



DISPLACED
WOMEN'S RIGHTS
TO HOUSING, LAND AND PROPERTY



LIFE CAN CHANGE:

Securing housing, land
and property rights for
displaced women

NRC

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Equality has two different sides: equality in law and equality in fact. Many laws recognize that men and women are equal before the law. However in practice, men and women rarely experience this equality. This is particularly evident in housing, land and property.

Women and the right to adequate housing, Office of the UN High Commissioner for Human Rights, 2012



About this project

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.

In 2011, NRC embarked on a five-year initiative aiming to increase displaced women's access to housing, land and property (HLP) rights through international and national advocacy. The project aims to provide well-researched legal, policy and practice recommendations for the humanitarian community, including practitioners, donors, governments and civil society.

The project's evidence base is drawn from NRC's extensive operational experience, for over 15 years, as a provider of information, counselling and legal assistance (ICLA) related to HLP rights in 15 countries afflicted by conflict or recovering from it. The project's analysis and recommendations are based both on assessments of NRC's legal cases and commissioned country research.

This report is based on the findings of country reports from Afghanistan, Lebanon, Liberia, Palestine (Gaza), South Sudan and Colombian refugees in Ecuador. For the country reports and more information visit womenshlp.nrc.no.

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FOREWORD

In many places affected by conflict and crisis, displaced women continue to live in extreme vulnerability. They often suffer unbelievable human rights abuses and remain marginalised, unable to make decisions about their lives and their communities. This is especially the case with respect to the realisation of their housing, land and property (HLP) rights.

Norwegian Refugee Council's (NRC) staff witness first-hand how conflict is most acutely felt by women and exacerbated by discrimination. Through our legal assistance operations we have witnessed the magnitude of the difficulties confronting displaced women seeking to access justice in order to claim their housing, land and property.

We fail in our humanitarian, development and peace-building efforts if we do not adequately support women and build on their own resourcefulness. In 2000, the UN Security Council passed the landmark Resolution 1325, generating numerous global initiatives and subsequent resolutions promoting the rights of women in conflict and post-conflict situations. Yet almost 15 years later, humanitarians still have a long way to go to put women at the centre of policy and operations. This is even more acute for displaced women's rights.

This report is NRC's contribution to generating policy and practice solutions based on our operational experience. We aim to shed light on the major hurdles that displaced women face when seeking to secure a home and rebuild their lives both during and after crisis. We have listened to their experiences in many countries and sought to reflect their voices, their concerns and their own vision for solutions. The report speaks of the difficulties, courage and triumphs of the displaced women with whom NRC works, and offers practical recommendations for humanitarians to support women as they recover from tremendous hardship.

But beyond this, the report reinforces NRC's belief that even in the midst of conflict and crisis, humanitarians can seize opportunities to bring about lasting transformation and greater equality through our conflict and post-conflict interventions. We can do this by challenging discriminatory laws and practices that undermine not only women and girls' rights, but also the effectiveness of humanitarian aid. Assisting displaced women to claim their HLP rights, particularly through legal assistance, is a crucial part of the solution.



Jan Egeland
Secretary General
Norwegian Refugee Council

EXECUTIVE SUMMARY

AND KEY RECOMMENDATIONS

In 2011 NRC established a programme of work focused on strengthening displaced women rights to housing, land and property (HLP). This was in response to challenges identified by legal staff working with displaced communities in conflict and post-conflict environments. The challenges included the difficulties women face in accessing justice and the barriers posed by repressive social norms, poverty and destitution. NRC has since gained a wealth of experience from its legal assistance work, generating positive results for displaced women through a variety of innovative practices and collaborations. Drawing on these insights and experiences, NRC is now in the third year of a five-year initiative that seeks to increase support to displaced women so they may realise their HLP rights. The initiative consists of improvements to NRC's own programming and international and national advocacy.

This report represents NRC's first reflection of both the challenges faced by displaced women and the positive results that can be achieved through the provision of legal assistance in a way that is sensitive to women's needs and the context in which they live. The evidence base is drawn from six countries – primarily from NRC's legal assistance (ICLA) programmes for displaced communities in Afghanistan, Ecuador, Lebanon, Liberia, Palestine (Gaza), and South Sudan. Despite the wide range of displacement contexts, NRC identified clear common themes from the research. Key findings and recommendations for NGOs, UN agencies and donors are presented in the report and summarised below.

1. ACCESS TO JUSTICE AND THE RULE OF LAW IN HUMANITARIAN CONTEXTS

Women's HLP rights are often neglected in humanitarian response

While much attention has been paid to issues related to gender-based violence (GBV) in recent years, violations of socio-economic rights, including HLP rights, have been a neglected aspect of women's experience of conflict. All too often, women's HLP rights are violated and abused by the parties to the conflict and their own families and communities. HLP rights are essential for women to survive displacement and recover from conflict as they enable them to secure shelter and a livelihood. Yet the humanitarian community continues to intervene in ways that fail to take women's experiences into account, particularly in the area of HLP.

The gap between the law and practice in conflict and post-conflict environments

Despite strong constitutional guarantees of equality and non-discrimination in states such as South Sudan and Afghanistan, in reality displaced women are often unable to assert their HLP rights. As the case studies in the report show, refugee and returnee women are evicted from family homes after divorce; their land is sold by family members or occupied with impunity; they miss out on shelter when it is allocated to male heads of households; and returning widows are denied inherited land. Most importantly, they often have little ability to do anything about it. The hard truth is that despite major investments in justice in conflict-affected and developing countries (US\$4.2 billion by OECD-DAC donors in 2009 alone), this has not translated into gains on the ground for many women whose only option for resolving HLP disputes may be local customary and religious authorities.

Inheritance and marital property laws can protect women's HLP

In the countries where NRC has operations, women's HLP rights continue to be determined through their relationship with men. As a result, inheritance and marital property laws can provide some of the most important avenues for women to gain independent control and use of HLP. However, humanitarian actors do not often consider the potential of these laws, nor the context in which they can be applied in their programming.

Recognising the significance of religious and customary structures

Customary and religious authorities regulate how disputes over issues such as inheritance, marital property and access to land, are addressed in many countries. Even though customary laws may contradict statutory provisions about equality, displaced women still found customary mechanisms to be the most viable option for resolution of their HLP disputes. Because maintaining social relations is critical for displaced women's survival, they may be reluctant to seek dispute resolution through adversarial approaches, such as courts. It is therefore crucial for humanitarians to work with, and support women to shape and define customary and religious justice mechanisms. NRC's experience shows that with the right kind of support, women can be successful in resolving their HLP claims through these forums. Educating customary authorities about statutory and religious laws that support women's claims is one way to combat discrimination against them.

2. SOCIAL NORMS, POVERTY AND ILLITERACY IMPEDE DISPLACED WOMEN'S ACCESS TO JUSTICE

Repressive social norms get in the way

Overwhelmingly, NRC's studies found that the main obstacles to women's access to justice for HLP rights are social norms that limit both women's understanding of their rights and their options for seeking redress when rights are denied. Norms embedded within families, communities and justice structures can perpetuate gender inequality, limiting the extent to which women's rights are realised in practice. Social norms and traditions can negatively impact the application of *sharia* provisions that would otherwise support women's HLP claims, as shown in NRC's research in Afghanistan, Lebanon and Palestine. Social norms may also be subject to change during conflict, post-conflict and in protracted displacement. In addition, many returnees bring with them new visions of gender roles, often clashing with the traditions of their places of origin. This underscores the importance of engaging with customary authorities to support women as they challenge social norms and demand equality in their HLP rights.

Existing discrimination is exacerbated during displacement

During conflict and displacement, existing patterns of discrimination are exacerbated. Displaced women face multiple discrimination – as women; as refugees; as returnees and IDPs; as members of economically disadvantaged groups and as members of ethnic and/or religious minorities. These layers of discrimination worsen their already precarious ability to access justice.

Displaced women often face impossible choices

Displaced women may face severe consequences for claiming their HLP rights. In the studies, they explained that they can be ostracised and ignored if they claim their land, and may be abandoned by their families. Some societies reject women who ask for their inheritance rights and it can be considered shameful if they make a claim, as shown by the experiences of Palestinian refugee women in Gaza and returnees in Afghanistan. Humanitarian HLP interventions and access to justice programmes often do not adequately take into account the difficult choices and risks that displaced women confront when deciding whether to claim their rights.

Practical barriers resulting from socio-economic disadvantage

Additional barriers result from displaced women's relative socio-economic disadvantage and can compound their difficulties at every step of the way. For example many women are unable to travel to court; they are unable pay court fees; they do not have their names on HLP documentation; and they are unable to engage in land sector reform interventions. Illiteracy means that women are often left out of key processes relating to the acquisition of land and housing rights. It also prevents them from filing HLP claims in court.

3. CONCLUSION – CHALLENGES AND OPPORTUNITIES FOR SUPPORTING DISPLACED WOMEN'S HLP RIGHTS

Humanitarian interventions may exacerbate displaced women's predicament

NRC's analysis shows that it is essential to recognise that the way in which humanitarians intervene during crises can have lasting consequences for recovery, especially for displaced women. Gender can no longer be considered an optional add-on to humanitarian programmes. Equally, the perception that humanitarian actors are, at most, responsible for restoring the pre-conflict status quo is unsustainable. Humanitarians have an obligation to provide rights-based assistance and to promote non-discrimination. However, where humanitarians fail to build an understanding of displaced women's specific constraints into their operations, they perpetuate gender inequality, for example by allocating assistance to male heads of households, which directly discriminates against displaced women and prevents them from realising their HLP rights.

HLP rights are an opportunity to promote gender equality

Conflict can bring devastation and loss for women. But it can also provide opportunities to promote equality during recovery, when lives are rebuilt, even in protracted displacement. Experience shows that there is a window of opportunity following periods of conflict to intervene in progressive ways that support improvements towards ending discrimination. There is potential to assist women to claim HLP rights after conflict, as they challenge social norms, and their families and communities, to achieve greater equality.

KEY RECOMMENDATIONS

The recommendations detailed below are targeted at international humanitarian and development actors and donors, based on the main findings of the research. A full set of detailed recommendations is presented at the end of this report. Country-specific recommendations are included in each of the country studies.

Closing the gap between law and practice – working with customary and religious authorities

1. Programmes to address HLP issues should be funded and implemented in the initial stages of emergency response. Donors should provide flexible funding for longer-term engagement, supporting women's access to justice for HLP issues from the beginning of humanitarian interventions, through transition to the rule of law.
2. Humanitarian and development funding should support legal assistance for displaced women to engage with all forms of dispute resolution mechanisms available to them at the local level – including

customary, religious and statutory processes.

3. Humanitarian and development actors should support government and local authorities to ensure that statutory law provisions promoting equal HLP rights for women are applied by customary and religious dispute resolution mechanisms. This should include training of customary authorities and religious leaders to increase their knowledge of statutory law and strengthen their collaborative dispute resolution skills.
4. Programmes supporting legal empowerment for displaced women should incorporate complementary services, such as the provision of information, legal counselling, representation and mediation so that the full range of options for resolution of disputes can be understood by women. This will enable them to determine the process that is most appropriate for their situation.

Challenging social norms and removing practical barriers

5. HLP and rule of law actors should take into account the social consequences that women face when they claim HLP rights, including the increased risk of violence. These considerations should be incorporated into project planning and monitoring and evaluation processes carried out by humanitarian organisations and required by donors.
6. International organisations should refrain from documenting and registering HLP assets only in the name of male heads of household. The registration of tenure rights in joint or multiple names, including of women, should be the standard procedure.
7. Legal assistance providers and rule of law actors should design programmes that address the practical barriers that women face in accessing justice resulting from their socio-economic disadvantage, illiteracy and lack of awareness of rights.
8. Humanitarian and development actors should incorporate more legal literacy and rights awareness campaigns in project programming. This means adapting training materials, location and timing of training and advisory services to be accessible for women.
9. Programmes that focus on awareness-raising should also be accompanied by the provision of support through individual counselling (legal advice) followed by the option of legal assistance if women decide to claim their rights.



INTRODUCTION AND BACKGROUND

NRC'S INFORMATION, COUNSELLING AND LEGAL ASSISTANCE PROGRAMMES

The Norwegian Refugee Council (NRC) is an independent, humanitarian, non-profit, non-governmental organisation which provides assistance, protection and durable solutions to refugees and internally displaced persons worldwide. With humanitarian assistance programmes in 23 countries, NRC promotes and protects the rights of some of the estimated 43.2 million people³ who have been forced to flee their countries, or their homes within their countries.

As a rights-based organisation NRC assists people to claim their rights, access available remedies, and recover from the effects of conflict, providing humanitarian assistance in all phases of displacement – from emergency response through transition to recovery and pursuit of durable solutions. In particular, NRC recognises the barriers displaced women face in accessing and controlling housing, land and property (HLP) and commits NRC to providing specific assistance aimed at removing such barriers.⁴

NRC's Information, Counselling and Legal Assistance (ICLA) programmes support beneficiaries through the provision of information, counselling, legal assistance, collaborative dispute resolution, capacity-building and advocacy activities. NRC's ICLA activities primarily focus on five thematic areas:

- ▶ HLP rights
- ▶ legal identity including obtaining civil documentation necessary to access rights and services
- ▶ citizenship and statelessness issues related to displacement
- ▶ procedures for refugee status determination
- ▶ procedures for registration of internally displaced people (IDPs) when access to rights and services is dependent on such registration.

NRC's approach involves understanding and engaging with the multiplicity of different mechanisms that exist in each local context for the resolution of HLP disputes. Procedures for addressing disputes range from adversarial (associated with statutory justice mechanisms) through to collaborative, involving negotiation, mediation and arbitration. These mechanisms may draw on statutory law, religious law, customary law and traditions as sources, and frequently a hybrid combination. During the last decade, NRC's ICLA programmes have become involved in innovative approaches to promoting and

³ Office of the UN High Commissioner for Refugees (UNHCR), 2013, New UNHCR report says global forced displacement at 18-year high, <http://www.unhcr.org/51c071816.html>

⁴ For further information about NRC's ICLA programmes, see: <http://www.nrc.no/?aid=9160708>

implementing collaborative dispute resolution (CDR)⁵ procedures that facilitate voluntary settlement of housing, land and property disputes.

NRC engages with these local mechanisms to support displaced women and men, based on their best interests as determined by the client and the range of options available. However, it is important to note that this approach is limited to the resolution of civil HLP disputes and is not employed by NRC for the purposes of addressing other issues affecting women in conflict such as sexual violence and other criminal acts.⁶

NRC's extensive operational experience in conflict and post-conflict contexts provides a sound understanding of the challenges facing the most vulnerable displaced populations. As one of the few international humanitarian organisations providing legal assistance and information services for displaced people, NRC is well positioned to provide analysis and make recommendations derived from operational experience.

NRC'S INITIATIVE ON DISPLACED WOMEN'S HLP RIGHTS

1.2

NRC's legal assistance programmes have found that displaced women's challenges in claiming their HLP rights are not always considered during emergency response, or by development interventions involving justice sector or land reform. This experience forms the basis of NRC's commitment to better understand the specific barriers to realising HLP rights for displaced women and to provide support to address these in our humanitarian assistance programmes.

In 2011, this commitment led to the launch of an initiative to conduct legal case analysis and research on displaced women's HLP rights in six NRC programme countries: Afghanistan, Ecuador (Colombian refugees), Lebanon, Liberia, Palestine (Gaza) and South Sudan. This report draws on these six research studies. While each country is different and unique, particularly in terms of the displacement dynamic and profile of displaced women, this report presents the main trends that have emerged.

NRC's research has found compelling similarities between displaced women's experiences, despite the differences in conflict history, patterns of displacement, governance and culture. From the perspective of displaced women this report explores the factors that contribute to their decision to seek access to HLP rights and their experiences of justice mechanisms, including in contexts of legal pluralism. Through the incorporation of women's own accounts, the report aims to promote

⁵ NRC uses the term "collaborative", rather than "alternative" as the latter has limited utility in countries where customary procedures and mediation may be the most common form of dispute resolution, and thus is not an alternative. CDR procedures include negotiation, facilitation, mediation, arbitration, and/or a range of other procedures that enhance voluntary dispute resolution and empower diverse parties to reach mutually acceptable agreements on issues in dispute. For more information, see Chris Moore, 2011, *Housing, Land and Property, Handbook on Design and Implementation of Collaborative Dispute Resolution*, Norwegian Refugee Council

⁶ This is in recognition that these types of issues require different considerations and skill sets.

wider recognition of individual displaced women's tenacity – as they tackle repressive social norms, judicial and customary authorities and their own families – to claim their HLP rights and demand equality. Among the women NRC works with, there is both a burning desire for change and courage to challenge the status quo.

Fundamental to the effective realisation of HLP rights is the right of access to justice.⁷ This report seeks to complement work done on HLP and access to justice, including by the UN Committee on the Elimination of Discrimination against Women (CEDAW)⁸, UN Women, the Office of the UN High Commissioner for Human Rights (OHCHR)⁹ and UN-HABITAT¹⁰ in order to deepen our understanding of the many obstacles faced by women when they pursue justice. As a provider of legal assistance in contexts of legal pluralism, NRC is well placed to provide locally-grounded analysis that counters unhelpful assumptions about engagement with customary and religious dispute resolution mechanisms¹¹ while also informing the design of rule of law programmes supporting women's access to justice.

Through this report NRC aims to start building a more comprehensive understanding of displaced women's experience of HLP rights and the justice process in order to assist humanitarians and development actors to review existing policies that disadvantage the women they seek to support. By providing evidence and analysis of the constraints women face in achievement of HLP rights, as well as examples of successful interventions, the report makes practical recommendations that can support women as they challenge discrimination and seek equality.

NRC also aims to contribute to the growing understanding among humanitarians, development actors and donors, that interventions in conflict and post-conflict contexts should do more than reinforce the existing status quo.

In each of the countries where research was undertaken NRC sought information that would help orient legal assistance programmes towards women's needs on the ground. This research also provided a basis for advocacy with national governments, law-makers and local authorities for improved implementation of relevant laws; as well as for women's increased access to, and participation, in dispute resolution processes when they claim their HLP rights. To date, NRC's reports have been published in Ecuador, Palestine (Gaza), Lebanon, Liberia and South Sudan.

7 Committee on the Elimination of Discrimination against Women (CEDAW), 2012, Access to Justice – Concept Note for Half Day General Discussion, Endorsed by the Committee on the Elimination of Discrimination against Women at its 53rd Session, p.9. <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/ConceptNoteAccessToJustice.pdf>

8 <http://www2.ohchr.org/english/bodies/cedaw/accesstojustice.htm>

9 OHCHR, 2008, Seeking justice for women in post conflict situations, <http://www.ohchr.org/EN/NewsEvents/Pages/JusticeforWomen.aspx>

10 UN-Habitat, 1999, Women's Rights to Housing, Land and Property in Post-Conflict Situations and During Reconstruction, http://www.unhabitat.org/downloads/docs/1504_59744_Land.pdf2.pdf

11 As recommended by UN Women. See UN Women, 2013, In Pursuit of Justice: 2011-2012 Progress of the World's Women, p.73. <http://progress.unwomen.org/wp-content/uploads/2011/06/Intro-English.pdf>

As NRC works to protect the rights of displaced and vulnerable persons during crises, the primary focus of this research has been on displaced women. In doing so, NRC does not seek to describe the situation facing women more generally in these country contexts. The report should be read with this understanding.



METHODOLOGY

1.3

The displaced women's HLP rights project team¹² established in NRC Oslo provided resources and support to the six country offices to direct their own research into aspects of displaced women's HLP rights relevant to the local displacement context. Directed by NRC's ICLA staff, the primary objective of the research was to inform NRC's legal assistance programmes to understand displaced women's HLP barriers and respond accordingly.

The countries that took part in the initiative were self-selecting and undertook research in different ways, according to their programme's needs, aims and capacity. Thus the research has been conducted in an iterative way, directed by the field, rather than according to a singular methodology imposed from head office. The primary research perspective was to capture operational lessons learned and identify trends through case analysis and the expertise of ICLA and other NRC in-country staff. Because there is no unified methodology the information is not quantitative, although some of the countries have included quantitative data in their reports. The country offices primarily based their information on interviews and focus group discussions with displaced women and men.

¹² A multi-disciplinary project team was established in NRC in 2011, bringing together a range of expertise in legal assistance, gender-based violence, gender, advocacy and communications.

It is acknowledged that some of the women included in the studies are being assisted by NRC and are therefore not necessarily representative of displaced groups as a whole. The researchers drew heavily on interviews with ICLA national staff and different stakeholders, including representatives of governments, civil society, UN agencies, other international NGOs, members of the judiciary, local traditional leaders and religious authorities. This was complemented by a literature review and legal analysis in each case, based on contextual information already held by the NRC country programme. Interviews were conducted in local languages, including through the use of interpreters. Guidelines on ethical research were developed to inform field research.

Rather than replicating all the findings of the individual studies this report identifies the main common issues and trends across the studies in the specific area of women's access to justice for HLP rights. It is also important to note that HLP, as it relates to displaced women, consists of a broad spectrum of issues. This report does not intend to present a comprehensive analysis of these, but rather focuses on the key HLP issues emerging from the country studies. It should be read in conjunction with each of the more detailed country office reports, which provide details of the particular contexts, the methodologies used as well as a comprehensive analysis of the findings.

In all conflicts, women suffer in ways specific to women. Yet they should not be seen as a homogenous group; different women will have different needs, vulnerabilities and coping mechanisms. Women in armed conflict are not passive and not necessarily 'victims'. Around the world, women become members of regular armed forces, armed groups or their support services. Moreover women are engaged as politicians, leaders of NGOs and active campaigners for peace. Essentially, the effect of war on women is not only determined by the character and stage of the conflict, but also by the particular role of each woman caught up in it.¹³

Country contexts – type of displacement

The countries included in the study represent a diversity of displacement contexts in Africa, Asia and the Middle East:

- ▶ Lebanon and Palestine (Gaza) reports represent the situation of Palestinian refugee communities in protracted displacement.
- ▶ At the time of the study refugees and IDPs had returned to parts of Afghanistan and South Sudan, albeit in highly unstable, insecure environments.
- ▶ The Ecuador report describes the situation of women refugees and asylum seekers fleeing the Colombian conflict.
- ▶ The Liberia study represents a situation of post-conflict recovery.

¹³ International Committee of the Red Cross (ICRC), 2004, Addressing the needs of women affected by armed conflict, p.8. <http://www.icrc.org/eng/resources/documents/publication/p0840.htm>

HLP AS A HUMANITARIAN AND HUMAN RIGHTS CONCEPT

HLP rights are about having a home, free from the fear of forced eviction; a place that offers shelter, safety and the ability to secure a livelihood.

Since the early 1990s humanitarians have called attention to the importance of HLP rights in providing durable solutions for both IDPs and refugees.¹⁴ Those who developed the concept sought to ensure that the full range of different living situations was incorporated into interventions in conflict and post-conflict settings. Using only the term 'property rights' can lead to certain groups – including tenants, cooperative dwellers, customary land tenure owners and users, informal sector dwellers without secure tenure – facing exclusion and inequitable treatment.¹⁵ From a human rights perspective, the concept of HLP is essential to ensure the protection of people in all these categories.¹⁶

HLP rights are referenced and defined in several international

human rights instruments which include a number of universally recognised human rights, particularly the right to adequate housing. Adequate housing must provide “more than four walls and roof”, but, rather, the ability to live somewhere in security, peace and dignity.¹⁷ Security of tenure is one of the core elements of the right to adequate housing and refers to the certainty that a person will be protected against forced eviction, harassment and other threats.¹⁸

Under the international human rights system, women's rights to own, manage, enjoy and dispose of property are inherent in the rights to be free from discrimination, to an adequate standard of living, including adequate housing, to enjoy financial independence and to earn a livelihood. Taken together, this bundle of rights goes some distance in securing women's rights to land, housing and property and to inherit these.¹⁹ It should be noted that neither the right to land nor the right

to inheritance appear as independent rights in international human rights law. For this reason, the right to housing is particularly important in the struggle for women's rights to land, housing and property, as is the principle of non-discrimination.

The original focus of HLP rights – based on well-established principles on the restitution of pre-displacement homes and lands – has evolved in recent years.²⁰ Situations of protracted displacement, typically characterised by unresolved conflicts which rule out both restitution and voluntary return, have necessitated a shift towards a broader perspective of security of tenure, as an aspect of the right to adequate housing relevant in humanitarian contexts.²¹ For example, both NRC and the International Federation of Red Cross and Red Crescent Societies (IFRC) have recently been looking at the concept of security of tenure in humanitarian shelter programmes.²²

14 Rhodri Williams, 2011, *From Shelter to Housing: Security of Tenure and Integration in Protracted Displacement Settings*, Norwegian Refugee Council, p.4. [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/ODEFBC13F54746D0C12579FA00590D6C/\\$file/From%20shelter%20to%20housing,%20NRC.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/ODEFBC13F54746D0C12579FA00590D6C/$file/From%20shelter%20to%20housing,%20NRC.pdf)

15 Scott Leckie, 2005, *Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework*, UNHCR, p.9. <http://www.refworld.org/pdfid/425689fa4.pdf>

16 Laura Cunial, 2011, *Housing, Land and Property, Training Manual*, Norwegian Refugee Council, p.11. <http://www.nrc.no/?did=9642898>

17 OHCHR and UN-Habitat, n.d. *The Right to Adequate Housing, Fact Sheet no.21* p.3. http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

18 UN Committee on Economic, Social and Cultural Rights, 1991, General comment 4: *The Right to Adequate Housing*, para. 8. <http://www1.umn.edu/humanrts/gencomm/epcomm4.htm>

19 UN-Habitat, 1999, *op. cit.*, p.21.

20 Williams, 2011, *op. cit.*, p.4.

21 *Ibid.*

22 See <http://www.nrc.no/?did=9678864> and <https://www.ifrc.org/en/news-and-media/news-stories/international/land-rights-and-secure-tenure-fundamental-to-humanitarian-shelter-operations-62681/>

DISPLACED WOMEN AND HLP

*Paying attention to women's needs is, of course, essential. But gender is a broader concept. It looks at how society works, who has the power and what roles different members of the society have. It helps us to understand the profoundly different ways in which men and women experience the same events, and to identify the different responses needed to keep them alive and healthy and to ensure their dignity in crisis situations.*²³

In 2000, the UN Security Council's resolution on women, peace and security (UNSCR 1325)²⁴ broke new ground by formally recognising the differential impact of conflict on women and by emphasising the special needs of women and girls during repatriation, resettlement, rehabilitation, reintegration and post-conflict reconstruction.²⁵ The UN Secretary-General's most recent report on women, peace and security found that despite this recognition, more attention needs to be paid to human rights violations against women during conflict, including forced displacement and loss of land and livelihoods. He noted that protection concerns in situations of displacement include refugee and IDP women's vulnerability to gender-based violence and acknowledged that this is exacerbated by factors including poor conditions of shelter and limited recourse to justice.²⁶

HLP rights violations are thus a central part of women's experience of conflict. Post-conflict situations are often characterised by on-going and sometimes increased levels of violence and insecurity for women.²⁷ Importantly, violations and abuses are not just perpetrated by parties to the conflict or armed groups; HLP rights are also denied to women by their families and communities. This adds a new dimension to considerations of women's experience and has significant implications for humanitarian and recovery interventions.

HLP rights are crucial for displaced women

Access to housing, land and property is one of the principal factors determining the economic and social well-being of women, especially in situations of conflict and reconstruction when their rights are violated on a mass scale.²⁸ Demographic changes that occur during conflict result in higher numbers of single women and women-headed households. This insufficiently noticed reality is exemplified by Afghanistan which has one of the highest rates of widowhood

²³ Valerie Amos, (Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator), 2011, Taking Gender Concerns Seriously, DARA, http://daraint.org/wp-content/uploads/2012/03/gender_Valerie_Amos.pdf

²⁴ <http://www.un.org/womenwatch/osagi/wps/>

²⁵ UN Women, 2013, op. cit. p.87.

²⁶ UN Security Council, 2013, Report of the Secretary-General on women and peace and security, para. 37. <http://www.unwomen.org/~media/Headquarters/Attachments/Sections/News/In%20Focus/Open%20Debate%20on%20WPS%202013/2013%20SG%20report%20on%20WPS%20pdf.pdf>

²⁷ UN Women, 2013, op. cit., p.74.

²⁸ UN-Habitat, 1999, op. cit., p.iii.

worldwide, with over two million 'war widows' reported in 2001.²⁹

In general, women-headed households have a higher dependency burden than male-headed households. Poverty in these households is significantly exacerbated when gender-biased inheritance laws deprive women of access to the property of a deceased or missing spouse.³⁰

Even before conflict, women are disadvantaged when it comes to HLP entitlements. The World Bank has noted that land ownership remains largely restricted to men, both by tradition and law.³¹ Globally, men's landholdings are almost three times the size of those of women.³² Inheritance is fundamental for the accumulation of assets, including land, yet often women and girls have fewer inheritance rights than men and boys. Conflict exacerbates this inequity. When women also happen to have insecure tenure – as they often do because their access to housing and land hinges on a relationship with a man, or because they face additional hurdles as sole head of a household – they are particularly vulnerable.³³

Women experience the loss of HLP rights at every stage of displacement. When women are forced to leave their homes, finding a place to stay is at the forefront of their ability to survive displacement and provide safety for their families. On arrival in Ecuador, NRC found that women fleeing conflict in Colombia – many of them Afro-Colombians – face racial discrimination as well as a range of social, psychological, and economic difficulties in exercising their HLP rights.³⁴ They have limited financial resources and many bear the psychological consequences of the violence which forced them to leave their place of origin. Many survivors, particularly single women and mothers, develop fear of going out and meeting other Colombians.

*A friend of the family allowed us to stay in a room, with one mattress for all of us. Later we had to leave and look for a place to stay, and that was really hard because no one would rent to us. You have to do your best with what you have, wherever you are, just to survive.*³⁵

*I came here with my children, the youngest was four years old and the other was thirteen. We slept in a nightclub and we had to wait outside until dawn to be able to go inside and sleep.*³⁶



29 UN Economic and Social Council, 2001, Follow-up to and implementation of the Beijing Declaration and Platform for Action: Report of the Secretary-General. The situation of women and girls in Afghanistan, E/CN.6/2001/2/Add.1, 25 January 2001, para. 38. <http://www.un.org/womenwatch/afghanistan/documents/ECN6-2001-2-Add1.pdf>

30 United Nations Security Council, 2013, op. cit. para .44

31 World Bank, 2012, World Development Report 2012: Gender Equality and Development. p. 82, <https://openknowledge.worldbank.org/handle/10986/4391>

32 IFAD 2011, p. 61. Cited in World Bank, 2012, Voice, Agency and Participation, Concept note for a new report, p.3. http://siteresources.worldbank.org/EXTGENDER/Resources/World_Bank_Voice_Agency_and_Participation_concept_note_Dec_1.pdf

33 Human Rights Council, 2011, op. cit., para 32.

34 Acceso a Tierra/Vivienda para Mujeres en Necesidad de Protección Internacional (PNPI) y Refugiadas en Ecuador, Norwegian Refugee Council, 2013, (English version forthcoming)

35 Ibid.

36 Ibid.

Women also have different experiences of HLP rights in return situations. In South Sudan, NRC found that almost twice as many women returnees as men were homeless, without access to land or secure accommodation.³⁷ Women were also more likely to report problems claiming inheritance rights and to be evicted by their family, the community or the government. In Liberia, NRC's legal assistance case analysis³⁸ showed that women are more likely than men to be in a land dispute if they are unmarried, less literate and had been a refugee during the civil war. Furthermore, women are less likely than men to possess documentary evidence of their land tenure and more likely to experience violence in relation to their dispute. They are also less likely to be satisfied with the outcome of the dispute resolution process.

Displaced and returnee women who are widowed, separated, disabled and illiterate are particularly vulnerable and are often without support systems or networks. HLP assets can constitute an important resource for women. Their survival and that of their families can depend on them. Many displaced women are left with few real options but to challenge their families and communities to have independent access to HLP assets. A 2004 UN Economic and Social Council report on adequate housing pointed out the problems women refugees and displaced persons encounter in accessing land and housing during reconstruction as well as the resulting lack of physical security for women and their children.³⁹

Displaced women have limited options to gain access to HLP, either in displacement or elsewhere. These may be through inheritance/marital property, purchase and allocation or entitlement from the state as part of return or reconstruction programmes. All of these options are important for displaced women. However, even in situations where women are legally entitled to own housing and land, financial constraints make purchasing these assets impossible.⁴⁰ This means that for many displaced women access to HLP is primarily through avenues of inheritance and marital property rights, and land allocation schemes, where available, such as in Afghanistan and South Sudan.

In South Sudan, research for this study shows that the preferred option for displaced women returning to the country is to purchase a plot of land that has been demarcated and surveyed by the Government of South Sudan (GoSS).⁴¹ Research also indicates this option is the least attainable for returnee and displaced women. The cost of initially registering the land, and then building a shelter on it, is beyond the reach of many women. It appears that in planning for the return of refugees and IDPs the GoSS expected that each family would return to the land of their ancestors. They failed to plan for the number of post-displacement female-headed households and those who did not

37 *Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan*, Norwegian Refugee Council, 2014, p.9.

38 The ICLA Liberia legal assistance database includes information about 5,496 registered HLP dispute cases (of which more than 4,500 have been resolved) since establishment of the programme in 2006.

39 UN Economic and Social Council, 2005, *op. cit.* para 67.

40 UN-Habitat, 1999, *op. cit.*, p.18.

41 *Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan*, Norwegian Refugee Council, 2014, p.43.

want to go back to their ancestral land.

NRC's research found that during post-conflict recovery, women's access to HLP, including through inheritance, is essential for their livelihoods and security. This has been directly linked to reducing women's financial dependency and, therefore, vulnerability to violence.⁴² In all countries where NRC works, land is a vital part of livelihoods; not only related to housing, but also for agricultural purposes and can provide an income for the woman and her family.

When a woman is unable to access adequate housing and land mainly because of her gender, she is not only affected in terms of her immediate material needs but she is also relegated to a subordinate and dependent position within society.⁴³ Thus there are major long-term consequences for gender equality and human rights that follow from the post-conflict denial of HLP rights for women. Despite this, women's economic security post-conflict is rarely treated as a priority.⁴⁴

At the same time, access and control of HLP and its social and economic benefits are linked to many of the Millennium Development Goals (MDGs). Development actors have singled out conflict and violence as obstructing progress towards MDGs – the biggest gaps are in fragile and conflict-affected states.⁴⁵ Inequality is one of the main



42 UN Security Council, 2013, op. cit., para. 40.

43 Human Rights Council, 2011, op cit., para. 3.

44 UN Security Council, 2013, op cit., para.40.

45 It has been widely reported that no fragile or conflict-affected state (FCAS) will achieve any of the MDGs, yet more than 1.5 billion people live in those countries, representing a significant proportion of the global population. CORDAID, 2013, Policy Paper March 2013: Gender Equality and Fragility in the Post-MDG Framework, p.5.

According to the World Bank, fragile and conflict-affected states account for 60 per cent of the world's undernourished, 61 per cent of the world's impoverished, 77 per cent of children who are not in primary school; 71 per cent of deaths of children under five; 64 per cent of unattended births and 65 per cent of the people without improved access to sanitation. World Bank. 2011, World Development Report 2011 on Conflict, Security and Development, p.62.

factors holding back progress and there have been fewest gains on MDGs that depend the most on women's empowerment.⁴⁶

There is increasing recognition of the ways in which international approaches to conflict-affected states can be improved to make a much more significant impact on women's equality in the longer term. The long-term cost of failing to address the challenges for women is high. With this in mind, supporting women's HLP rights represents an opportunity to strengthen the links between humanitarian responses and to set the framework for sustainable recovery and development.

Women face multiple discrimination in HLP rights

*Existing patterns of discrimination prevalent in many of these contexts are exacerbated during conflict and contribute to violations of women's rights to housing, land and property.*⁴⁷

CEDAW *General Recommendation No. 28* refers to the concept of intersectionality to describe multiple discrimination. The Committee notes that the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, sexual orientation and gender identity.⁴⁸ The World Bank also notes the intersection of gender with poverty and other markers of disadvantage – such as ethnicity, age, or place of residence. There is ample evidence that suggests that women tend to be more income poor than men, given their typically lower pay, relatively more time spent on unpaid family labour and lower levels of education.⁴⁹

This multiple discrimination can be seen in the countries where NRC operates. Not only do women in conflict-affected countries experience discrimination as a result of their gender. It is significant that displaced women in the countries where NRC works frequently also face multiple layers of discrimination affecting their HLP rights – as women; as refugees, returnees and IDPs; as members of economically disadvantaged groups and as members of ethnic and/or religious minorities. This further compounds their challenges.

Women's inequality and the multiple discrimination they experience are the most significant underlying factors in determining their experience of conflict and post-conflict – including their HLP rights and access to justice. In South Sudan so grave are the multiple obstacles to achieving safe housing and secure tenure that almost four out of five of the women interviewed stated that if given the chance they would go back to where they had been living as a refugee or IDP.⁵⁰

⁴⁶ UN Women, 2013, *op. cit.*, p.14.

⁴⁷ UN Human Rights Council, 2013, Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, A/HRC/23/4, para. 21, <http://reliefweb.int/report/world/report-special-rapporteur-human-rights-internally-displaced-persons-chaloka-beyani-1>

⁴⁸ According to CEDAW General Recommendation No. 28 States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. Cited in CEDAW, 2012, *op. cit.*, p.13.

⁴⁹ World Bank, 2012, *Voice, Agency and Participation*, *op. cit.*, p.8.

⁵⁰ Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan, Norwegian Refugee Council, 2014, p.39.

COLOMBIAN WOMEN FACE MULTIPLE DISCRIMINATION AFFECTING THEIR ACCESS TO HOUSING⁵¹

ECUADOR

During NRC's research in Ecuador, Colombian refugee women and asylum seekers highlighted the strength of discrimination and xenophobia encountered when looking for housing – primarily through rental accommodation. Without exception, in all of the cities included in the research refugee women highlighted instances of discrimination due to their nationality, Afro-Colombian ethnicity, refugee status, gender and because they have children. They have to deal with strong stereotypes of Colombian women as prostitutes and reluctance from house owners to have them as

tenants.

NRC's research found that discrimination against Colombian women was cited as a basis for higher rent, increased deposits and less formalisation of rental contracts. As a result, women reported having to live in poor quality, overcrowded housing where more than one family share a single rented room. Colombian women also reported problems with return of deposits when they left properties but were afraid to seek redress for fear of coming into contact with the authorities, losing their refugee documentation or otherwise having to leave the country.



The multiple forms of discrimination related to gender and refugee status is evident in the case of Palestinian refugee women living in camps and informal *gatherings*⁵² in Lebanon. A law passed in 2001 forbids the acquisition of rights in property for people who do not hold the nationality of a recognised state. At the same time, women are disadvantaged within their family and communities by social norms that work against women's independent HLP rights.

Women's HLP rights continue to be determined by their relationship with men

*Min beit abuha la beit jauzha – From the house of her father to the house of her husband.*⁵³

*Women are seen as the property of society and of men. In the family home they are the property of brothers or fathers, then of their husbands, and if they divorce or are widowed they are returned back to their original owners.*⁵⁴

Related to the multiple discrimination described above, the central issue behind the many challenges described by women NRC works with is the underlying concept that women's relationship and claims to HLP rights are lesser than men's and should quite naturally be determined

51 Acceso a Tierra/Vivienda para Mujeres en Necesidad de Protección Internacional (PNPI) y Refugiadas en Ecuador, Norwegian Refugee Council, 2013, (English version forthcoming)

52 In Lebanon the term 'gatherings' refers to informal settlements outside the boundaries of official refugee camps where an estimated 103,000 Palestinian refugees, 38 per cent of the Palestinian refugee population in Lebanon, currently live. J. Chabaan et al., Socio-Economic Survey of Palestinian Refugees in Lebanon, American University of Beirut and UNRWA, 2010 (AUB/UNRWA Survey) p. 10. Cited in No Place Like Home: An Assessment of the Housing, Land and Property Rights of Palestinian Refugee Women in Camps and Gatherings in Lebanon, Norwegian Refugee Council, 2013, p.4.

53 No Place Like Home: An Assessment of the Housing, Land and Property Rights of Palestinian Refugee Women in Camps and Gatherings in Lebanon, Norwegian Refugee Council, 2013, p. 57.

54 Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, p.61.

by their relationship with men. In the countries studied, when that relationship ends, women are at risk of losing land or property resulting in economic and physical insecurity.⁵⁵

This is inextricably linked, across different cultural contexts and crises, to the familial, communal and public perception of women as family members, rather than individuals. All the country studies show that both women and men hold attitudes about women's property ownership that reflect lesser entitlements than for men. In South Sudan and Liberia, it is not unusual to hear people say that women cannot own land because 'property cannot own property'.

These attitudes stem from the broader dynamic of gender roles within households, determining control and use of joint assets. In Liberia, interviewees for NRC's research reported that men tend to control economic decisions in the household.⁵⁶ This role is linked to traditions, and gives men power in a relationship. It was reported that women only make household decisions over assets if they are single.⁵⁷

There are repercussions that are significant for displaced women's HLP rights. The first is that women are less likely to register HLP assets in their names. Following on from this, women become vulnerable to losing access and entitlement to HLP upon dissolution of marriage.

NRC's research shows that even in the absence of formal legal barriers for women to register HLP assets in their names, it is these social attitudes that define the reality. For example, NRC's research in Gaza identified strong social reservations towards women's independent property ownership. This is reflected in the low rate of female ownership of immovable property (approximately eight per cent of all women).⁵⁸ Due to cultural and societal pressures it was reported that women do not ask for their names to be registered when property or land is bought, even if the woman has contributed financially. This is an issue across all classes.⁵⁹ Even for well-educated women, despite having lived in their homes for decade, the properties were not in their names, therefore they would have no rights to remain there if they divorced their husbands.

NRC's research in Liberia found that most documents providing evidence of HLP rights, including deeds, leases and squatters' certificates, are often written in the name of a man.⁶⁰ This limits women's ability to assert HLP claims. The decision about which family member should be named on the deed is bound up in social norms and practices that are different for men and women. There is a general perception that a man's name should be on the document, to show respect for him as head of the household.

55 UN Security Council, 2013, op. cit. para. 40.

56 Violence Against Women and Housing, Land and Property in Monrovia, Norwegian Refugee Council, 2013, p.47.

57 Ibid., pp.48-49.

58 Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, p.85.

59 Maha Abu-Dayyeh, director of the Women's Centre for Legal Aid and Counselling (WCLAC) cited in Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, p. 85.

60 Violence Against Women and Housing, Land and Property in Monrovia, Norwegian Refugee Council, 2013, p.7.

GAZA

WOMEN'S HLP RIGHTS UNDERMINED BY
RELATIONSHIP WITH MEN⁶¹

On 3 January 2009, Laila and her family were victims of Israel's Cast Lead offensive. Fearing for their lives, Laila and her family fled to her brother's house. Her husband and three of her children were killed. After recovering from her injuries she and her four surviving daughters, together with her stepson, bought a flat from one of her late husband's relatives, using money received from the UN Relief and Works Agency for Palestine Refugees (UNRWA) and the local authorities. The flat was registered in the name of her late husband's heirs. Laila's stepson developed a drug addiction and his violence towards her and her daughters forced them to leave. The stepson subsequently sold the property

without consulting Laila.

Today, Laila and her four daughters live in a cramped 70 square-metre concrete apartment above her brother's house, a two-floor building shared by her two brothers and their 16 family members.

Laila does not feel safe or have any privacy. Her situation is not in accordance with the customs and traditions of Palestinian society. She feels she and her daughters are a burden on her brothers. Lawyers from NRC are in discussions with the authorities about providing a separate housing unit for Laila and her children.



Many returnees and IDPs rent housing in urban areas. In Monrovia, Liberia, rental documents generally consist of a receipt from the landlord indicating the amount paid in rent annually or semi-annually. The person named on the receipt is usually the person who physically paid the rent. NRC Liberia research found that men are much more likely to be named in the rental receipts even if they used their wives' or girlfriends' money, as the men are generally the ones who take the money to the landlord.⁶² According to some of the men interviewed during NRC's research in Liberia, men should be more involved than women in property matters. A man noted that "God made men to head the entire family. It would be an insult to men if women are the ones making decisions". Women reported that if a woman's name is on the rental receipt, her partner will try to steal the receipt from her possession or will make sure that he is the one to go to the landlord to carry out future payments.⁶³

In South Sudan, when returnee women (single heads of household and widows) are allocated land plots by the local authorities, it was reported that it is still very common for them to come under pressure to register the plot in the names of their male children, in line with customary practices.⁶⁴ This results in women and girls in the family

⁶¹ Ibid., p.71.

⁶² Ibid., p.40.

⁶³ Ibid.

⁶⁴ Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan, Norwegian Refugee Council, 2014, p.49.

having a lesser degree of security of tenure and protection.

Displaced women's access to HLP rights often come under threat when husbands die or as a result of divorce. In both Gaza and Afghanistan NRC found that in the event of divorce women are expected to leave the matrimonial home and return to the homes of their fathers or brothers. It is significant that despite popular support for an extension of women's rights in family law in Gaza, there is clear male resistance in some areas, most notably against women's property claims either in divorce or inheritance.⁶⁵

In South Sudan, under customary law, men inherit land from their fathers and it is expected that women's access to land will result from marriage. Women and girls therefore do not have an independent right to claim or inherit land under customary law.⁶⁶ Returning female refugees and IDPs, often widows, single mothers or otherwise without husbands or families, are regularly denied access to community land.⁶⁷ Another major challenge facing many returnee women stems from the fact that women are treated the same way as 'outsiders' under customary land law. Again, their HLP rights are mediated through their relationship to men as husbands, fathers or sons.⁶⁸

Changes in gender roles lead to pressure for community change

*We protested even under heavy rain and we contacted the media and journalists. I organised this with other women – other organisations helped.*⁶⁹

Palestinian woman in Lebanon who mobilised her community against eviction.

The change in women's roles in response to the demographic impact of conflict can also be accompanied by a dynamic shift in women's demands for rights. In countries where NRC works, gender roles are challenged when conflict-affected women take on the role of sole provider, protector and carer of children, elderly relatives and other dependents. NRC's research showed that displaced women's experience of other cultures while in exile has influenced their expectations and understanding of entitlements upon return. Returnee women who have been living in different countries bring with them a greater awareness of their rights and an accumulation of civic knowledge that can contradict conservative patriarchal attitudes in the societies to which they return.

65 Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, p.85.

66 Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan, Norwegian Refugee Council, 2014, p.30.

67 Tiernan Mennen, 2012, Customary Law and Land Rights in South Sudan, Report for NRC p.17. http://www.nrc.no/arch/_img/9683694.pdf

68 Michael Odhiambo, 2009, Southern Sudan Land and Property Study and Workshops: A Synthesis of Policy and Legal Issues, Southern Sudan Land Commission, Norwegian Refugee Council, Food and Agriculture Organization and UNHCR, p.14. <http://kk.convdocs.org/docs/index-35600.html>

69 No Place Like Home: An Assessment of the Housing, Land and Property Rights of Palestinian Refugee Women in Camps and Gatherings in Lebanon, Norwegian Refugee Council, 2013, p.46.

This is echoed in NRC's experience in South Sudan. A high number of South Sudanese women spent a considerable amount of time as IDPs in Khartoum, and as refugees in neighbouring countries such as Uganda, Kenya and Ethiopia, all with very different legal systems and customs.⁷⁰ In Kenya and Uganda in particular, women had access to school education, university, employment and exposure to a higher awareness of human rights, particularly women's rights. As large numbers of refugees and IDPs have returned they have brought back a different way of living, following a hybrid set of customs and beliefs which are often at odds with the traditional customs followed by those who remained in South Sudan.

During the Liberia crisis, men's and women's roles changed significantly as women took on an increased number of responsibilities. As men were often targeted by rebels, and so were confined to homes, women had to fill in gaps in the domestic economy and provide for the whole family. Women therefore had greater access to economic, skills development and income-generating opportunities. The longer-term consequences of this shift are twofold. On one hand, men's feeling of shame over their diminished status and economic power in their domestic unit may have left them feeling anger and resentment towards their wives. On the other hand, even though women gained more economic power, the gender disparities in education and earnings remained, meaning that women did not gain complete financial independence from men.⁷¹

In Afghanistan, there is evidence that women are increasingly claiming their rights, potentially in response to the rising number of widows and female-headed households who are learning to live independently as a result of the conflict.⁷² Another sign of change is the growing number of women who are reluctant to step back into their traditional roles as they become more directly involved in farming and raising livestock. Women's exposure to different cultural values during exile has meant that they are more likely to challenge restrictive gender roles on return. Afghan women who were refugees in Iran for many years struggle to adopt and adhere to conservative notions of social behaviour and economic dependence upon their return and reintegration, particularly to rural areas of Afghanistan. NRC's legal assistance case analysis shows that women returnees cited this issue as a factor influencing their divorce and subsequent efforts to secure marital property and inheritance entitlements to land.⁷³

Furthermore, for women in Afghanistan, claims to inheritance and



70 Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan, Norwegian Refugee Council, 2014, p.31.

71 International Rescue Committee, 2012, Let me not die before my time: Domestic violence in West Africa, p. 15, http://www.rescue.org/sites/default/files/resource-file/IRC_Report_DomVioWAfrica.pdf, cited in Violence Against Women and Housing, Land and Property in Monrovia, Norwegian Refugee Council, 2013, p.20.

72 Liz Alden Wily, 2003, Land Rights in Crisis, Restoring Tenure Security in Afghanistan, Afghanistan Research and Evaluation Unit, p.31. <http://www.areu.org.af/Uploads/EditionPdfs/302E-Land%20Rights%20in%20Crisis-ES-IP-print.pdf>

73 Strengthening Displaced Women's Housing, Land and Property Rights: Afghanistan Country Report, Norwegian Refugee Council, (forthcoming).

*mahr*⁷⁴ are not simply an economic issue but a struggle to assert their position in society. A woman claiming her inheritance or full payment of *mahr* is asking for the right to make her own decisions and a rare degree of autonomy. By seeking to assert her rights, she is challenging much more – she is also confronting the basis of gender discrimination itself.⁷⁵

These changes that begin during displacement and continue through post-conflict transition make the need for independent, secure HLP rights even more vital. The examples also show how HLP rights can be transformative for communities, contributing in some instances to displaced women's empowerment and social change. When a proportion of the displaced and returnee population demands change in gender roles – for equality in HLP rights and beyond – this should be taken into consideration by international humanitarian and development actors.

The role of humanitarian organisations

*The neglect of land issues in humanitarian response is striking insofar as conflicts over land play leading roles in many humanitarian emergencies, and land access and tenure issues are also central to recovery or rehabilitation. Humanitarian responses, both during the height of crisis and during what is variously called the rehabilitation or recovery phase, have an impact on land tenure and settlement patterns and thus on the future prospects of the people affected.*⁷⁶

In order to build on the recent recognition of displaced women's changing demands for HLP rights, NRC's research focuses on ways in which humanitarian actors can contribute to this process. HLP issues have been included in several UN and other peacekeeping operations, yet it is widely acknowledged that overall, the issue has been neglected and practical interventions limited. HLP issues are too readily seen as complex, politically sensitive and falling within the remit of development actors.⁷⁷ Attention to HLP issues is increasing, but there are still too few actors willing to engage.⁷⁸

74 When a couple gets married the future husband is required under Islamic law to make a gift (*mahr*) to the future wife. Its value will be negotiated between the two families. Marriage is regulated under the Afghan Civil Code, which specifies that *mahr* must be included in the marriage contract. It is personal property registered in the name of wife without any condition and gives her all rights of ownership. If the contract takes place without *mahr*, the wife can ask for it any time she wants and a court should direct the husband to comply. Conor Foley, 2005, A guide to property law in Afghanistan, p.63. https://www.nrc.no/arch/_img/9683692.pdf

75 Strengthening Displaced Women's Housing, Land and Property Rights: Afghanistan Country Report, Norwegian Refugee Council, (forthcoming).

76 Alex de Waal, 2009, "Why humanitarian organizations need to tackle land issues", in *Uncharted Territory: Land, Conflict and Humanitarian Action*, Sara Pantuliano (ed.), Practical Action Publishing, pp.10-11. <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5556.pdf>

77 Sara Pantuliano, 2009, "Charting the way: Integrating land issues in humanitarian action" in *Uncharted Territory: Land, Conflict and Humanitarian Action*, Sara Pantuliano (ed.), Practical Action Publishing, p.194. <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5556.pdf>

78 Conor Foley, *Uncharted territory: Land, conflict and humanitarian action*, Meeting Report, ODI, HPG, para. 23, <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/events-documents/1880.pdf>

THE DEVELOPMENT OF A RIGHTS -BASED APPROACH TO HLP ISSUES IN HUMANITARIAN RESPONSE

Advocacy for HLP rights has been based on the recognition that securing access to adequate housing and land is crucial to both the immediate and long-term ability of displaced persons to meet some of their most basic shelter, protection and livelihood needs in a manner that encourages self-reliance rather than dependence. By the late 1990s, the dominant model for giving effect to HLP rights in humanitarian settings involved the restitution of properties that displaced persons had left behind. The *Pinheiro Principles*,⁷⁹ formulated in 2005, asserted a post-conflict right to restitution as both a legal remedy for arbitrary displacement and a precondition for durable solutions, including return to homes of origin.⁸⁰

The development of the *Pinheiro Principles* signalled an important shift in the HLP landscape, with the emergence of the right to restitution for returning refugees and IDPs, particularly evident in the Balkans. The role of legal assistance programmes, such as NRC's ICLA, has helped spur development of a rights-based approach to HLP issues for

displaced populations.⁸¹ Recently, however, there has been an understanding of the potential limitations of placing property restitution on a pedestal⁸¹ and an awareness of the gaps in the *Pinheiro Principles'* recommendations regarding the role that traditional and religious dispute resolution mechanisms can play in addressing property disputes.⁸³

It is clear that a rights-based approach to HLP issues is not limited to property restitution. Situations of protracted displacement have necessitated the adoption of a broader perspective of security of tenure, as an aspect of the right to adequate housing.⁸⁴ For humanitarians, addressing tenure insecurity is key to resolving the lingering humanitarian vulnerability of the long-term displaced, encouraging self-reliance and facilitating durable solutions.⁸⁵ It needs to be more widely recognised that in many countries where NRC works one of the main issues facing displaced populations is pre-displacement landlessness – there is nothing to reconstitute. When periods of exile have spanned generations, the

restitution of a property that once housed one family may no longer be a viable option for return of several extended family units.

NRC's South Sudan⁸⁶ research also found that one of the main reasons given by women as to why they had not returned to the area of their deceased husband or father was their desire to be near services such as schools, water pumps, markets and health centres, to which they had become accustomed while displaced or living as a refugee. One woman responded to questions about why she would not return to the land of her relatives:

*I don't want to live out there. My children need to go to school and we need clean water and markets. I have been to the village and there is nothing there! Nothing! I cannot live there.*⁸⁷

NRC has supported returnee women in South Sudan to apply for government land allocation schemes⁸⁸ as a preferred option to resolving an inheritance dispute – again highlighting the fact that property restitution is not one of the most viable options for displaced women to access HLP.

79 U.N. Sub-Commission on Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, U.N. Doc. E/CN.4/Sub.2/2005/17.28 June 2005. <http://www.cohre.org/news/documents/the-pinheiro-principles>

80 Williams, 2011, op. cit., p.7.

81 Foley, Uncharted territory: Land, conflict and humanitarian action, Meeting Report, ODI, HPG, para. 23, <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/events-documents/1880.pdf>

82 Rhodri Williams, 2012, UN High-Level RoL meeting to take up HLP issues <http://terraonullius.wordpress.com/2012/09/23/un-high-level-rol-meeting-to-take-up-hlp-issues-maybe/>

83 Barbara McCallin, Uncharted territory: Land, conflict and humanitarian action, Meeting Report, ODI, HPG, para. 37, <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/events-documents/1880.pdf>

84 Williams, 2011, op. cit., p.4.

85 Ibid.

86 Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan, Norwegian Refugee Council, 2014, p.56.

87 Ibid., p.43.

88 In South Sudan government land allocation schemes allow for independent access to a plot of land in women's names. Women's inheritance claims are often over land of deceased husbands, which can be subject to a number of competing claims. Even in the case of successful resolution of inheritance claims, eviction from the land is still a possibility. Thus the option of acquiring government land may offer a more durable solution.

A further factor in neglect of HLP issues is the short-term framework of emergency response. Humanitarian actors often lack time, resources and opportunities to consider longer-term consequences. The pressing requirements of humanitarian organisations at the onset of a crisis mean that the great majority of effort is concentrated on providing essential relief. In the most immediate phase of an emergency, land issues are given barely any attention. Whilst this may be understandable in the first few weeks of a crisis response, there is no good reason why an in-depth and on-going analysis of land and property issues cannot be built into the medium-and long-term phases of response, particularly given the protracted nature of many crises generated by conflict.

In some cases, lack of attention to HLP issues is also exacerbated by the fact that donors continue to split their funding between humanitarian and development programmes. Since addressing land issues is seen as a development concern, it is harder to access funding for humanitarian programmes targeted to HLP rights.⁸⁹ Another reason might be that 'fast' results demanded by donors are difficult to deliver in HLP projects because working with governments and regional authorities is a long-term process.

The international humanitarian community continues to debate whether its role is to seek to restore the conditions of a population that has experienced conflict to that of pre-conflict or to try to 'build back better' and achieve results in line with international principles and aspirations to realise the MDGs. Approaches by the humanitarian community that may seek to restore or maintain a pre-conflict status quo do not reflect the dynamic change of societies experiencing conflict, and in some cases might risk reinforcing discriminatory practices.

NRC's analysis shows that it is essential to recognise that the ways in which humanitarians intervene during crisis have lasting consequences for peace building and recovery. Failure to acknowledge the impact that humanitarians have on the communities where they operate, is at best, naïve. During conflict there is a rupture of local authority – authority based on land, kinship and tradition is substituted with new forms of authority that emerge around the distribution of relief. Humanitarians feed into this dynamic.⁹⁰ This can represent an opportunity and a reason for greater self-reflection.

In the worst case, humanitarian and recovery actors can entrench discriminatory patterns in society that impact negatively on women's HLP rights. This happens when humanitarian programmes fail to recognise the differential ways in which women are affected by discriminatory HLP and family laws, social norms and practical barriers that discourage women from registering land in their own names or to recognise that seemingly gender-neutral government land and shelter allocation policies make women's security of tenure contingent on their relationship with a male designated as head of household. Humanitarian actors may overlook the specific risks for particular groups of vulnerable women who are subject to violence or threat of eviction because they are not able to pay land registration fees.

The UN Special Rapporteur on adequate housing has drawn attention to

⁸⁹ Gert Ludeking, *Uncharted territory: Land, conflict and humanitarian action*, Meeting Report, ODI, HPG, para. 23, <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/events-documents/1880.pdf>

⁹⁰ De Waal, 2009, *op. cit.* pp.10-11.

the potential negative impact of humanitarian interventions in her report on security of tenure in disaster response,⁹¹ an observation that can equally be applied to conflict and complex emergencies:

Recovery efforts, by overlooking or directly discriminating against some groups, can perpetuate and even reinforce pre-existing patterns of vulnerability and disadvantage. This is often the case with women. In the wake of the 2004 Indian Ocean tsunami, it was reported that the international response on many occasions strengthened “those who were better off and/or more articulate, while marginalizing those who had few assets, notably women”.⁹² Relief efforts and policies excluded women from livelihoods assistance and on occasion directly undermined women’s pre-existing rights, such as their rights to housing or land in matrilineal communities.

A recent evaluation of a shelter assistance programme in Afghanistan implemented by the Office of the UN High Commissioner for Refugees (UNHCR) shows that of all households assisted, only 1.9 per cent are female-headed.⁹³ The under-representation of female-headed households is particularly worrisome considering their increased vulnerability in comparison to male-headed households in Afghanistan.

The Special Rapporteur also underlines the importance of integrating human rights standards, and particularly the right to adequate housing, in post disaster and post-conflict reconstruction processes.⁹⁴ Many humanitarian organisations have adopted the explicitly rights-based approach promoted in documents such as the *UN Guiding Principles on Internal Displacement*, and have attempted to restructure their work in a manner that takes into account both the protection risks and opportunities that inherently accompany aid provision. Likewise, the most authoritative guidelines on humanitarian assistance now reflect the assumption that humanitarian aid provision must proceed from relevant human rights standards.⁹⁵

The UN Emergency Relief Coordinator has warned that much more needs to be done to mainstream gender into all aspects of humanitarian actions. This is not simply because many statements and commitments have been made in this regard, but because it is one of the most powerful and effective means to ensure humanitarian actions are based on objective assessments of needs, and provided in ways that do not discriminate against any portion of a crisis-affected population.⁹⁶



91 UN General Assembly, 2011, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A /66/270, para.19, http://ap.ohchr.org/documents/alldocs.aspx?doc_id=19300

92 John Telford and John Cosgrove, 2006, Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report, Tsunami Evaluation Coalition, p.104. Cited in UN General Assembly, 2011, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A /66/270, para.19, http://ap.ohchr.org/documents/alldocs.aspx?doc_id=19300; <http://www.preventionweb.net/english/professional/publications/v.php?id=2097>

93 Maastricht University and Samuel Hall, 2012, UNHCR shelter evaluation, UNHCR Afghanistan, p.85. www.merit.unu.edu/publications/uploads/1387202954.pdf

94 UN Human Rights Council, 2010, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/16/42, para. 2.

95 Williams, 2011, op. cit. p.7.

96 Amos, 2011, op. cit. p.15.

2



THE LEGAL BASIS FOR WOMEN'S HLP RIGHTS

The key provisions underpinning displaced women's HLP rights in international law are set out below, with a brief description of the ways in which they may be realised at the national level in conflict and post-conflict contexts. The purpose is to provide a brief consolidated resource in order to promote a stronger rights-based approach in humanitarian response and to support advocacy efforts with governments and local authorities.

A comprehensive description of international legal instruments relevant to women's HLP rights in conflict and post-conflict contexts has been compiled by UN-Habitat and the Office of the UN High Commissioner for Human Rights (OHCHR).

INTERNATIONAL LEGAL PROTECTION OF WOMEN'S HLP RIGHTS

2.1

Women's HLP rights are protected by international instruments and declarations, by regional legal frameworks and by national and local laws.

International legal protection of HLP rights is based on key provisions within the *Universal Declaration of Human Rights* (UDHR)⁹⁷; the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)⁹⁸; the *International Covenant on Civil and Political Rights* (ICCPR)⁹⁹ and the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW).¹⁰⁰

Security of tenure

*Security of tenure is understood as tenure of land and/or housing which ensures a secure home and enables one to live in security, peace and dignity.*¹⁰¹

Security of tenure is one of the most important aspects of the human right to adequate housing and has become an important consideration for humanitarian intervention, in support of a rights-based approach for displaced populations. Calls for security of tenure for displaced persons are supported by both human rights law and contemporary development standards.

97 Article 25(1) states that everyone has the right to adequate standard of living including housing and Article 17 provides that everyone has the right to own property without arbitrary interference.

98 Article 11(1) protects the right to adequate housing and Article 2(2) provides for non-discrimination. ICESCR General Comments No. 4 and 7 more precisely define the right to adequate housing.

99 Article 17 protects persons from arbitrary or unlawful interference with their home. Articles 3 and 26 provide for non-discrimination and equal protection before the law. ICCPR General Comment No. 28 specifically addresses the equality of rights between men and women.

100 Article 14(2)(h) obliges States Parties to eliminate discrimination against women in respect of women in rural areas to ensure they enjoy adequate housing. Articles 15 and 16 provide for equality and for equality in property during and after marriage.

101 UN Human Rights Council, 2012, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/22/46, para. 23.

THE RELATIONSHIP BETWEEN HOUSING, LAND AND PROPERTY RIGHTS

Although the right to adequate housing, and specifically security of tenure, is one of the most important legal bases for HLP rights, this is complemented by interconnected guarantees related to property and land.

The wide range of tenure forms protected by the right to security of tenure serves to distinguish them from the right to property. In accordance with international human rights law, property rights that have been recognised by the state must be protected, in the sense that they cannot be interfered with (in the case of expropriation proceedings, for instance) without a public purpose, fair process and compensation.¹⁰⁵

While officially recognised property ownership thus represents the most secure form of tenure, the right to security of tenure also extends to homes occupied in accordance with less categorical rights (e.g., leasehold) or no officially recognised rights at all (e.g., residence in informal settlements). The right to property can also protect non-residential forms of property such as land. Although the right to adequate housing does not explicitly include land, commentators have expressed the view that secure tenure to land should properly be seen as a precondition for the meaningful exercise of both the right to housing and the right to food.¹⁰⁶ The UN CESCR recognised this link early on in its first General Comment on the right to adequate housing.¹⁰⁷

This definition builds upon *General Comment Number 4* by the Committee on Economic, Social and Cultural Rights:

*Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.*¹⁰²

This means that protection extends to all forms of housing, land and property arrangements. Tenure security involves both 'positive' undertakings by states and the 'negative' obligation to refrain from forced evictions.¹⁰³ In international practice, security of tenure has been defined as "legal protection against forced eviction, harassment and other threats."¹⁰⁴ Perhaps most importantly for women, enjoyment of the right to security of tenure may not be made subject to any form of discrimination, as explained in more detail below.

Human rights standards related to legal security of tenure are reinforced in a number of important respects by corresponding development standards. The concept of security of tenure has been a point of convergence between human rights and development discourses that have often worked in parallel, failing to connect with each other meaningfully.¹⁰⁵

Equality and non-discrimination

Two other important principles for support of displaced women's HLP rights are equality and non-discrimination.

Although the ICCPR does not explicitly codify HLP rights for women, it contains an important anti-discrimination provision that protects women's rights to be free from discrimination with respect to housing, land and property. Article 26 is a broad, anti-discrimination provision indicating that any law – regardless of its subject matter – which discriminates on the basis of sex, is in breach of the ICCPR. Therefore, law which discriminates against women with respect to, *inter alia*, using, renting, owning or inheriting land, housing and property would constitute a violation of women's human rights under the ICCPR.¹⁰⁹

¹⁰² Committee on Economic, Social and Cultural Rights, 1991, General Comment Number 4 on the right to adequate housing, para. 8. <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

¹⁰³ Rhodri Williams, 2011, op. cit. p.5.

¹⁰⁴ Ibid., p.5.

¹⁰⁵ Ibid, p.17.

¹⁰⁶ Ibid.,p.17.

¹⁰⁷ The current UN Special Rapporteur on the Right to Food, Olivier De Schutter, has frequently asserted this link. See, UN General Assembly, 2011, Report of the Special Rapporteur on the Right to Food, UN Doc. A/65/28, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/482/30/PDF/N1048230.pdf?OpenElement>, cited in Williams, 2011, op. cit, p.15.

¹⁰⁸ Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement; UN Committee on Economic, Social and Cultural Rights, 1991, General comment 4: The Right to Adequate Housing, paragraph 8(e). <http://www1.umn.edu/humanrts/gencomm/epcomm4.htm>

¹⁰⁹ UN-Habitat, 1999, op. cit., p.22.

The right to be free from discrimination in enjoying security of tenure is underscored by the fact that equal housing rights are protected by two other global human rights treaties, namely the Convention on the Elimination of all Forms of Racial Discrimination (CERD) and CEDAW.¹¹⁰

CEDAW is the primary instrument to support the human rights of women. It is based on the concept of substantive equality, which focuses on the outcomes and impacts of laws and policies.¹¹¹ The Convention defines discrimination as any act that has the effect or purpose of impairing women’s equal enjoyment of their rights (Article 1).

Like Article 26 of the ICCPR, the CEDAW’s relevant provisions focus on the right to be free from discrimination, but differ from the ICCPR in that it contains a number of provisions which explicitly protect women from discrimination with respect to matters relating to HLP. For example, Articles 15 and 16 provide explicit protections from discrimination with respect to HLP.¹¹²

Under Article 15, States Parties are obliged to accord to women “equality with men before the law”; “a legal capacity identical to that of men” including “equal rights to conclude contracts and to administer property”. It also states that “all contracts and all other private instruments of any kind with legal effect which is directed at restricting the legal capacity of women shall be deemed null and void”. Article 16 stipulates:

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property whether free of charge or for a valuable consideration.

According to their obligations under this convention, States must not only repeal discriminatory laws but also ensure that no action or practice of the State – or of any private “person, organisation or enterprise” – discriminates against women. CEDAW calls on governments to legislate to regulate the private as well as the public domain, which includes extending protection to women against family violence.¹¹³

Furthermore, the Convention is clear that where plural legal systems exist, States remain responsible for the impacts of all laws and must maintain oversight to ensure that women are not discriminated against.¹¹⁴ CEDAW, Article 5(a) provides that state parties shall:

110 CEDAW entered into force in 1981 and has been ratified by 187 UN Member States, except for Sudan, South Sudan, Somalia, Iran and Tonga. It has been signed but not ratified by the United States and Palau. Palestine has made a symbolic signature of the Convention. See: <http://www.cedaw2011.org/index.php/about-cedaw/faq>

111 UN Women, 2013, op. cit., p.9.

112 As cited in UN-Habitat, 1999, op. cit., p.99.

113 UN Women, 2013, op. cit. Article 2.

114 Ibid.



Modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Protection of refugees' and IDPs' HLP rights¹¹⁵

The principles of equality and non-discrimination are important for the protection of refugees' and IDPs' right to adequate housing. It is now well accepted that the non-discrimination rule not only forbids the differential treatment of similarly situated persons but also implies the need for special measures in favour of groups suffering as a result of particular obstacles to the exercise of their rights.¹¹⁶ For internally displaced persons, the *Guiding Principles on Internal Displacement* set out the type of special measures needed to allow those affected to exercise their rights on a non-discriminatory basis with the non-displaced population.¹¹⁷

With regards to refugees there is a specific obligation imposed by the *1951 Refugee Convention* on host states to guarantee a range of rights relating to immovable property on at least the same terms as other non-citizens in a host state.¹¹⁸ However, it is considered they have been superseded in principle by the human right to adequate housing, which offers stronger protection.¹¹⁹ The UN CESCR has asserted an implied right to be free from discrimination on the basis of nationality, noting that the rights under the Covenant

*apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.*¹²⁰

In light of the UN CESCR's interpretation, any distinction between nationals and non-national refugees in the exercise of the right to adequate housing would have to be justified on "reasonable and objective" grounds in order to avoid a finding of discrimination.¹²¹ UN CESCR has applied similar reasoning to prohibit discrimination against IDPs on the basis of their place of residence.¹²²

The Special Rapporteur on adequate housing notes that attention to non-discrimination and equality requires governments and aid organisations to pay particular attention to vulnerabilities and inequalities in pre-disaster contexts, and, in the aftermath of disasters, to address

¹¹⁵ For a detailed discussion on security of tenure for IDPs and refugees see Williams, 2011, op. cit. pp.20-21.

¹¹⁶ Ibid., p.21.

¹¹⁷ UN Commission on Human Rights, 1998, The Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, <http://www.idpguidingprinciples.org/>

¹¹⁸ Limited protections of the rights to housing and to acquire property are included in Chapters II-V of the 1951 Refugee Convention; Williams, 2011, op. cit. p.20.

¹¹⁹ Ibid., p.19.

¹²⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), 2009, General Comment 20, Non-discrimination in economic, social and cultural rights, para.5. <http://www.refworld.org/docid/4a60961f2.html>

¹²¹ Ibid., para 13

¹²² For a more detailed analysis, see Williams, 2011, op. cit., p.21.

inequalities and protect the most vulnerable.¹²³ This, by extension, also includes obligations on the international community during humanitarian response to conflict and displacement.

Non-discrimination and the head of household concept

The Special Rapporteur on adequate housing has stated that the independent right of women to security of tenure should be explicitly recognised in housing, law and policy programmes.¹²⁴ This should be irrespective of their family or relationship status. It is for this reason that the Special Rapporteur notes that property regimes which recognise joint rights with equal powers between spouses best protect women's right to adequate housing and to equality.

This is in accordance with Principle 4.2 of the *Pinheiro Principles* which highlights the fact that 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 practice.¹²⁵ This can be ensured by conferring equal rights to women and/or joint ownership rights when restitution claims are considered by relevant judicial bodies.

Principle 4.2 further states that 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 household as an explicit component of the restitution process. This provision is designed to combat sex discrimination which occurs when only male heads of households are recognised as rights holders or are provided with formal title to housing as it leaves women without legal control over what should also be treated as their property.

In its 2011 *Concluding Observations on Sri Lanka*, CEDAW recommends abolishing the concept of head of household in administrative practice and recognising joint or co-ownership of land.¹²⁶ The Committee considered that the authorisation of a head of household to sign official documentation such as land ownership certificates is a discriminatory practice that prevents women from acquiring ownership of land.

¹²³ UN General Assembly, 2011, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/66/270, para.13. http://ap.ohchr.org/documents/alldocs.aspx?doc_id=19300

¹²⁴ UN Human Rights Council, 2011, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/19/53, para. 27, <http://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx>

¹²⁵ Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the 'Pinheiro Principles', July 2007, p.36, [http://www.internal-displacement.org/8025708F004CFA06/\(httpPublications\)/BE8C2A266A6A3349C1257314003C7627?OpenDocument](http://www.internal-displacement.org/8025708F004CFA06/(httpPublications)/BE8C2A266A6A3349C1257314003C7627?OpenDocument)

¹²⁶ Committee on the Elimination of all Forms of Discrimination against Women (CEDAW), 2011, Concluding observations of the Committee on the Elimination of Discrimination against Women: Sri Lanka, para. 39=8, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LKA-CO-7.pdf>

ACCESS TO JUSTICE¹²⁶

CEDAW has stated that respect and protection of human rights can only be guaranteed with the availability of domestic effective remedies. Access to justice is therefore also an essential component of rule of law and a means for women to actively claim the entire range of rights provided for in the Convention.¹²⁷

The Convention's legal basis for access to justice is found in Articles 2 and 15. Article 2 is the main source of the State parties obligation to ensure the availability of remedies for women subject to discrimination. Laws prohibiting discrimination must embody some form of legal or other material consequence for those who violate them. This provision includes all types of remedies and all types of penalties, whether penal, civil or administrative, depending on the forum that has jurisdiction over particular claims.

Article 15 is a response to the gender bias in legal systems. It embodies the principle of equality before the law, which is to be interpreted broadly, meaning equal access to courts and tribunals, non-discriminatory administration of justice, as well as equal protection of the law. It encompasses "all decision-making bodies, executive or judicial, including civil, criminal and administrative courts and tribunals". Traditional legal systems are also bound by this provision.

In this regard, the UN Secretary-General has issued a clear directive to Member States who have justice mechanisms based on tradition, custom or religion operating alongside state institutions, in which he urges them to ensure that women and vulnerable groups enjoy equal access to justice within all justice delivery mechanisms.¹²⁸

2.2

NATIONAL LEGAL FRAMEWORK – LEGAL PLURALISM

Legal pluralism is the existence of several legal systems in a given country. It is possible that different legal regimes prevail in a country with their scope of application covering only certain rights, or being applicable only on a specific territory or a specific group of people. Furthermore, legal traditions of various ethnic groups or religious communities may accept the application of different rules or standards in the same case.¹³⁰

¹²⁷ This analysis is set out in CEDAW, 2012, *op. cit.*, p.2.

¹²⁸ *Ibid.*

¹²⁹ UN General Assembly, 2012, Report of the Secretary General, Delivering justice: Programme of action to strengthen the rule of law at the national and international levels, A/76/749, Para 23 (c), http://www.unrol.org/files/SGreport%20eng%20A_66_749.pdf

¹³⁰ Kabeh Rastin-Tehrani and Nadjma Yassari, 2012, Max Planck Manual on Family Law in Afghanistan, Max Planck Institute, p.2, http://www.mpipriv.de/files/pdf3/max_planck_manual_on_afghan_family_law_english.pdf

Five of the countries where NRC's research took place are legally pluralistic – Afghanistan, Palestine, Lebanon, Liberia and South Sudan. This reflects the situation found in the vast majority of developing countries.¹³¹

Legal pluralism can be understood as the co-existence of parallel laws and authorities that guide and inform the administration of justice on similar matters in any particular context. Often these are:

- ▶ statutory laws – acts, rules or regulations approved and promulgated by a government
 - ▶ faith-based legal systems such as *sharia* ¹³¹
 - ▶ customary laws – customs, rules or practices that regulate social behaviour that have developed over time in a specific community
-

These legal norms are rooted in the historical, social and demographic conditions of a particular country. The different legal systems may coexist, overlap and even contradict each other and the boundaries between them are not always distinct – they often influence and build on each other. The precise interaction of different laws depends not only on the country but also the locality in which these different systems are present and the ways in which they are administered. The reality that NRC encounters on the ground is that these mechanisms – statutory, religious and customary – are much more interconnected than is represented by a theoretical description of each.

Legal pluralism with regards to land tenure is defined by the different sets of rights and obligations concerning land and property, within multiple social fields.¹³³ HLP rights do not correspond with any singular aspect of law, but have their source in many different areas. In contexts of legal pluralism they are influenced by a multiplicity of statutory, religious and customary laws. Family laws on marriage, divorce and inheritance are particularly likely to be subject to plural legal provisions.¹³⁴

¹³¹ Currently some 52 countries formally recognise religious or customary laws alongside legislation. World Bank 2011, *Women business and the law*, cited in World Bank, 2012, *Voice, Agency and Participation*, op. cit., p.10.

¹³² Erica Harper, 2011, *Customary Justice: from Programme Design to Impact Evaluation*, International Development Law Organization

¹³³ Jon Unruh, "Humanitarian approaches to conflict and post-conflict legal pluralism in land tenure", in *Uncharted Territory: Land, Conflict and Humanitarian action*, Sara Pantuliano (ed.). Practical Action Publishing, p.53. <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5564.pdf>

¹³⁴ UN Women, 2013, op. cit. p.12.

Statutory law

Marital property usually refers to property acquired by either spouse during marriage. These properties can be held in common ownership (each person owns a portion of the whole property and upon their death, this portion is part of their individual estate); joint ownership (more than one person owns the property as a whole, which means that upon one's death, the surviving partner owns the whole property), or separate ownership (property that belongs only to one spouse).

Inheritance of property on the death of relatives is a universal concept, included in most international and national legislation.

The terms “inheritance” and “succession” are often used interchangeably, but should be distinguished. Inheritance is the transmission of the right to property such as land and housing, from one generation to the next while succession means the transmission of all rights, duties and powers of the deceased.¹³⁴

Statutory law (often referred to as formal law) is law that has been passed and enacted by the legislature of a government. As stated previously, it is important to note that one law does not encompass all aspects of HLP rights. In order to understand the full range of protections of women's HLP rights it is necessary to consider laws relating to land, to housing and to property (both real and private), as well as family laws relating to inheritance and marital property.

Often in countries emerging from conflict, new progressive laws are enacted that reflect international standards, including guarantees of equality and non-discrimination. The Transitional Constitution of South Sudan¹³⁶ provides an example of strong statutory protection of women's HLP rights. Article 14 prohibits discrimination on the basis of sex and makes it clear that men and women are equal before the law.¹³⁷ Article 16 explicitly recognises women's rights to own property and to shares in their deceased husbands estate.¹³⁸ Importantly, the Constitution calls on all levels of government to “enact laws to combat harmful customs and traditions which undermine the dignity and status of women”.

However, a lack of knowledge of statutory provisions, combined with a lack of enforcement at the local level continues to undermine even the strongest statutory provisions protecting women's rights. In South Sudan this is acknowledged in the draft Land Policy¹³⁹, in the following statement:

Despite the legal provisions recognising the equal rights of women to land, widespread knowledge, recognition and protection of those rights, remains limited throughout South Sudan. Women's land rights remain largely conditional, derived through their marital or child-bearing 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 socio-economic 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.¹⁴⁰

As mentioned, the post-conflict period can provide an opportunity to incorporate international legal standards into new national legal frameworks. However, in other countries where NRC works, statutory law may still be discriminatory against women, particularly in some areas of family law. For example, the concept of shared matrimonial

135 Cunial, 2011, op. cit., p.63.

136 2011 Transitional Constitution of South Sudan (TCSS) <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/5133/The-Transitional-Constitution-Of-The-Republic-Of-South-Sudan-2011.aspx>

137 Article 14: 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.

138 Article 16: Women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased.

139 The draft Land Policy was approved by the Council of Ministers in February 2013 and is awaiting adoption by the South Sudanese parliament.

140 South Sudan draft Land Policy, p.4.

property does not exist in Palestinian law¹⁴¹, effectively denying women any legal claim to housing upon dissolution of marriage. The result of this legislative gap is that when a marriage ends following death or divorce, a wife's contribution to the accumulation of marital assets is not recognised unless it is documented.¹⁴²

Overall, statutory laws offer the strongest protection for women's HLP rights. However, as shown below, the main challenge is the application of the law and the accessibility of statutory justice mechanisms to women.



Religious law

Three of NRC's country studies deal, *inter alia*, with the application of *sharia* law – Afghanistan, Palestine (Gaza) and Lebanon. Thus this section focuses on *sharia* as one of the legal systems in legally plural contexts. Personal status laws in Muslim countries, which govern legal procedures that pertain to familial relations such as marriage, divorce, child custody or inheritance, derive from *sharia*. As such there is often an overlap between religious and statutory law. For example, inheritance laws in the Gaza Strip are codified¹⁴³ granting women specific inheritance rights. A woman is due to receive half the shares a man would receive in a similar situation, as stipulated in the Qur'an.¹⁴⁴

While *sharia* norms generally entail gender asymmetry, NRC's research shows that *sharia* nonetheless supports one of the most important ways to acquire ownership of land and property for women. Without *sharia*'s strict rules on inheritance, women would receive far less or

141 UNDP, 2011, A Review of Palestinian Legislation from a Women's Rights Perspective, p.25. <http://www.undp.ps/en/newsroom/publications/pdf/other/womenrreview.pdf>

142 Ibid.

143 Articles 583-630 of the 1954 Egyptian Law on Family Rights

144 Siraj Sait and Hilary Lim, *Land Law and Islam: Property and Human Rights in the Muslim World*, UN-Habitat and Zed Books, London New York, 2006, p.108.

nothing at all. It is important to note that women's rights to inheritance under *sharia* are an improvement on their pre-Islamic position, and until a few decades ago stood in marked contrast to the less privileged position of women in the West.¹⁴⁵

Customary law

Customary law is the set of customs or rules that reflect a certain community's beliefs, habits and values and is more a reflection of social convention than legal protocol. It typically exists in an informal, unwritten form which is orally transmitted although there have been efforts to codify some customary law. Depending on the context, customary law and religious law can overlap.

The administration of customary law may take a variety of forms – for example, customary courts or courts and councils of chiefs or other traditional leaders, depending on the country and context. These are invariably presided over by men.¹⁴⁶ This has implications for the use of customary mechanisms by women. In some instances it leads to a lack of women's access and representation in customary forums, as well as to authorities' bias in the application of statutory and religious legal provisions that support women's HLP claims.

It is not only the administration of justice through customary mechanisms that may be problematic for women. It is widely recognised that many customary laws discriminate against women, undermining statutory guarantees of equality, including for HLP rights. While customary systems may provide land to a landless widow, they often deny her the right to inherit the land from her husband or to keep a share of the land in case of divorce if she does not have male children.¹⁴⁷

Furthermore, customary authorities may also hold discriminatory attitudes against outsiders, justifying them as a way to preserve cultural identity and the values of the community against internal and external threats.¹⁴⁸ In practice this has important implications for women who may be treated as outsiders. It is also important to challenge underlying assumptions that customary law reflects community values. Rather, these can be seen as reflecting the interests of the most powerful, those who have a disproportionate say in shaping, defining and maintaining laws and values.¹⁴⁹

Despite the fact that customary laws may contradict statutory provisions relating to equality, and that the forums themselves may put women at a disadvantage, customary mechanisms were still described by women in the country studies to be the most viable option to seek resolution of HLP disputes in pluralistic legal systems. Because maintaining social relations is so important to the survival of women interviewed

145 Sait and Lim, 2006, op. cit., p.112.

146 Chris Moore, 2011, Housing, Land and Property, Handbook on Design and Implementation of Collaborative Dispute Resolution, Norwegian Refugee Council, p.73.

147 Barbara McCallin, 2012, Restitution and Legal Pluralism in Contexts of Displacement, Case Studies on Transitional Justice and Displacement, p.9. <http://www.brookings.edu/~media/Projects/idp/tj%20case%20studies/McCallin%20Legal%20Pluralism.pdf>

148 Ibid.

149 UN Women 2013, op. cit., p.68.

they may be reluctant to seek dispute resolution through adversarial approaches, such as through a statutory court procedure. Instead they opt for approaches that incorporate mediation, such as some customary and religious mechanisms. This can mean an outcome that is supported by both parties, and maintains vital family ties, even if it also often means a compromise.

NRC's findings also confirm that pressure to keep disputes 'within the family' tips the balance towards choosing local customary processes, rather than seeking a more public forum, such as statutory courts.¹⁵⁰ In contexts such as Afghanistan and Gaza, the stigma of shame that challenging family can entail also influences women's decisions about available remedies. For these reasons, grievances are commonly resolved within families or communities or through customary or other collaborative dispute resolution processes.¹⁵¹

For these reasons, despite the challenges, in the majority of cases in the countries where NRC works, women prefer to seek redress through customary or religious mechanisms. It is important to support women to shape and define them, including through engagement with customary and religious leaders, as these are often the only available option.¹⁵²

150 *Ibid.*, p.73.

151 *Ibid.*, p.72.

152 *Ibid.*, p.94.

3



THE REALITY FOR DISPLACED WOMEN – CHALLENGES IN ACCESS TO JUSTICE FOR HLP RIGHTS

NRC's findings highlight three sets of constraints preventing displaced women from realising their HLP rights: the challenges from a breakdown in the rule of law, from social norms, and practical barriers stemming from socio-economic inequalities. All of these are intricately related to one another, and to a large extent cannot be separated. Without seeking to oversimplify the issues, NRC has presented them in this way to reflect current thinking and practice in addressing access to justice barriers, as outlined by CEDAW.¹⁵³

Where the primary obligation for ensuring non-discrimination in access to justice lies with States, in conflict and post-conflict periods humanitarian and development actors can contribute to supporting women's access to justice. This section therefore focuses on the role of international actors rather than on States' obligations.

Rights are only meaningful if they can be asserted.¹⁵⁴ Women's HLP rights depend on the availability of effective domestic remedies. The reality is that women worldwide experience the denial of their basic rights and discrimination, often compounded by poverty, age and legal status.¹⁵⁵ The intersectional effect of discrimination on several grounds limits women's access to legal redress. Refugee and displaced women are among the groups recognised as facing additional difficulties in accessing justice.¹⁵⁶ In conflict and post-conflict situations, the feminisation of poverty also plays a role in limiting women's access to justice.¹⁵⁷ NRC has found that displaced women who seek legal assistance do so because they are denied their HLP rights – for example through being prevented from accessing land, receiving inheritance or claiming marital property – or have experienced violations of HLP rights that they are not able to remedy without support.

RETURNEE WOMAN UNABLE TO CLAIM HUSBAND'S LAND¹⁵⁸

Mary lost her husband and all three children during the Liberian civil war. When a refugee in Ghana she lost the copy of her late husband's title deed to property they had jointly purchased in Tusa Field in the Liberian capital, Monrovia. After her repatriation she went to Tusa Field to discover another family had moved into the house and removed property boundary markers. Mary reported the case to the local authorities

but to little avail. With NRC's help she was able to retrieve a certified copy of the deed from the national archive. NRC organised a negotiation process which led to agreement to survey the plot to verify its dimensions and boundary lines. Mary acknowledged that the occupier had acted in good faith and improved the property and allowed him and his family two months to find alternative accommodation.

LIBERIA



153 CEDAW, 2012, op. cit.

154 Ibid., p.2.

155 UN General Assembly, 2012, Delivering justice, op. cit., para. 31. http://www.unrol.org/files/SGreport%20eng%20A_66_749.pdf

156 CEDAW, 2012, op. cit. p.13.

157 Ibid.

158 The woman's name has been changed.

NRC's research has identified discriminatory social norms and socio-economic disadvantage as being the most significant challenge for displaced women in the study countries. It is acknowledged that women's right to access justice may in some countries firstly be impaired by national legislation which contains explicit or implicit discriminatory laws and provisions.¹⁵⁹ However, since this report considers conflict and post conflict environments, displaced women cannot rely on statutory legal provisions for many reasons, including breakdown in the rule of law and destruction of the judicial infrastructure. Thus NRC's evidence highlights the gap between the laws and their realisation as the main problem. The effect of discriminatory social norms and practices combined with low social status cannot be underestimated.

NRC's research shows that these barriers apply at all stages of the justice process: beginning with social norms that influence women and their family's perception of their rights and the options available for seeking redress. These include the ways that laws are interpreted; the fact that women are not able to travel to court; their lack of financial means; illiteracy and their lack of awareness of rights and procedures and inability to access some courts or their lesser status as witnesses. Displaced women are disadvantaged throughout the process. As each practical barrier represents a challenge, the accumulated effects can be insurmountable. The following case study illustrates the combination of factors that make it difficult for women to claim their rights and secure a home upon divorce.

LEBANON

SHARIA DIVORCE RIGHTS DENIED FOR PALESTINIAN WOMAN¹⁶⁰

Aziza was born in 1953 in Jal al Baher, a non-recognised Palestinian refugee camp near Tyre in south Lebanon. She moved to Beirut when she got married and lived there for 23 years with her husband and his children from a previous marriage. When she fell ill in 2007, her husband asked her to leave. Divorced in a *sharia* court, for seven months she repeatedly petitioned for full payment of her *mahr*, the sum which in Islamic law should be paid to the wife by the husband or his family on marriage. Her husband refused to pay and the judge ruled that he could pay half. "Now the courts are giving nothing to women", Aziza said. Aziza did

not have a copy of the marriage contract in which her entitlements would be set out. She did not have a lawyer because she did not have money to pay.

"Court is for the man because the judges do not support women. I blame the judge because he did not help".

The judge granted the divorce and awarded Aziza a million Lebanese pounds (c. US\$650). Aziza accepted the decision and waived her right to full payment. She now lives with her widowed mother. The delays in the divorce proceedings and over the disputed *mahr* had taken its toll. "What can I do? This was against my will. I preferred to stay."

159 This is the case with the legislative framework in Liberia, Gaza and Lebanon. Please refer to these reports for discussions on each specific context.

160 No Place Like Home: An Assessment of the Housing, Land and Property Rights of Palestinian Refugee Women in Camps and Gatherings in Lebanon, Norwegian Refugee Council, 2013, p.62.

BREAKDOWN IN THE RULE OF LAW IN CONFLICT AND POST-CONFLICT CONTEXTS – IMPLICATIONS FOR PROGRAMMING

Challenges related to access to justice are especially aggravated and acute in conflict and post-conflict situations and in failed states. Statutory systems may not exist or function with any level of efficiency or effectiveness.¹⁶¹ This exacerbates the obstacles for women's access to justice. A contextual analysis of humanitarian crises and post-conflict countries which focuses only on international and national statutory provisions supporting women's equality fails to take into account the central defining characteristic of these situations – the breakdown in the rule of law, the lack of implementation of legal provisions and the inaccessibility of statutory justice mechanisms for most women, particularly displaced women.

The situation in Gaza provides an example of the impact of protracted conflict on the overall capacity of judicial mechanisms to address HLP disputes. In Gaza civil (*nizami*) courts have jurisdiction over all land claims and disputes. In 2007, an already-existing shortage of judges was exacerbated when Hamas took over the Gaza Strip and Palestinian Authority employees went on strike. Hamas responded by replacing judges with new appointees, many with little or no experience.¹⁶² There are now an estimated 37 judges serving a population of 1.7 million. Long delays in resolving cases have resulted in people turning away from *nizami* courts.¹⁶³ According to NRC research, between 2004 and 2010 there was an estimated 20 to 25 per cent increase in cases heard before customary dispute resolution mechanisms such as the *rabita* committees established by the Hamas-affiliated Palestine Scholars League, rather than in formal *nizami* courts.¹⁶⁴



¹⁶¹ CEDAW, 2012, op. cit., p.13.

¹⁶² Norwegian Refugee Council, 2012, Customary Dispute Resolution Mechanisms in the Gaza Strip, p.23

¹⁶³ Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, p.43.

¹⁶⁴ Ibid., p.43.

GAZA

COURTS SLOW AND EXPENSIVE¹⁶⁵

Many of the women and men in NRC focus groups agreed courts provided a mechanism that could help resolve disputes by compelling disputants to engage. But the vast majority believed the court process was slow and expensive. Female focus group participants often had on-going cases in court and were unsure why the process was taking so long.

There are so few judges in Gaza's nizami courts that every day, each one of them hears 35 to 40 cases, inevitably resulting in

insufficient time for each case and repeated adjournments. Most women in the focus groups had perceptions or personal experiences of a slow nizami court system.

Women were also worried that taking cases to court would worsen their relations with family members. While this was a key concern, many women, felt it was more important to pursue their rights. This conviction was driven both by principle and by economic necessity.

Experience shows that rebuilding rule of law capacity takes time. Poor governance may be compounded by incomplete laws detailing policy and procedures for dealing with HLP disputes and failure to clarify the local interface between statutory, religious and customary mechanisms, creating jurisdictional confusion. In Liberia, over a decade after the conflict, there is still no system for adequately addressing HLP disputes and there continues to be considerable uncertainty about the appropriate venue for dealing with property matters. Cases can be heard by the Civil Law Court, the tribal "courts" of the Ministry of Internal Affairs¹⁶⁶ and the Probate Court. In principle, tribal courts have jurisdiction over matters related to custom, including customary marriages. However, the division of privately held property upon divorce – even for a customary union – may be heard by a civil court or the tribal court. In addition, a number of different organisations offer collaborative dispute resolution for property related matters, including local and international NGOs and the Ministry of Justice.

In post-conflict states, and situations of protracted displacement, even when governance structures are rebuilt, experience has shown that outside of national capitals, community life continues to be determined by local power holders. Religious and customary structures regulate many aspects of women's lives, not least the way that family law matters such as inheritance and marital property disputes are dealt with. This is also the case even in situations where

¹⁶⁵ Ibid., p.44.

¹⁶⁶ Liberia is divided into counties, which are in turn divided into administrative districts. The structure of local government comprises in descending order from the county level: paramount chief, clan chief (a "clan" is not necessarily an area occupied by one ethnic group), general town chief, town chief (a "town" may only comprise a few houses) and quarter chief. The chiefs are accountable to central government through the Ministry of Internal Affairs and also resolve disputes through their "courts", which are generally adversarial in nature. Gregory Norton, 2011 Searching for soap trees: Norwegian Refugee Council's land dispute resolution process in Liberia, Norwegian Refugee Council, p.8. http://www.nrc.no/arch/_img/9546544.pdf

the post-conflict environment has provided an opportunity to incorporate international human rights standards into national constitutions and to draft progressive new laws. Despite this, there is a continued gap in realising the strong protective guarantees of women's rights.

South Sudan is an example of a country in which the interim and post-independence period have provided an opportunity to rewrite laws to incorporate much stronger guarantees for women's equality. But it is yet to see the laws implemented in practice. Again, there is overall confusion over jurisdiction of HLP disputes. Statutory and administrative systems are absent at the local level, or dysfunctional. Where they do exist there is limited awareness among local and traditional authorities of what the law actually says and which administration or court deals with what type of dispute.

Another example of strong laws that fail to be recognized in practice is in Afghanistan, showing that one of the greatest challenges in post-conflict contexts is lack of enforcement.¹⁶⁷ The landmark Elimination of Violence against Women Act (EVAW)¹⁶⁸ was passed in 2009 by presidential decree, criminalising a range of offences, including denying women their inheritance. Importantly it also sets out victims' rights, including the right to seek prosecution, legal representation and compensation. Over the past three years, on average the EVAW act has only been applied to between 15 and 17 per cent of reported cases.¹⁶⁹ The law is currently under threat from Parliament, but even though it remains in place, enforcement is weak.¹⁷⁰

In the countries where NRC works, enforcement is particularly challenging in the case of legal rulings for HLP disputes. In South Sudan, a general lack of enforcement mechanisms at the community level, including awareness of these laws, has further weakened the application of provisions protecting women's HLP rights. The following case study illustrates a key issue reported by interviewees – despite being successfully awarded ownership of demarcated plots of land, they had been unable to access and use the land due to illegal occupation, by soldiers, government officials or wealthy men with power and influence in the community.¹⁷¹

167 See, for example, Afghanistan Research and Evaluation Unit, 2013, Women's Rights, Gender, Equality, and Transition: Securing gains, moving forward. <http://www.areu.org.af/Uploads/EditionPdfs/women%20and%20Transition.pdf>

168 Presidential Decree on Endorsement of Law on Elimination of Violence against Women (EVAW), No: 91, 20/07/2009: http://www.laoa.af/laws/law_on_elimination_of_violence_against_women.pdf

169 According to UN statistics, http://www.peacewomen.org/news_article.php?id=6193&type=news

170 "A May parliamentary debate on the ground breaking Law on the Elimination of Violence Against Women (EVAW Law), passed by presidential decree in 2009, was halted after 15 minutes to block numerous lawmakers who were calling for the law's repeal and speaking out against legal protections for women and girls. The law remains in place, but enforcement is weak." – see: <http://www.hrw.org/news/2014/01/21/afghanistan-rights-setbacks-fan-future-fears>

171 Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan, Norwegian Refugee Council, 2014, p.39.

SOUTH SUDAN

RETURNEE WOMAN FIGHTS FOR IMPLEMENTATION OF COURT DECISION FOR LAND RESTITUTION¹⁷²

Returning temporarily to her home in 2005, Elizabeth found that her three commercial plots and two residential plots were occupied by soldiers. For the past seven years, Elizabeth has been travelling between the USA and South Sudan trying to get her land back. She has tried negotiating with the soldiers themselves, only to be verbally and physically threatened, resulting more than once in a gun being pointed at her. She has tried to get the local chiefs to support her but both say they can do nothing.

Failing to get justice through the customary system, she opened a case against the soldiers in the local County Court. Unable to afford a lawyer, she represented

herself. At each court hearing Elizabeth reports that the soldiers came, dressed in full uniform, with many of their friends, also in military uniform, verbally threatening her and trying to intimidate the judge. In early 2012, after spending more than 1,200 South Sudanese Pounds (US\$300) on court 'fees', the judge ruled in her favour, agreeing with her claim that she was the rightful owner of three of these plots. Since then, however, she has been unable to get the court or the police to enforce the ruling and to evict the soldiers from her land. With no land to come home to and running out of money she is almost ready to give up on her land and on South Sudan.

All these failures limit women's choices about where to seek redress for HLP disputes in conflict or post-conflict environments. Analysis of NRC's legal assistance cases shows that the majority of cases in Afghanistan are settled through traditional dispute resolution mechanisms.¹⁷³ Contributing factors are the perceptions that formal systems lack competent jurisdiction of cases involving women, that they are generally corrupt and expensive, together with women's desire to preserve family relations.¹⁷⁴

UN Women reports that donors from the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD-DEC) allocated US\$4.2 billion to justice in 2009.¹⁷⁵ The USA and the European Union (EU) together accounted for 70 per cent of this total. Afghanistan and the occupied Palestinian territory were among the largest recipients of this aid. Five per cent of the total (c. US\$206 million) was allocated to programmes for which gender equality was a primary aim, with Sweden, Canada, Denmark,

¹⁷² Ibid.

¹⁷³ Strengthening Displaced Women's Housing, Land and Property Rights: Afghanistan Country Report, Norwegian Refugee Council, (forthcoming).

¹⁷⁴ IRIN, 12 March 2013, Afghan women navigate a challenging judicial landscape, <http://www.irinnews.org/fr/report/97631/afghan-women-navigate-a-challenging-judicial-landscape>

¹⁷⁵ At the time of publishing the most recent year for which data was available was 2009. See UN Women, 2013, op. cit., p.15.

Norway and Germany as the largest donors.¹⁷⁶ Again, Afghanistan was among the top five recipients of gender-focused justice aid in 2009. Yet NRC's research in Afghanistan and Palestine shows that there is a long way to go before access to justice is a reality for displaced women in these countries.

While investments in statutory justice mechanisms are vital, NRC's research shows that engaging with local mechanisms such as religious and customary authorities is equally vital to making a difference in women's experience of justice. This should be combined with the provision of legal assistance for women to support their engagement in these processes. Despite the challenges of customary justice mechanisms, the reality is that in conflict and post-conflict contexts they may be the only available mechanisms. NRC experience shows that with the right kind of support, women can be successful in resolving their HLP claims through these forums.

SOCIAL NORMS AS BARRIERS

3.2

Social norms are the manifestation of a complex interplay between tradition and beliefs, specific to any given community. Norms embedded within social, political and economic structures are associated with the persistence of patriarchal attitudes and deep-rooted gender stereotypes that perpetuate gender inequality, limiting the extent to which women's rights are realised in practice.¹⁷⁷ As described in NRC's country studies, these may also be subject to changes during the upheaval of conflict, the dynamic flux of the post-conflict environment and in unstable protracted displacement.

RETURNEE WIDOW UNABLE TO CLAIM HLP RIGHTS

In November 2012, Christina and her six children arrived in Juba, the capital of South Sudan, after travelling for more than a year. Her husband died en route. They live in a small tent on the land of a distant relative who has told her she must find other accommodation. She does not know where to go. Her husband left his ancestral land in 1960 and Christina has no idea how to find out whether he had any entitlements to land she might potentially inherit. On visiting land that

was her father's, she discovered that her uncles had already divided it up. Her family refuses to give her any land, claiming that they do not have enough to feed themselves. Christina wishes she had stayed in Khartoum, where she had a house, her children went to school and she had friends and a supportive community: "There have been so many changes, the people here are not like how I remembered them, no one wants to help each other, everyone is by themselves".

SOUTH SUDAN



¹⁷⁶ A range of activities including training for judges, legal aid for survivors of violence, women's participation in peace building and reconciliation, reintegration of victims of trafficking and awareness-raising campaigns to reduce early marriage. UN Women, 2013, op. cit., p.15.

¹⁷⁷ World Bank, 2012, Voice, Agency and Participation, op. cit., p.9.

NRC's research shows that consistent and pervasive discrimination based on complex social and cultural practices constitutes a barrier to accessing justice for displaced women. Despite the billions of aid dollars¹⁷⁸ channelled to strengthening post-conflict justice mechanisms and in working with national authorities for rule of law service development, these interventions often fail to address social attitudes and norms that undermine legal protection.

For example, in Palestine in traditional Bedouin communities, women cannot travel alone without the permission of a male relative, which can make it difficult for them to take an active part in court proceedings and engage with their lawyers.¹⁷⁹ Some outreach work has been started. An NRC lawyer pointed out that several women had been losing their land and property because of this social norm. NRC decided to address this issue by hiring a female lawyer to visit these women so they can sign a power of attorney document to enable the lawyer to act on their behalf.

We cannot leave the home without the permission of our husbands. We would like to have sessions on defending our homes and protecting them from demolition, but because we can't leave the community, the sessions would have to take place here.

Bedouin refugee woman, Palestine

AFGHANISTAN

RETURNEE WOMAN DENIED HLP RIGHTS BY CULTURAL CONSTRAINTS¹⁸⁰

Amina fled Afghanistan following the Soviet intervention, returning in 2007 with her husband. Amina sought to claim property inherited from her father who had died twenty-five years previously. Other claimants for the five hectares of land were Amina's brothers and mother. Amina filed a case against her uncle. Denied by custom the right to herself appear in court, she nominated her husband to act on her behalf. Upon being awarded

only one hectare, she asked NRC to intervene. An appeal to the Supreme Court dragged on for eight months, necessitating many visits to Kabul. In the end the highest court upheld the original judgement. The NRC legal adviser had to explain to Amina that she may have won if she had not appointed her husband as her legal proxy and he had not agreed a legally binding compromise deal with the uncle.

178 UN Women, 2013, *op. cit.*, p.15.

179 Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, pp.74-75.

180 The woman's name has been changed. Strengthening Displaced Women's Housing, Land and Property Rights: Afghanistan Country Report, Norwegian Refugee Council, (forthcoming).

To seek access to justice for HLP rights violations, displaced women have to challenge these prevailing social, cultural, traditional, religious and/or community-based norms.¹⁸¹ This can make it very difficult – and often dangerous – for women to seek access to justice. This has important implications for programmes working on women’s HLP rights. Understanding the many different ways that social norms affect women’s decisions and their experience of justice is vital to building humanitarian and development interventions that address some of the challenges and take into account women’s experience of risk, as it differs from men’s.

Women face severe consequences claiming HLP rights

NRC’s research shows that a woman asserting her HLP rights can face impossible choices. She may have to decide between upholding an inheritance claim and continuing to live with her family, if they are parties to the dispute. Women interviewed during the research explained that they are ostracised and ignored if they claim their land, and may be abandoned by their families. Some societies reject women who ask for their inheritance rights and it can be considered shameful if they make a claim.

For many women in the countries where NRC works, family relations are critical for women’s survival – not just their livelihoods but also for their personal security. Filing an inheritance lawsuit against family members has an impact on a woman’s domestic and daily life. It might impact on where she stays, who is providing for her economically and who will guarantee her future safety. NRC’s legal case analysis in Afghanistan found that most cases involve women fighting for inheritance rights in opposition to family members, usually brothers.¹⁸³

“The family threatened that I would lose all relations with them.”

“I have no contact with my brothers.”

“My family haven’t spoken to me for two years. They threw my things out of the house.”

“I don’t care about the reaction of my family, I just want my rights. If they get angry I will carry on anyway even though they say it is shameful.”¹⁸¹

The conclusion from many of NRC’s legal cases is that women dare to confront family members and established norms only as a last recourse and when facing absolute destitution, having exhausted all other possible avenues to provide for themselves and their children.

The overall result is that women may be prevented from making claims against their families. Women are deterred from claiming their inheritance rights by relatives’ threats of being cut off and becoming socially isolated. There is also the threat of physical violence or a more low-key pervasive refusal to provide resources – financial or otherwise – that would enable women to pursue justice. It can also include prohibiting women from leaving the home to consult with those who can provide information and advice about entitlements or to travel to court or government offices.

¹⁸¹ CEDAW, 2012, op. cit., p.12.

¹⁸² Realities from the Ground: Women’s Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, p.59.

¹⁸³ Strengthening Displaced Women’s Housing, Land and Property Rights: Afghanistan Country Report, Norwegian Refugee Council, (forthcoming).



Even when women take the risk and pursue claims, if decision is made in a woman's favour the effect of social norms may continue. A win for a woman in court may lead to her husband or family exerting psychological pressure or even physical violence on her to overturn the court decision. The fact that close family members are likely to be the source of HLP cases reinforces the risk for women's safety.

Furthermore, claiming HLP rights can represent broader 'political' claims about women's status and empowerment both in the family and broader society. Women claiming their HLP rights can be seen as causing social disruption in more conservative contexts where NRC works. This can expose them to the risk of social ostracism, and possible retribution and violence, from the broader community. It can act to deter women from bringing a claim in the first place or to abandon a case. Women who decide to claim their HLP rights can end up paying a high social cost, a factor that NRC is aware of during their counselling prior to taking on legal assistance. Unfortunately, for many women, the price is too high.

NRC's analysis concludes that the effect of social norms and the risk of consequences for women claiming their rights remain unexplored in humanitarian programming. NRC's country research shows that more needs to be done to empower women to tackle discriminatory social norms that prevent them from claiming their HLP rights.

Customary norms and practices not in conformity with religious and statutory laws

In NRC's experience, one of the main barriers for women claiming their HLP rights in Afghanistan, Lebanon, South Sudan, Gaza and Liberia stems from the fact that customary norms may not be consistent with provisions of statutory and religious law. In some cases traditional authorities may have the intention to implement *sharia* provisions on inheritance rights for women, for example. However, a lack of education and knowledge about the law and its application, can lead to erroneous interpretations, based on personal beliefs, often to the disadvantage of women. This is the case with decisions on HLP disputes, which as described above, are often dealt with at the local level and thus depend on the knowledge of traditional leaders and local authorities as the main enforcers.¹⁸⁴

In Afghanistan, Gaza, and Lebanon research shows that social norms applied by traditional authorities and affecting intra-familial perceptions of rights can negatively impact the application of *sharia* that would otherwise support women's HLP claims. In Gaza it was noted that while Islamic jurisprudence and the legal system provide no overt barriers to women's ownership of property, social norms and traditions often prevent women from taking full advantage of their HLP rights.¹⁸⁵

NRC research found, as with statutory laws, that the greatest challenge for women with *sharia* provisions relating to marital property and

¹⁸⁴ OHCHR, 2012, *op. cit.*, p.51.

¹⁸⁵ Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, p.3.

inheritance is in their implementation – particularly their unpredictable application by both customary authorities. The Special Rapporteur on violence against women noted the following concerns regarding the application of *sharia* law in Afghanistan:

Actual knowledge of the rules of sharia law and their scholarly interpretation though appear to be ambiguous. Reportedly most judges, prosecutors, members of local councils and other persons called upon to apply law do not have sufficient legal training to distinguish between tribal customs and the sharia. Practices that blatantly violate Islamic teachings, such as child marriage, baad¹⁸⁶ and denial of the rights of widows and women's inheritance rights are thus assumed to be in accordance with the sharia.¹⁸⁷

The case study from Afghanistan below highlights how legal advice and support for returnee women engaging with the customary system can result in them successfully obtaining HLP rights while maintaining relationships with their families. This example also demonstrates that a key challenge for humanitarians and development actors is to find ways to bridge the gap between customary authorities' understanding and application of statutory and religious law, particularly provisions that support women's HLP rights.

NRC INTERVENTION CHALLENGES MISCONCEPTIONS ABOUT RETURNEE WOMAN'S HLP RIGHTS¹⁸⁸

Afifa was internally displaced in 2004 due to the presence of Taliban in her village. After finding shelter in another district her husband found it hard to find regular daily labour. Afifa returned alone to her village and became embroiled in a land inheritance dispute. She explained to an NRC legal counsellor that her deceased father had left four acres to his heirs – Afifa, her two brothers and her mother. However, her brothers refused to give her rightful share. The NRC counsellor informed her of her rights in Islamic, national and international law. Afifa explained

that her brothers were unaware of their obligations and that custom in the area was to deny women immovable property. The counsellor spoke with the village leader and they agreed to convene a village shura (collective discussion group) during which it became clear the brothers were unaware of their obligations in Islamic law. Having shed their misconceptions – thanks to the counsellor's testimony – they agreed to give their sister her share. Afifa now lives amicably with her brothers, noting they did not act out of malice but of ignorance.

AFGHANISTAN



¹⁸⁶ baad is a Pashtu practice of forced marriage where a woman or girl is ceded by one family to another to settle a dispute upon the orders of a local council (jirga), thus preventing a potential blood feud between them. While baad may serve to settle a dispute between two families, it does so at the expense of women, who are reduced to property to be exchanged and disposed of as desired. UN Economic and Social Council, 2006, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Mission to Afghanistan, (9 to 19 July 2005), E/CN.4/2006/61/Add.5, para 27, http://www.glow-boell.de/media/de/txt_rubrik_2/Afghanistan_visitreport_05.pdf

¹⁸⁷ Ibid., para. 38.

¹⁸⁸ The woman's name has been changed. Strengthening Displaced Women's Housing, Land and Property Rights: Afghanistan Country Report, Norwegian Refugee Council, (forthcoming).

In Gaza NRC has been working with a local partner, the Palestinian Centre for Democracy and Conflict Resolution (PCDCR), to provide legal advice and representation to assist women facing difficulties in securing their inheritance entitlements.¹⁸⁹ This involves capacity building on mediation, arbitration and women's HLP rights for *mukhtars*¹⁹⁰ (traditional community leaders) in response to concerns that the customary dispute mechanism system does not adequately meet the needs of women. By combining the customary dispute resolution with the resolve and funding to take a case to court where necessary, this project provides a highly effective method of resolving often complex and long-running HLP disputes.¹⁹¹

GAZA



TRAINING FEMALE *MUKHTARS*¹⁹²

Mukhtars are traditional family leaders and clan elders. They are usually the first actors approached for assistance in dispute resolution. All *mukhtars* in the Gaza Strip are male. They are appointed by the Ministry of Interior, and are assigned to specific families, neighbourhoods, camps, areas, tribes or cities. There are several initiatives in

Gaza to begin training female mukhtars, including by the Palestinian Centre for Democracy and Conflict Resolution (PCDCR) and the Women's Affairs Center (WAC). However, the female *mukhtars* have not been formally accepted or registered as *mukhtars* and are instead considered community leaders or social workers.¹⁹³

Thus, despite the challenges for women associated with dealing with HLP disputes within customary justice mechanisms, NRC's research shows that dynamic post-conflict contexts present a real opportunity to affect women's experience of access to justice. This represents the intersection between statutory, customary and religious protection of women's HLP rights and their realisation at the community level. It is important to work with these mechanisms for the implementation of laws and provisions that are consistent with statutory law. When women are supported to engage with traditional authorities, in order to offset their disadvantage that results from multiple layers of discrimination, the result can be favourable and transformative for women, as well as for their communities.

¹⁸⁹ Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, p.9.

¹⁹⁰ A mukhtar is a clan elder, who traditionally connected villages to formal government, and often play an integral role in customary dispute resolution and application of *urf* (customary law).

¹⁹¹ PCDCR has built up a network of mukhtars who have received training on women's rights, domestic violence and inheritance rights, among other topics. It also employs lawyers who oversee the process and act as the initial point of contact for women who approach the centre. Lawyers refer cases complete with full summaries to mukhtars who, with the agreement of complainants, attempt to resolve disputes by working with all parties to negotiate a mutually acceptable agreement.

¹⁹² Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, p.48.

¹⁹³ *Ibid.*, This is the case at the time of publication (November 2013).

PRACTICAL BARRIERS RESULTING FROM SOCIO-ECONOMIC DISADVANTAGE

3.3

NRC found that there is also a range of practical barriers to women's access to justice. These are often inseparable from the communal environment and social attitudes that permeate women's experience of the justice system. Practical barriers stem from women's socio-economic disadvantage which is compounded by conflict and their displacement.

Poverty and lack of financial resources often prevent women from making a claim. Women may be dependent on others for transport, finance and childcare in order to be able to access justice.¹⁹⁴ Practical barriers arise for women where their socio-economic disadvantage means that they experience increased difficulty at every step of the justice process – when they are unable to pay court fees; when they are unable to travel to court; when they do not hold a personal identity document or HLP documentation; and when they are unable to engage in land sector reform interventions. All of these barriers influence their decisions about if and how to seek remedies for denial of access to land or inheritance or to address marital property disputes.

One of the assumptions behind investing in rebuilding rule of law institutions is that these will be accessible for the population who wish to use statutory justice mechanisms to resolve disputes. However, when women's different abilities and constraints are not taken into account during justice sector reform or humanitarian interventions, these mechanisms become inaccessible to women. All of these factors, combined with discriminatory social norms have a compounded effect for women.

Economic constraints

NRC's findings demonstrate a common theme across all research countries. For displaced women in economically strained circumstances, which are exacerbated in conflict and post-conflict situations, the financial costs of claiming HLP rights may be prohibitive. The compounded effect of different costs associated with statutory and customary processes, doubt about achieving a positive outcome or then having it enforced all discourage women from seeking redress. Statutory, customary and religious processes entail financial costs that are often beyond the ability of displaced women to afford.

In Afghanistan, South Sudan, Liberia and Gaza it was found that court costs are a barrier for women trying to access statutory justice systems, especially considering the outcomes of such procedures are uncertain. In Gaza for example the fees in the Magistrate's Court¹⁹⁵ are one per cent of the value of land (to a maximum of Jordanian Dinars 500, c. US\$700).¹⁹⁶ All the higher level courts charge 0.5 per cent of

¹⁹⁴ CEDAW, 2012, op. cit. p.12.

¹⁹⁵ The Magistrate's Court is part of the nizami court system.

¹⁹⁶ With the exception of some types of cases, for example, expropriation claims, which require a fixed fee of JD 50.

the value of the land in dispute (to a maximum of Jordanian Dinars 250, c. US\$350). This is a considerable amount and was cited by many interviewees as a deterrent for many women for bringing claims in the *nizami* courts.

It is not only court fees that are prohibitive. NRC's research found the many costs that women may be liable for in both statutory and customary processes are often beyond their means. This can include the costs of transportation to court, a male *mahram*¹⁹⁷ to accompany them and witnesses. The practical element of accessing courts is compounded in situations of displacement. For displaced women in Afghanistan, claiming inheritance in their place of origin can entail travelling long distances to appear in court.¹⁹⁸ This is financially difficult, time-consuming and sometimes dangerous. In one such case, NRC successfully petitioned to transfer the case from the court in Bamyan to the claimant's place of residence (Kabul), in order to ease the financial strain on the client and allow her representation by NRC, resulting in a successful outcome. According to NRC's experience, this outcome was rare.



There may be additional costs associated with addressing an HLP claim. Identification, allocation, demarcation, surveying and registration of land all incur additional costs, such as a legal fee, and in some cases a bribe. In Liberia, the process of contesting land rights through both civil and customary courts can be prohibitive. Division of property using any of the available mechanisms requires that the land be surveyed, and surveying fees are high (US\$100 or more per parcel).¹⁹⁹ For court procedures, the additional expense of hiring a lawyer is a further barrier. The cost of pursuing a dispute through the court system often exceeds the value of the property in question. For many women, these added barriers mean that, in practice, there is very little hope of enforcing their formal rights to property upon divorce or upon the death of a spouse.

Illiteracy and lack of awareness of rights

It is well-known that worldwide, women are much more likely to be illiterate than men.²⁰⁰ This is even more the case in the countries where NRC operates. Conflict destroys educational infrastructure, while families in protracted displacement have few resources and opportunities for educating their children.

197 In sharia legal terminology, a mahram is an unmarriageable kin. In this sense it refers to a relative who will accompany an Afghan woman so that she can travel from the family home.

198 In Afghanistan, the Civil Procedure Code (1990) stipulates that for immovable property the primary court where the property is located has jurisdiction over the case. Strengthening Displaced Women's Housing, Land and Property Rights: Afghanistan Country Report, Norwegian Refugee Council, (forthcoming).

199 Violence Against Women and Housing, Land and Property in Monrovia, Norwegian Refugee Council, 2013, p.22.

200 It has been estimated that while the global literacy rate for men is 87 per cent the rate for women is 77 per cent. See <http://www.indexmundi.com/blog/index.php/2013/06/25/male-and-female-literacy-rates-by-country>. According to UNESCO of all the illiterate adults in the world, two-thirds are women, http://www.unesco.org/education/ild2010/FactSheet2010_Lit_EN.pdf

RETURNEE WIDOW UNABLE TO PAY FEE TO REGISTER HER LAND²⁰¹

Six months after her return, Nyandeng, a 46 year old widow with six children, was allocated a plot of land as a part of the government's returnee reintegration programme. However, she is unable to pay the land registration fee, fears she will be evicted and has been warned by the host community and government officials that without required documents she may be dispossessed. Nyandeng feels uncomfortable leaving her house for extended periods. Her ability to plant crops to feed her family and to earn money is very limited. She would like to be allocated some more land so she can farm but is scared to ask

the community chief. NRC staff have begun discussions, hoping to negotiate a better relationship between the host and returnee communities. NRC has also met government officials and negotiated an extension of the deadline to pay the registration fees. While Nyandeng is grateful, she has little confidence she will ever be able to pay the fees.

I am scared to go too far from my house, I haven't paid the fees, and I am afraid that if people get to know that they will take my house from me. If I am here they can't take it away from me, can they?

SOUTH SUDAN



Even where women have HLP rights protected in law a major constraint is that women (and men) are often unaware of their rights. Low literacy levels further impede women's knowledge of the law and their ability to claim their HLP rights. It also affects their ability to complete applications for assistance and to participate meaningfully in land allocation processes and other transactions involving written documentation. In the country studies, lower literacy and education levels were also cited as a factor contributing to women's increased susceptibility to being cheated in land registration or purchase.

Illiteracy compounds displaced women's lack of understanding of key processes relating to the acquisition of land and housing rights as well as their ability to address disputes. For example, in South Sudan illiterate returnee women who did not understand government land registration processes were on occasion encouraged to sign away their demarcated plot during the registration procedure.²⁰²

Research in settlements in Monrovia, Liberia found that education levels are among the factors determining who in the household is named on title deeds.²⁰³ Significantly, interviewees who were in a

²⁰¹ Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan, Norwegian Refugee Council, 2014, p.42.

²⁰² Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan, Norwegian Refugee Council, 2014, p.5.

²⁰³ Violence Against Women and Housing, Land and Property in Monrovia, Norwegian Refugee Council, 2013, p.38.

WISE Women²⁰⁴ group and had been educated about the benefits of joint ownership had their names on the deeds alongside their husbands'. The report notes that the more education men receive the more likely they are to put their wives' names on the deed.



During NRC's research in Liberia, it was also reported that throughout the process of purchasing HLP assets, women are easier to cheat than men, especially if it is known that they lack the protection of a man, and that if a women purchases land, it is less likely to be a legitimate sale.²⁰⁵ In Ecuador, Colombian women explained to NRC's researchers that they had paid for land but never managed to obtain ownership titles.²⁰⁶

NRC's research in Afghanistan found a striking lack of awareness of rights among women, which further impedes their lack of access to justice for HLP rights. However, legal practitioners had also noticed an increase in *mahr* and inheritance cases brought to court by women aware of the rights guaranteed by Afghan law. This improved level of awareness was noted in urban areas – particularly Kabul.

Literacy levels impact significantly on the ability of people to participate equally and meaningfully in awareness raising programs and campaigns. In South Sudan NRC's research found that fewer women than men reported

204 WISE – Women's rights via Information Sensitisation and Education. The WISE Women and WISE men groups are community groups supported by NRC in which community leaders and other members are trained about GBV and HLP rights and then pass on that training to the community. See Norwegian Refugee Council, WISE Women fight Violence, <http://www.nrc.no/?did=9490694>

205 Violence Against Women and Housing, Land and Property in Monrovia, Norwegian Refugee Council, 2013, p.42.

206 No Place Like Home: An Assessment of the Housing, Land and Property Rights of Palestinian Refugee Women in Camps and Gatherings in Lebanon, Norwegian Refugee Council, 2013, p. 32.

FORSAKING MARITAL ENTITLEMENT FOR CHILD CUSTODY IN AFGHANISTAN²⁰⁷

AFGHANISTAN

Ziba was forced to flee her village, finding shelter in the town of Khoram Sarbagh. Her destitute parents married her off for US\$400 to a man she had never met. Within a month she began suffering physical and verbal violence, tolerating the abuse until her infant daughter was burned by her husband. Her husband sought divorce, attesting that she was responsible for the child's injuries. Ziba approached NRC but her case was weakened by the fact her parents had spent

much of the bridewealth, leaving her with limited options. She continued living with her husband during the proceedings, despite his on-going violence. She was forced, like many other Afghan women in similar circumstances, to accept a judgement that she could keep custody of her child only if she agreed not to pursue her former husband for payment of the *mahr* owed her. The NRC lawyers noted that Ziba was completely unaware of her rights in Afghan law.



knowing about the 2009 Land Act – a critical document that explicitly recognises women's rights to property and inheritance and which could be used by women as justification when trying to claim their land rights in statutory or customary courts.²⁰⁸ This is due to higher levels of illiteracy among women as families tend to prioritise their son's education over that of daughters.

This indicates that there is a need for actors working on HLP rights to organise awareness-raising activities to ensure not just that they train equal numbers of women and men, but that they prioritise the training of women. Humanitarian organisations have the potential to play a leading role in informing women about their HLP rights, as shown in some of the examples below.²⁰⁹

In an effort to address these issues, NRC has developed training material on HLP rights that specifically target women. In Liberia the training makes use of a pictorial flip-book with pictures and simple terminology to explain to women their options in statutory and customary legal systems when accessing land and claiming inheritance and divorce rights. For many women, this is the first time that they have had the chance to ask, in a supportive space, what their rights really are when it comes to holding land and their inheritance and divorce entitlements and how they might contest discriminatory decisions made by customary leaders.

In Palestine, some progress is being made on raising awareness about women's rights to inheritance. Programmes by women's rights organisations that bring in religious leaders to explain that women do have a right to inherit under *sharia* law have been successful in raising awareness. During NRC's research in Gaza almost all the women interviewed in focus groups were aware they had a right to an inheritance share, and many articulated that inheritance was their right under *sharia*

²⁰⁷ The woman's name has been changed. Strengthening Displaced Women's Housing, Land and Property Rights: Afghanistan Country Report, Norwegian Refugee Council, (forthcoming).

²⁰⁸ Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan, Norwegian Refugee Council, 2014, p.60.

²⁰⁹ Mennen, 2012, op. cit., p.10.

law.²¹⁰ This may relate to the awareness campaigns that have been initiated by women's organisations and civil society organisations such as the Palestinian Centre for Democracy and Conflict Resolution (PCDCR).

Similarly, in Lebanon, Palestinian women who had received gender equality training by NGOs were more likely to consider that women should enjoy individual HLP rights so that they can be protected if their marriages end in divorce.²¹¹ Those women who either worked with women's groups in the camps or *gatherings* or who had received gender equality training were vocal about the importance of women's HLP rights, even in mixed groups. Women interviewed also had a good level of awareness of their rights under *sharia*, including to maintenance from their husbands, and inheritance. They had limited specific knowledge, however, of how they might protect or enforce these rights. Women interviewed generally considered that human rights awareness was valued and yielded strong, independent thinking about women's rights yet rarely felt able to articulate or insist on these within their families.

This shows that awareness-raising alone is not enough. It is vital that follow-up tools are offered to women to help realise their HLP rights. If appropriate support is not provided, simply raising awareness of rights can lead to increased frustration if there are no options to realise them. NRC's experience shows that awareness-raising needs to be accompanied by the provision of support through individual counselling (legal advice) where women can discuss and weigh their options, followed by the option of legal assistance if they decide to claim their rights. It is crucial for humanitarian and development actors to provide the full complement of services to support women's choices.

Allocation of assistance to male heads of household

The humanitarian community contributes to barriers for women's access to justice for HLP rights by registering refugee registration cards and humanitarian assistance in the name of male heads of household.

In Gaza, for example, refugee registration cards are held in the name of the (usually male) head of household.²¹² The first implication for Palestinian refugee women in Gaza is that in the case of divorce, a woman often returns to her father's house and is then transferred from her husband's registration card, back to her father's.²¹³ Since the same registration cards are used to access humanitarian assistance this has direct effects on women's HLP rights. New properties allocated to households whose homes were destroyed or damaged in Operation Cast Lead (the December 2008/January 2009 Israeli assault on Gaza), or in other Israeli military operations, are registered in the names of male heads of households, rather than jointly or in the name of the woman, except in the case of a woman-headed household.

210 Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, p.56.

211 No Place Like Home: An Assessment of the Housing, Land and Property Rights of Palestinian Refugee Women in Camps and Gatherings in Lebanon, Norwegian Refugee Council, 2013, p.57.

212 Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, p. 66.

213 Op. cit. NRC Gaza p. 67.

PALESTINIAN WOMAN FAILS TO RECEIVE COMPENSATION AS HOUSE REGISTERED IN HUSBAND'S NAME²¹⁴

LEBANON

Samar has two daughters. Prior to her divorce, she lived in Nahr el-Bared camp in Tripoli, Lebanon, building a flat atop her husband's family home. As he was unemployed she paid around 70 per cent of the construction costs, by selling her gold. She felt she could trust him, but then he abandoned her, remarrying, leaving her during the 1980s 'War of the Camps' when Palestinian refugee camps were besieged by the Shi'ite Amal militia. The former marital home destroyed, her husband – as the owner of property registered with the UN Relief and Works Agency

(UNRWA) – received all the compensation for the loss of the house. Samar's hopes the money would cover costs of renting her own dwelling were dashed and he gave her nothing. Unable to bear living as a co-wife, Samar and her daughters relocated to her parental home in Rashidieh camp in southern Lebanon. She would like to return to Nahr el-Bared but UNRWA says as the house there is registered in her husband's name she requires his authorisation. Her husband refuses to pay maintenance for their daughters.



If refugee women do not have their own registration documentation they are at a continued disadvantage for future allocation of humanitarian assistance. This has a longer-term, often permanent, impact on their HLP rights. By registering women as part of a household under a designated male head, humanitarian actors reinforce the practice of denying women an independent status. This has significant detrimental implications for women's choices and economic empowerment. In Gaza, there is currently little consideration about changing this policy to enable women to benefit from joint security of tenure and to help protect their interests in properties in the event of widowhood or divorce.²¹⁵

The period immediately following a conflict can also offer an opportunity to not only assist displaced women to secure their land and housing rights but also to bring about lasting transformation. However, the evidence from countries where NRC works demonstrates that unfortunately many of these aspirations are not met. Projects can fail to take into account the needs of women and can perpetuate and even exacerbate pre-existing discrimination particularly in respect of head of household designation. This issue goes beyond the countries included in the report. Despite the fact that it has been challenged many times over the years, the use of head of household remains a significant barrier for women to exercise their rights in practice.

²¹⁴ No Place Like Home: An Assessment of the Housing, Land and Property Rights of Palestinian Refugee Women in Camps and Gatherings in Lebanon, Norwegian Refugee Council, 2013, p.60.

²¹⁵ Realities from the Ground: Women's Housing, Land and Property Rights in the Gaza Strip, Norwegian Refugee Council, 2013, p.5.

4



CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

NRC found a common theme in the six very different countries and displacement contexts considered in this report. 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 their options for seeking redress when rights are denied.

This is compounded by poverty and socio-economic disadvantage – high rates of illiteracy and lack of awareness of rights, resources, social support and economic means. For many women, the social and economic costs of pursuing justice are prohibitive. For others, economic necessity, a desire for equality and new perspectives derived from being displaced compel women to seek changes within post-conflict environments. Some women are prepared to take risks for an opportunity to set the cornerstone for their and their families' future.

Despite enormous investments in building rule of law institutions in countries such as Afghanistan and Palestine, women's lack of access to justice is an overriding feature of their daily lives. Strong constitutional guarantees of equality and non-discrimination in HLP rights fail to be reflected on the ground. Weak statutory justice mechanisms that often accompany post-conflict recovery are not the primary avenues for delivering justice at the local level.

NRC's analysis concludes that awareness of social norms that foster gender inequality, and the risk of detrimental consequences for women claiming their rights, are not, in many cases, reflected in the planning of humanitarian programming. More can be done to support women as they fight against the discriminatory social norms that hold them back.

For many women, despite the constraints, customary authorities represent the most tangible way to address HLP disputes. It is important to recognise the significance of customary and religious authorities given their role in the governance of family law and the implications this has for women's HLP rights. When there are contradictions between customary and statutory law – exacerbated by women's relative disadvantage in these forums – the international community should engage with these mechanisms and provide the additional support needed for women to resolve HLP disputes through the most accessible, and sometimes preferred methods. NRC's experience shows that when displaced women are supported to engage with customary authorities the result can be favourable and transformative for women, as well as for their communities.

In the past, rule of law reform efforts have focused on strengthening statutory justice mechanisms. This alone cannot support women's HLP rights unless the specific situation and barriers they face are taken into account in access to justice programmes. There are now a number of important initiatives by local civil society, NGOs and international agencies to support women's access to justice through engagement with customary and religious justice mechanisms, for example, as described in Gaza. NRC's research confirms that in the dynamic post-conflict context these mechanisms present a real opportunity

to improve equality in women's HLP rights. Humanitarian and development actors should work with existing structures at the local level to promote the application of laws that are consistent with statutory protection of women's HLP rights.

Experience also shows that there is a window of opportunity following periods of conflict where international organisations, civil society and governments are able to implement strategies and programmes that take a progressive and non-discriminatory approach, including in support of HLP rights. This needs to go beyond property restitution, to support the many different ways in which women seek HLP rights after conflict. There is an undoubted potential to support women as they try to change their societies.

Furthermore, legal empowerment of women has been shown to play a critical role in reducing poverty.²¹⁶ Women's access to justice and HLP rights should therefore be included in the post-2015 global development agenda (the post-MDG framework), now being led by a high level UN panel²¹⁷, to support progress in fragile and conflict-affected states. Humanitarians can share practical lessons with development actors working in such countries.

NRC's work with HLP rights has informed wider policy recommendations. Donors should require the organisations they fund to give priority to gender considerations in the design, implementation, monitoring and evaluation of their programmes. Humanitarian aid should never foster discrimination, but rather, through a rights-based approach, promote equality including for displaced women.²¹⁸



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217 See <http://www.un.org/millenniumgoals/beyond2015.shtml>

218 See DARA, 2011, Humanitarian Response Index 2011: Addressing the Gender Challenge, <http://daraint.org/humanitarian-response-index/humanitarian-response-index-2011/>

RECOMMENDATIONS

These recommendations are targeted at international humanitarian and development actors, including NGOs, UN agencies and donors. They complement the recommendations for governments and local stakeholders included in each of the country studies and should be read in conjunction with them.

Strengthen national laws underpinning women's HLP rights

1. Where statutory law is not in compliance with international guarantees of equality and non-discrimination, humanitarian and development actors should advocate for the amendment of marriage, inheritance and related laws to ensure women's equality in HLP rights is recognised in law.
2. Promote increased recognition of marital property in national laws and the HLP rights of women and girls so that they are able to continue residing in the family home in the case of a breakdown of spousal relations or the death of a spouse, father, brother, son or other male household member.
3. Promote the implementation and monitoring of national laws and policies that increase women's realisation of their HLP rights.

Provide legal assistance to displaced women

4. The Committee on the Elimination of Discrimination against Women has recognised that access to affordable legal representation, is crucial to overcoming the numerous practical and economic obstacles preventing women from seeking redress when HLP rights are denied. Donors should fund humanitarian and development programmes that provide legal assistance in support of women's access to justice for HLP rights.
5. Programmes supporting legal empowerment for displaced women should incorporate complementary services, such as the provision of information, legal counselling, representation and mediation so that the full range of options for resolution of disputes can be understood by women, in order for them to determine the process that works best for their situation.
6. Legal assistance providers and rule of law actors should design programmes that address the practical barriers that women face in accessing justice resulting from their socio-economic disadvantage, illiteracy and lack of awareness of rights.
7. HLP and rule of law actors should take into account the social consequences that women face when they claim HLP rights, including the increased risk of violence. These considerations should be incorporated into project planning and monitoring and evaluation processes carried out by humanitarian organisations and required by donors.
8. Legal assistance providers should follow up on land allocation schemes to support women heads of households and widows in recognition of their greater risk of encountering discrimination, corruption and lack of

access to land administration processes.

9. Legal assistance providers should prioritise judicial cases put forward by women claiming their HLP rights. Some of these cases may be considered public interest cases as they can have direct positive effects for a greater number of women or create legal precedents that can generate positive structural changes and serve as an advocacy platform.

Engage with customary and religious authorities

10. Humanitarian and development funding should support legal assistance for women to engage with all forms of dispute resolution mechanisms available to them at the local level – including customary, religious and statutory processes.
11. Humanitarian and development actors should support government and local authorities to ensure that statutory law provisions promoting equal HLP rights for women are applied by customary and religious dispute resolution mechanisms. This should include training of customary authorities and religious leaders to increase their knowledge of statutory law and strengthen their collaborative dispute resolution skills.
12. Humanitarian and development actors should identify and promote changes to customary practices which are gender-discriminatory and in violation of constitutional and statutory provisions guaranteeing women equal HLP rights.
13. Humanitarian and development actors should continue to research and record good practice examples of the best ways to engage with customary and religious justice mechanisms in support of women's HLP rights, and in particular those which successfully address discriminatory social norms that prevent women's access to justice.

Conduct training and awareness-raising

14. Humanitarian and development actors should improve knowledge of routes and practical access to justice for women to ensure that women know their rights and are empowered to claim them.
15. Humanitarian and development actors should consider replicating documented good practices such as NRC's WISE women programmes in Liberia and training of female *mukhtars* in Gaza.
16. Humanitarian and development actors should incorporate more legal literacy and rights awareness campaigns in project programming. This means adapting training materials, location and timing of training and advisory services to be accessible for women.
17. Programmes that focus on awareness-raising should also be accompanied by the provision of support through individual counselling (legal advice) followed by the option of legal assistance if women decide to claim their rights.

Increase attention to women's HLP issues in humanitarian response

18. The principles of equality and non-discrimination in international law place an obligation on aid organisations and governments to pay particular attention during emergency response to ways of addressing existing inequalities and protecting the most vulnerable.
19. Humanitarian and development actors should pay greater attention to supporting women's HLP rights during emergency response and reconstruction. This entails a focus beyond property restitution towards practical steps that support women's access to justice for HLP rights, such as implementing laws relating to inheritance and marital property rights.
20. Programmes to address HLP issues should be funded and implemented in the initial stages of emergency response. Donors should provide flexible funding for longer-term engagement, supporting women's access to justice for HLP issues from the beginning of humanitarian interventions, and through transition to the rule of law.
21. The focus on investments in statutory justice should be matched with funding for programmes that engage with local justice mechanisms such as customary and religious dispute resolution mechanisms.
22. In post-conflict contexts, access to justice programmes should be assessed not only in terms of investments in statutory justice systems, but in measures that have an impact on displaced women's access to justice at the local level.
23. Humanitarian and development actors should consult and involve a diverse range of women in their HLP programming and should support the empowerment of women in leadership and decision-making positions relating to HLP issues, such as membership of land commissions.
24. Convene a follow-up roundtable initiative to bring together humanitarians working on HLP rights, development actors working on access to justice and gender actors, to discuss how strengthened holistic programming could support women's access to justice for HLP rights in conflict and post-conflict contexts.

Displaced women to be registered independently from men

25. Women should not be included as additional members on their father's or husband's refugee cards. International organisations should promote effective protection of women's rights by registering them independently from male heads of households and should promote this practice with government counterparts.
26. International organisations should refrain from documenting and registering HLP assets only in the name of male heads of household. The registration of tenure rights in joint or multiple names, including of

women, should be the standard procedure.²¹⁹

Post-2015 global development agenda to incorporate women's access to justice and HLP rights²²⁰

27. Incorporate measurable targets for women's access to justice, including access to quality legal services.
28. Incorporate a measure aimed at achieving secure rights to land and property for women.
29. Include a stand alone gender equality goal, which seeks to end abuses of women's rights, practically supports women's agency and leadership and to tackle the underlying causes of gender inequality, including discriminatory attitudes and social norms.



219 UN Human Rights Council, 2011, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/ HRC/19/53, para. 62, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-54_en.doc

220 These recommendations are in accordance with an open letter and petition to the UN General Assembly from grassroots justice advocates, former presidents, ministers, and other notable figures, which urges the inclusion of justice and legal empowerment in the post-2015 development agenda. See Speak up for Justice: Endorse civil society's letter to the UN, <http://www.namati.org/justice2015/>

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