those rights, there also exist many challenging barriers, especially those that relate to gendered norms regarding the balance of power between men and women. These rights are not just violated and abused by warring parties, but by their own families and communities.

Overwhelmingly, the main obstacles for women's access to justice for HLP rights are repressive social norms that limit both women's understanding of their rights and the options for seeking redress when rights are denied. This is compounded by poverty and socio-economic disadvantages; high rates of illiteracy and the lack of awareness of rights, resources, social support and economic means.

Some countries have taken significant steps to adopt and amend laws and policies to improve legal protection for women's HLP rights. However, the limited number of laws or the delay in passing bills drafted to eliminate discrimination against women may take long or remain pending before several parliaments in Africa "because of its cultural implications." Further still, the gender dimension is rarely considered by traditional and local dispute resolution mechanisms. Patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men persist in all spheres of life, which prevents women from owning land and any provisions in the law offer little protection in practice as women are often at the mercy of male family members with regard to land.

Moreover, displaced women in Africa face several obstacles that prevent them from claiming their rights, and many stem from chronic poverty, and the male dominated traditions and cultures that underpin African societies. By controlling the story of why certain practices become customs, men can justify the decisions they take to maintain dominant positions in society. Discriminatory customs are used to justify denying women several rights including HLP rights available to them under both formal and informal legal frameworks. Majority of women have little voice or protection in the customary and religious justice processes, as they are often excluded from shaping the rules of these systems, from acting as decision-makers in the case of the disputes, and often from speaking for themselves if they have grievances.

Additionally, those who seek to exercise and claim their rights outside the informal justice system are stymied by the somewhat ad-hoc nature of the legal institutions, in that there is still general uncertainty as to what legal rights and rules exist, and where they can be adjudicated. Generally, for women across Africa, access to informal justice mechanisms is often

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limited if traditional elders are male. Even if women are able to get to the court, they continue to face obstacles related to the discriminatory nature of several harmful cultural practices and religious norms, often exacerbated by low literacy levels and poverty. Moreover, both formal and informal courts struggle to see male and female complainants as equal. Another significant obstacle to women's ability to exercise their HLP rights, particularly within the marital household, is domestic violence. Violence perpetrated by husbands or partners who are angry when their wives exercise their HLP rights is a pervasive threat to the realisation of women's rights.

In **Nigeria**, women are responsible for 70 to 80 percent of all agricultural labor in the country, and according to federal and state law, they have the right to hold and inherit land. But, only 10 percent of land owners in Nigeria are women. Due in large part to the application of customary law to land and property ownership in Nigeria, women rarely inherit land and typically cannot obtain land rights on their own. This is the situation in both customary law in the south and Islamic law in the north that discriminate against wives and daughters in land inheritance, but there are important distinctions.<sup>99</sup>

Additionally, this report indicates that the phenomenon of displacement has exacerbated HLP violations already threatened by the gendered norms of the access and use of HLP rights in Africa. In particular, the analysis looked at what HLP rights women are able to exercise, and how the powers of men and women are affected by factors such, drawing experiences from East Africa, Central Africa and West Africa. Important to note is that due to fear of being ostracised, some of the coping strategies adopted by the women to handle these changes may have positive effects on the survival of the family, but often result in negative repercussions from their husbands.

For example, in **Central African Republic (CAR)**, as in many other developing countries, women's access to HLP is limited and often depends on their relationship with a man. Husbands are entitled by law to decide places of familial residence and wives usually have little say in HLP issues. Documents showing ownership or rights to housing and land are often in the name of the husband or a male relative. Several reports indicate that single, divorced or widowed women could be allocated land for residential or agricultural purposes. However, it would seem that when and if this happens such women are only regarded as land users, and not owners. For Central African women inheritance is often the only way to accumulate HLP assets. Central African Republic family law does not discriminate against women with regard to inheritance rights. However, there are serious concerns with regards to women's ability to inherit in practice. These challenges have been exacerbated by the increased numbers of women-headed households as a result of men killed or missing due to conflict. By far the biggest reported challenge for displaced women is eviction from the family home.

In displacement, the reversal in the gendered role of economic providers has had significant consequences. When men who were the primary breadwinners, and had a stronger claim to decision-making power and



**Caption:** Aisha, is a mother of 7 children. She recently returned home after spending the past 4 years in displacement.

Photo by Hajer Naili/ NRC

authority in the household – are now being offered handouts in the form of humanitarian assistance, these power dynamics have implications on the respect of rights in displacement. With humanitarian actors increasingly identifying women as heads of household, the role of women as primary breadwinners is being challenged. While women remain socially subordinate to men, displacement is making them less dependent on men for access to economic resources and other means of production.

In contrast, while most women found that working was good in so far as it allowed them to care for their children, in **Somalia** women did not view having to work under current conditions as a positive development. This is unsurprising, as working outside the home is simply an additional burden to the existing workload; the paid work they do is often menial, and detracts from the time they need for their household and family duties. There is no general trend of men assisting with domestic work or childcare, even if they are unemployed. Furthermore, women reported exposure to additional protection risks when working; a major issue within IDP communities for women was harassment outside the home, at work places, at checkpoints as they access their places of work or business.

Another example from **South Sudan** indicates that women are significant contributors to the social and economic survival and wellbeing of households and communities. Although women are the majority producers of the food families consume, patriarchal norms have bestowed power over Housing, Land and Property (HLP) to men. Women have a subordinate position. This position prevents them from enjoying their HLP rights and participating in HLP reforms, particularly at a decision-making level. The majority of women in Africa want to have their voices heard, in addition to this they desire to find spaces where they can speak, and decision-makers they can speak to in order to claim their HLP rights and still have marriages with respect; to be economically empowered, and to seek justice when they have been wronged.

Further still, women are aware of their HLP rights under statutory, customary and religious laws (specifically Shari'a), and while some may argue that Islamic law discriminates against women (at least as compared to more "Western" individualistic discourse), Islamic teachings remain one of the most respected and widely understood sources of rights and truth amongst all Muslim women. In **Somalia**, women view the fulfillment of their HLP rights under Islam as a worthy achievement, as it provides more protections and rights than they are currently able to access.

In **Ethiopia**, officials and scholarship argue that the land is registered in the names of both the husband and wife (if assigned to a married couple), because both names are included in the actual green book that is issued.<sup>100</sup> However, the registry book that remains with the government includes only the name of the head of household, which is typically the husband. As has been noted elsewhere, this practice weakens the wife's claim to land in general, and because access to rural land depends on residency in a particular kebele, women who divorce or become widows and who have to leave their marital land will not be allocated land. It is also unclear to what extent women were actually involved in the registration process. For example, one returnee woman interviewed during a study<sup>101</sup> in Ethiopia said that she and her husband had owned land in the area with papers that would have given her the right to sell



**Caption:** Mary fled from her village in South-West Cameroon and is currently living in the bush near Buea, Cameroon.

Photo by Tiril Skarstein/NRC



the land, but she knew nothing about the registration. Members of the kebele administration who had insisted that all land in the kebele had been registered explained the discrepancy by saying that registration was only done in her husband's name, so she would not know anything about the process.<sup>102</sup>

Further still, in Africa, civil strife has exacerbated women's insecurity and inability to access their land and also increased tensions between communities. For example, in **Cote D'Ivoire**, the women from the autochthonous and migrant communities have had their rights to land threatened by civil strife. Widows, divorced, and abandoned women are perhaps the most vulnerable, often being forced to leave their deceased husbands' land, or to marry an in-law or another villager in order to remain in their community and with their children. While the statutory land tenure framework does not exclude women from legally owning land, very few do. Additionally, under the customary system in **Cote D'Ivoire**, women are prevented from owning and inheriting land, which often results in their exclusion from land registration processes.<sup>103</sup>



Caption: Portrait of IDP woman in Somalia.  
Photo by Ingrid Prestetun / NRC

## PART IV.

## CONCLUSIONS AND RECOMMENDATIONS

## A. CONCLUSIONS

This publication complements the first edition of the “Kampala Convention – Make it work for Women” report, through identifying and prioritizing gaps in the implementation of women’s land rights, with a focus on displaced women. In addition, the advocacy work will also provide practical recommendations on how national laws can provide better legal protection to housing, land and property rights.

In many parts of Africa, discrimination against women’s rights to property and security of land tenure remain the norm – and yet the existing policies and legal frameworks often provide little recourse for women to realise these rights. Ultimately, women’s HLP rights remains a complex, and complicated issue in Africa, and actors wishing to intervene must understand these dynamics to facilitate long-term and positive change, and to guard against creating further harm in conflict affected and fragile contexts. As a result, many women in these areas are effectively excluded from key decision-making processes.

Additionally, the customary system remains an integral part of the African society, customary practices remain key in the management of social issues and relationships. Thus, a deeper discussion about discriminatory customs and norms themselves should be had. Those who adhere to them often guard them as the ways of “our people”, but there are questions as to exactly who defined “our ways,” as well as whether these norms are still relevant and justifiable today. Just as women should be included in the discourse about what it means to be a woman, so should they be involved in the on-going processes of defining African custom. More thoughtful engagement is needed to explore how these systems, religious leaders, and customary leaders, can come together to support and protect displaced women as they seek to claim their HLP rights and aim for better lives.

Whereas policy recommendations articulate how best legal and policy frameworks addressing displaced women’s rights have been domesticated among countries that have already ratified it, this report has identified significant gaps, in its implementation - and findings will be used to advance the protection of Displaced Women’s Housing, Land and Property rights in the region, placing emphasis on the fact that displaced women often pay a high price when claiming their HLP rights, which should be taken into account by both development and humanitarian actors. For example, the women that NRC works with have had their land confiscated by armed actors, sold by family members, occupied illegally and with impunity, their land is grabbed and widows are evicted. These women live in inadequate accommodation under inhumane conditions, have been denied shelter assistance, often allocated to male heads of household. Returnee women have been denied their inheritance rights and divorced women are ostracised.

To empower displaced women to claim and exercise their HLP rights, the importance of informal (religious; Islamic and customary) systems cannot

In many parts of Africa, discrimination against women’s rights to property and security of land tenure remain the norm – and yet the existing policies and legal frameworks often provide little recourse for women to realise these rights.

be overlooked or legislated away. It is therefore important to understand how women's access to their HLP rights are affected by statutory, religious and customary systems. This is key if we are to contribute to ongoing efforts to seek greater empowerment or access to other rights, including those of displaced women.

## B. RECOMMENDATIONS

**i. Eliminate harmful cultural practices:** the sustainable development goals call for the elimination of all harmful cultural practices to advance the rights of women and girls. Efforts should be made to develop and support the implementation of laws and policies that address harmful cultural practices. In addition to this, community level transformation of social norms and practices should be prioritised. This includes creating spaces where women can come together and talk about problems, and discuss possible ways to improve their lives. Additionally, IDP women would benefit from greater exposure to women in positions of strength or authority, and there should be a space where strong women can share their message and experiences to encourage the displaced women and give them hope. Seeing other women speak freely and hold positions of authority can encourage displaced women to speak for themselves, and serve as proof that women can succeed and have better lives.

Further to this, women should be helped to gain access and audience with the decision-makers, who are still primarily male, in both statutory and customary systems. Establishing a link between women and male authority figures is crucial to ensuring that the leaders in society understand that the mistreatment of women, and denial of their rights is more widespread and damaging than they wish to believe. Women are capable of explaining what they need, and should be given the opportunity to make their case to the ones who are well positioned to do something about it.

**ii. Invest in initiatives that empower women to exercise and claim their rights:** investing in women's equal access to land and assets requires them to be empowered. This includes increasing their knowledge of women's rights, and ensuring both men and women are better trained on women's rights, particularly placing emphasis on the right of all women to directly own land and property. Efforts should be made to ensure there are more open discussions among men and women on how to improve access to these rights. Both humanitarian and development projects should be carefully designed to see if they are distributing opportunities to men and women equitably, and to ensure they are not inadvertently favouring men due to customs and traditional practices. Additionally, women should be provided with opportunities to access and claim HLP rights. Where possible, interventions should be structured to ensure that women have, at a minimum, a choice to exercise their HLP rights.

Displaced women should be empowered economically to enable them escape the cycle of poverty. This will increase their confidence and strength, and enables them to make independent choices without fear of abandonment, eviction, or divorce. Economic strength provides the



**Caption:** Refugee woman after fleeing her village in Central African Republic to seek refuge in Cameroon. Photo by Itunu Kuku/ NRC

sense of power and self that increases a woman's resolve to claim her HLP rights, and the ownership and control of property itself reinforces economic power.

### iii. Strengthen the Rule of Law and increase Access to Justice:

apply a human rights-based approach to strengthen and increase access to justice for displaced women. Work with Justice (Judiciary) Law and Order (law enforcement) Sector actors to ensure that the availability of legal remedies and mechanisms alone is not being used to measure women's access to justice. Interventions should be designed to consider the fact that access to justice is affected by several factors, not only inside the legal system, but outside it. Women's access to justice should therefore not be confined to access to the legal system (substantive, normative, procedural) but should include access to multidisciplinary support services as well, taking into account women's active participation and empowerment in the overall process. Geographic, political and economic factors affecting women's resort to legal and judicial processes should be considered when designing access to justice and rule of law programs.

Additionally, increase access to legal aid services for HLP specific cases. Legal aid is an essential component of fair, humane and effective access to justice, and should be based on the rule of law. It contributes significantly to the enjoyment of other rights, including the right to a fair trial, and an important guarantee of fundamental fairness and public confidence within the justice (judiciary) law and order (law enforcement) sector.

Unfortunately, many countries in Africa still lack the resources and capacity to provide legal assistance to indigent and vulnerable groups, hence the need to develop and strengthen national legal aid policies. This is particularly important since women in Africa often face specific barriers in accessing legal aid, due to a lack of gender-sensitive legislation, policies and services or insufficient knowledge of their rights. Special measures must therefore also be taken to ensure that legal aid is effectively accessible to women. Interventions aimed at addressing women's HLP rights should focus on the promotion and implementation of gender-sensitive laws and policies, capacity building of legal aid service providers, and legal empowerment of women.

Further still, strengthen linkages between statutory and religious or customary forums by bringing together women, religious leaders and traditional leaders to create forums where women can claim the rights and protections offered under customary or religious courts. This includes facilitating legal assistance through either lawyers or paralegals, or collaborative methods such as mediation, negotiation and arbitration or conciliation. Develop networks within settlements or camps where women are trained on their rights and able to provide support for each other, building on existing outreach and awareness initiatives, and where possible, seek the inclusion of men who understand the importance and benefits of supporting women.

### iv. Domesticating International Conventions Laws and Regulations in East, Central and West Africa, specifically the Kampala Convention.

International treaties are not self-executing and require domestic



**Caption:** Female IDP woman explaining issues on housing, land and property in Dollow, Somalia. Photo by Nashon Tado/ NRC

legislation to give effect to their provisions. Appropriate implementing legislation must be drafted at the national level, because international treaties can only become effective when implemented into national legislation. All stakeholders should work towards ensuring the implementation of the Kampala Convention through building a critical mass to identify national implementation needs. Several obligations in the Convention require States to designate a focal point with the responsibility to oversee all IDP matters. This obligation helps to systematize domestic responses to displacement situations and structure coordination between national and international responders. It also facilitates domestic policy processes on internal displacement, and it is important to make the process systematic, accountable, inclusive and transparent.

Programmes must take into account the specific needs of men, women, girls and boys with respect to both biological/sex differences and sociocultural gender differences.

- v. Implement Gender-Sensitive Programming:** Both humanitarian and development actors should integrate or mainstream gender into programmes and reduce vulnerability to HLP violations. Programmes must take into account the specific needs of men, women, girls and boys with respect to both biological/sex differences and socio-cultural gender differences. Programmes should promote both gender equality and equity and should be grounded in a rights-based approach. This requires challenging harmful socio-cultural norms and stereotypes related to masculinity and femininity. Another concept critical to gender-responsive programming is that of sexuality. Taboos related to sexuality exacerbate the discrimination against women, and gender influences HLP rights in several ways as discussed throughout this report. Interventions should therefore include and measure gender indicators. It is important to note that when gender is measured, it is more likely to be prioritised and evidence gathered against indicators can help make the case that gender issues should be taken seriously in HLP responses.

Gender indicators should therefore be used for advocacy and to help make the case for action by highlighting key issues, backed up with statistics and other evidence. Gender indicators need to evaluate the outcomes of gender-focused and mainstream interventions and policies and help reveal barriers to achieving HLP specific rights of displaced women. They should provide vital information for adjusting programmes and activities so that they achieve better gender equality goals and do not create adverse impact on women and men. This includes mainstreaming gender within organisations, and holding institutions accountable for their commitments on gender equality. Gender indicators and relevant data should be used to make visible the gaps between the commitments that governments and other institutions have made at all levels.

Lastly, analyse and understand how interventions will impact both men and women. Continue focusing on women's needs and addressing discrimination, but be cautious that the advancement of women is not perceived as coming at the expense of men. Strategies may include efforts: to better understand the behaviour of men; to include men in the discussion on women's rights and empowerment; to identify possible risks caused by frustrated or angry men; and to develop mitigation and protection strategies should they occur.

**PART V.****ANNEX****ANNEX A: NRC Publications on Displaced Women's HLP rights in Africa**

1. **Côte d'Ivoire** – Displaced women's rights to housing, land and property in post-conflict western Côte d'Ivoire, NRC, 2015
2. **Central African Republic** – Consequences of Evicting Widows: Displacement and women's housing, land and property rights in the Central African Republic, NRC, 2015
3. **Ethiopia** - Housing Land and Property rights of displacement affected communities in Gedeo and West Guji, NRC, 2018
4. **Liberia** – Violence Against Women and Housing, Land and Property in Liberia, NRC, 2013
5. **Nigeria** - The HLP Rights of Conflict Affected Women in Northeast Nigeria, NRC, 2019
6. **Somalia** - Housing, Land and Property rights for Somalia's urban displaced women, Somalia, NRC, 2016
7. **South Sudan** – Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan, NRC, 2013
8. **Global** – Life Can Change, NRC, 2014
9. **Global** – Kampala Convention: making it work for women, NRC, 2015



**Caption:** Women gathered for a cash distribution for shelter rehabilitation in Ituri, Democratic Republic of Congo. Photo by Itunu Kuku / NRC

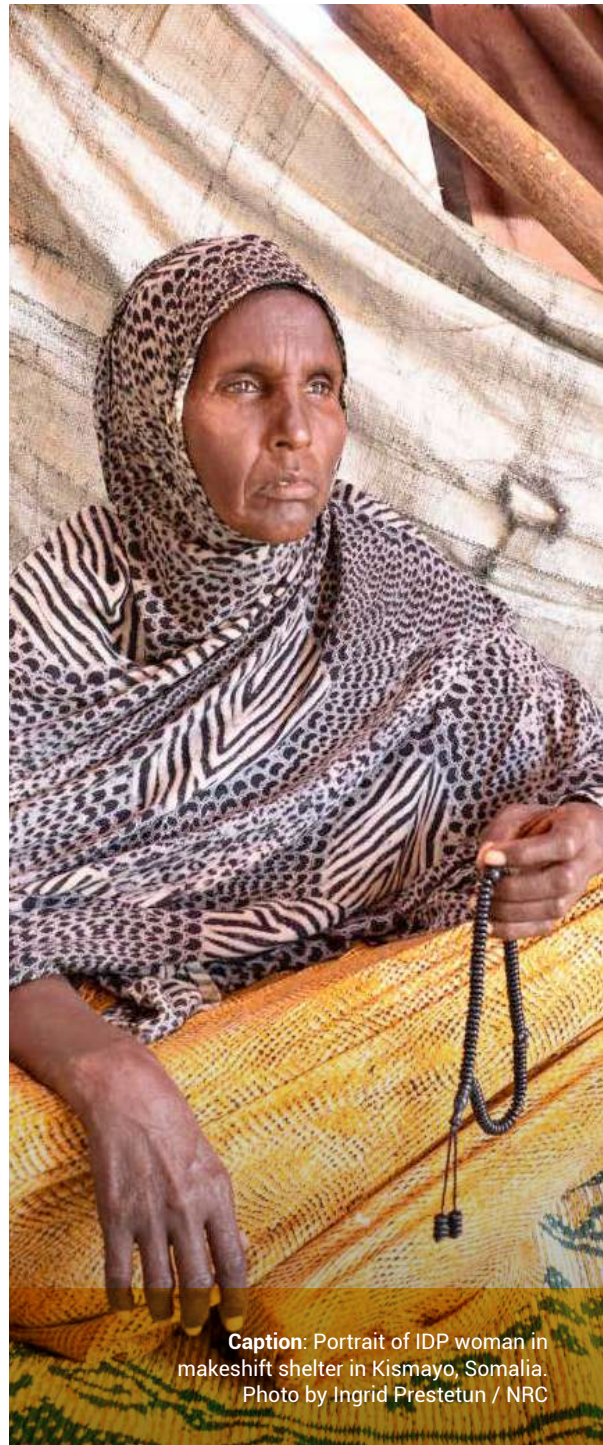
## PART V.

## ENDNOTES

- 1 After nine years of assisting refugees and internally displaced people in Cote d'Ivoire, the Norwegian Refugee Council (NRC) has closed down its operations in the country.
- 2 Ibid.
- 3 South Sudan is not (yet) member to any of the ICCPR, ICESCR and CERD treaties.
- 4 See, e.g., United Nations Human Rights Office of the High Commissioner (2013); United Nations Human Settlements Programme (2006).
- 5 OHCHR booklet on Adequate Housing: [https://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](https://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf)
- 6 ICESCR; UN CESCR General Comment 3 and 4
- 7 It is important to add that it is not legally binding. This is aimed at making it crystal clear since there seems to be an eternal misunderstanding in so many papers/discussions around the binding nature of declarations, guidelines, principles and regulations etc.
- 8 Adopted by the Islamic Council, 19 September 1981
- 9 Adopted by the Organization of the Islamic Conference (OIC), 05 August 1990, available at: <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/Human-Rights/cairo.pdf>
- 10 Adopted by the Islamic Council (London-based affiliate of the Muslim World League NGO seated in Saudi Arabia), 19 September 1981.
- 11 UIDHR, Art. II(b)
- 12 UIDHR, Art. III(a)
- 13 UIDHR, Art. XV(c)
- 14 <https://www.oic-oci.org/>
- 15 <https://www.oic-oci.org/>
- 16 Cairo Declaration, Art. 1(b)
- 17 Id., Art. 6.
- 18 Id., Art. 11
- 19 Id., Art. 14
- 20 Id., Art. 15
- 21 Id., Art. 19
- 22 Handbook on Implementing Pinheiro Principles (2005)
- 23 <http://www.achpr.org/instruments/women-protocol/ratification/>
- 24 Kampala Convention, Article 2(a)
- 25 Kampala Convention, Article 3(1)
- 26 Kampala Convention, Art. 4(4)
- 27 Consequences of Evicting Widows: Displacement and women's housing, land and property rights in the Central African Republic, Norwegian Refugee Council, Central African Republic, 2015
- 28 Kampala Convention, Art. 9(2)
- 29 However, the civil law system differs from the common law system of marital property law. It is not possible to fully understand the community system of marital property law without understanding its foundation. The origin of community property lies outside English, and is a distinct realm of civil law. French law describes Community of gains (named in French communauté réduite aux acquêts as the 'regime legal' or legal regime, applicable automatically by operation of law (French Civil Code). It is possible to opt out completely and adopt a 'regime conventional' or contractual regime, or in part, in a matrimonial agreement making reference to the 'regime legal' yet with conventional changes.
- 30 Article 360.
- 31 Report on the Pre-Validation Workshop on the revised provisions of the Code de la Famille from 30 September to 1 October 2010 in Bangui, p.5.
- 32 Family law, articles 365 – 381.
- 33 Family law, articles 745 – 789 and 939, interview with Association des Femmes Juristes de Centrafrique (AFJC) in Bangui in September 2014 and Pre-Validation Workshop Report 2010 op. cit., p.5.
- 34 Family law, articles 216 and 230.
- 35 Pre-Validation Workshop Report, op. cit. and Report on the National Validation Workshop on the revised provisions of the Code de la Famille on 23 November 2010 in Bangui.
- 36 Interviews with officials of the Ministry of Social Affairs and Humanitarian Action and AFJC in Bangui in September 2014.
- 37 Crook, Richard, Simplice Affou, Daniel Hammond, Adja F. Vanga, and Mark Owusu-Yeboah. (2007). The Law, Legal Institutions and the Protection of Land Rights in Ghana and Côte d'Ivoire: Developing a more effective and equitable system, p. 32. <https://www.ids.ac.uk/download.php?file=files/Rr58.pdf>
- 38 Ibid.
- 39 Ibid.
- 40 Ibid
- 41 This means that a non-Ivoirian who has made a customary land purchase may not have this purchase transformed into a title deed. At best, s/he can expect to obtain a long-term lease with favourable conditions, but which still imposes the payment of rent for land that he considers his/her own. The non-Ivoirian who is a beneficiary of a customary transfer may enjoy a long-term lease if a "statement of continuous and peaceful existence of customary rights" is made as part of an application for a land certificate, and if his guardian considers the non-Ivoirian to be in good faith. However, when non-Ivoirians were already bearers of formal title deed prior to the enactment of the law, the law allows the title deed to be retained in a personal capacity. See McCallin, B., & Montemurro, M. (2009). Whose land is this? Land disputes and forced displacement in the western forest area of Côte d'Ivoire, p.7 <https://www.internal-displacement.org/sites/default/files/inline-files/200911-af-cdi-whos-land-is-this-sumrec-country-en.pdf>
- 42 Hartman, op. cit. p.14.
- 43 La Loi n° 98-750 du 23 décembre 1998 relative au domaine foncier rural. Art. 5: Il n'y a pas de condition d'exclusion liée au sexe. "La propriété d'une terre du Domaine Foncier Rural se transmet par achat, succession, donation entre vifs ou testamentaire ou par l'effet d'une obligation". And Loi n° 64-379 du 7 octobre 1964 relative aux successions, Art. 22 : Les enfants ou leurs descendants succèdent à leurs père et mère, aïeuls ou autres ascendants, sans distinction de sexe ni de progéniture et encore qu'ils soient issus de différents mariages ou nés hors mariage". [http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legal-framework/inheritance-legal-mechanisms/en/?country\\_iso3=CIV](http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legal-framework/inheritance-legal-mechanisms/en/?country_iso3=CIV)
- 44 Ibid.
- 45 Les directions départementales et régionales de l'agriculture du district des Montagnes
- 46 Ibid.
- 47 Article 40
- 48 Id.
- 49 Federal Rural Land Administration Proclamation No. 89/1997, Part II.
- 50 Federal Rural Land Administration and Land Use Proclamation No. 456/2005, Part I (2).
- 51 Federal Rural Land Administration and Land Use Proclamation No. 456/2005, Part II.
- 52 Id
- 53 P. E. Oshio, 'The Indigenous Land Tenure and Nationalization of Land in Nigeria,' Boston College Third World Law Journal (10) 1 (1990).
- 54 Ibid.
- 55 Subsurface rights are the right to the earth below the land, and any substances found beneath the land's surface. Subsurface rights usually include the right to oil, minerals and even water that's found beneath the land's surface. Like surface and air rights, subsurface rights can be bought, leased or sold alone.
- 56 Article 2(a) and Article 15(1) of the 1999 Nigerian Constitution.
- 57 Federal Republic of Somalia, Provisional Constitution, Art. 3(5)
- 58 Id., Art. 11
- 59 Id., Art. 15(2)
- 60 Id., Art. 26(1)
- 61 Id., Art. 27(5)
- 62 Id., Art. 31(1)
- 63 Id. Art. 39
- 64 Id., Art. 43
- 65 Constitution of Puntland, adopted 18 April 2012, available at <http://extwprlegs1.fao.org/docs/pdf/som197962.pdf>



- 66 Id., Art. 18  
 67 Id., Art. 23  
 68 Id., Art. 25  
 69 Id., Art. 30  
 70 Id., Art. 31  
 71 Id., Art. 32  
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**Caption:** Portrait of IDP woman in makeshift shelter in Kismayo, Somalia. Photo by Ingrid Prestetun / NRC



**Caption:** Sabine holds an information session with women on the importance of laminating and safely storing birth certificates in Kourgi village, Far-North Region of Cameroon. Photo by Itunu Kuku / NRC



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