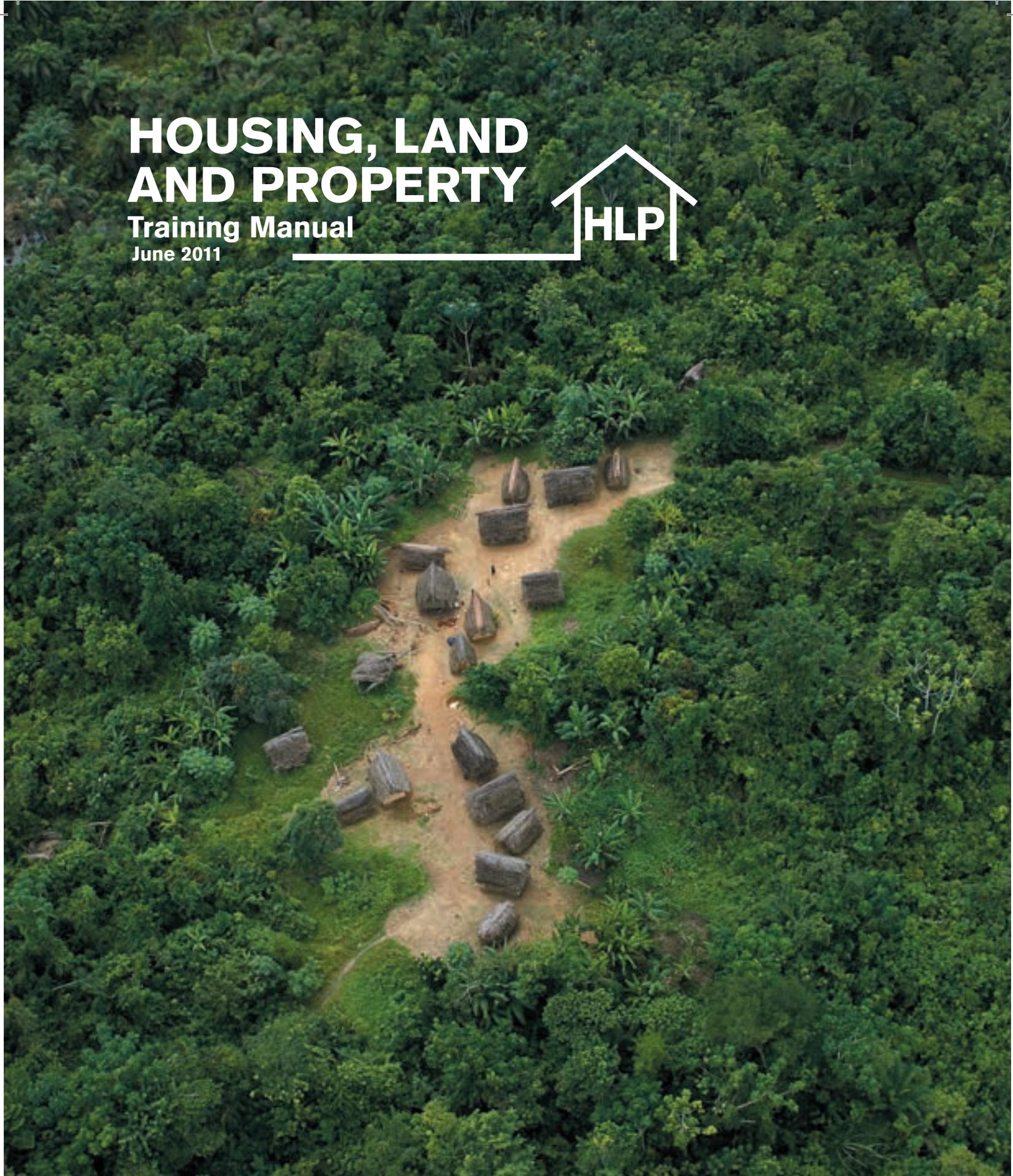


# HOUSING, LAND AND PROPERTY

Training Manual

June 2011





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# Housing, Land and Property

## Training Manual

June 2011

### Background to the Housing, Land and Property Training Manual and Training Guidance

This Training Manual has been drafted with the aim of improving the quality and effectiveness of humanitarian aid response through improved capacity on housing, land and property issues.

All the modules were tested with pilot training, in Juba (Southern Sudan), Kabul (Afghanistan), Gaza and Ramallah (occupied Palestinian territory) and Goma (DR Congo). In addition, a final training session for global humanitarian actors was held in Geneva (Switzerland). The topics and methodologies were adjusted after every pilot training according to recommendations made by participants.

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The contents of this report do not necessarily represent the policies of either NRC or IDMC. The author is responsible for any errors or omissions.

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### **The European Commission's Humanitarian Aid**

The European Commission's Humanitarian Aid department funds relief operations for victims of natural disasters and conflicts outside the European Union. Aid is channelled impartially, straight to people in need, regardless of their race, ethnic group, religion, gender, age, nationality or political affiliation.



### **Internal Displacement Monitoring Centre**

The Internal Displacement Monitoring Centre (IDMC), established in 1998 by the Norwegian Refugee Council, is the leading international body working on internal displacement worldwide through monitoring, advocacy and training on the rights of internally displaced persons.



### **Norwegian Refugee Council**

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



## **Information Counseling and Legal Assistance**

The primary objective of the Information Counseling and Legal Assistance (ICLA) programme is to contribute to durable solutions for refugees, IDPs and returnees and to assist them in obtaining their rights. The ICLA programme seeks to:

- contribute to the best basis on which target groups can decide whether to return or integrate locally
- help target groups overcome legal obstacles, particularly those related to housing, land and property (HLP)
- contribute to the recognition of legal personality and access to rights and services that are dependent on obtaining personal identity documents
- provide legal assistance to improve access to justice by the displaced
- advocate on documented issues of concern and contribute to their solutions.

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# INTRODUCTION

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## THEMATIC AREAS

**MODULE NO. 1:** An introduction to Housing, Land and Property

**MODULE NO. 2:** The Housing, Land and Property International Legal Framework and Principles

**MODULE NO. 3:** Housing, Land and Property during Internal Displacement

**MODULE NO. 4:** Women's Housing, Land and Property Rights

**MODULE NO. 5:** Housing, Land and Property in Urban Contexts

**MODULE NO. 6:** Addressing Housing, Land and Property Disputes

**MODULE NO. 7:** Housing, Land and Property and Durable Solutions

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### ***Advice to Trainers***

*The following pages include the session plans and background notes for each of the modules. The first page of each module contains the objectives and key messages for the session plans, followed by the session activity plan. The background notes provide all the information needed to run the activities and PowerPoint slide shows and to inform discussions. Trainers are advised to take time to thoroughly familiarise themselves with the background content.*

***Good luck with your training!***

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## GENERIC OBJECTIVES

At the end of the training participants will be able to:

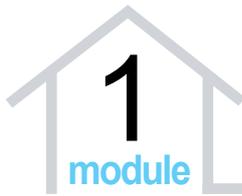
- describe why it is important to consider addressing HLP in humanitarian relief and recovery phases
  - outline key concepts and terms related to HLP
  - list sources of international laws related to HLP and key principles
  - describe ways of addressing HLP during and after displacement
  - discuss the specific HLP challenges encountered in urban contexts
  - consider causes of HLP disputes and ways to address them
  - consider how women rights can be promoted in HLP.
- 

## TRAINING AIM

To provide guidance to humanitarian actors implementing response and recovery projects on how to address HLP issues.



Traditional houses in Togo



# An Introduction to Housing, Land and Property

## SESSION OBJECTIVES

At the end of the session participants will be able to:

- describe why HLP issues should be considered in the response and recovery phase of an emergency
- differentiate between statutory and customary land tenure systems
- define key concepts in the area of HLP.

## KEY MESSAGES

- The legal aspects of HLP include land access rights and all forms of residency (i.e. owners, tenants, cooperative dwellers, customary land tenure owners and users, informal sector dwellers and squatters).
- HLP rights include statutory and customary rights.
- Humanitarian organisations should address HLP in their interventions because:
  - Land and natural resources underpin most conflicts.
  - Humanitarian responses have an impact on land tenure in urban and rural areas. HLP assets can provide food and shelter.
  - The resolution of HLP disputes can contribute to peace processes.
- Land is fundamental for poverty reduction and development.
- HLP legal pluralism occurs when different land tenure systems co-exist in one country (i.e. statutory and customary).
- Access to land is the ability to use, control or transfer land and natural resources.
- Land tenure is the way in which individuals and groups relate to land and its resources.
- Security of tenure is the right to protection by the State against forced evictions.

## PREPARATION FOR THE SESSION

- Prepare the projector and laptop to show the presentation
- Prepare the flip chart for the Parking Lot
- Photocopy for each participant:
  - The agenda
  - The pre-test
  - Task Sheet 1: Short Cases

| DAY ONE :Opening                 |   | Session 1  |
|----------------------------------|---|--|
| Time                             | Activity  | Comments   |
| 08:30                            | <p>Opening remarks.</p> <p>Pre-brief representative to explain the rationale for holding the training and some of the key in-country HPL issues experienced.</p>  | <i>Potentially ECHO representative or Head of NRC Office</i>   |
| 09.00                            | <p>Introductions:</p> <p>Introduce yourself and your role at the training, explaining your background experience and knowledge.</p> <p>Ask participants their name, organisation, role, experience in HLP, something unusual about themselves and one expectation.</p> <p>Chart expectations.</p>   | <i>Choose a method for introductions from the Training Guidance</i>  |
| 09:30                            | <p>Distribute agenda.</p> <p>Provide an overview of the agenda.</p> <p>Make sure to compare expectations with objectives, and ensure you check expectations that are not realistic.</p> <p>Introduce the Parking Lot.</p> <p>Outline housekeeping details such as location of toilets, break times, Internet access, <i>per diems</i> and any other issues.</p>   | <p><i>Key messages:</i></p> <p><i>There will be a mixed profile in the group – everyone has something to add</i></p> <p><i>Remind participants that it does not matter if they have no HLP experience.</i></p> |
| 09:45                            | <p>Distribute the Pre-Test.</p> <p>Explain that this is a way for participants to measure their progress over the course and will also link to an evaluation form that will be sent out three months after the end of the course.</p>   | <i>Inform participants their responses will remain anonymous and confidential.</i>   |
| 10:15                            | Break   |  |
| Module 1: An introduction to HLP |   | Session 2  |
| 10.30                            | <p>Show slide: An Introduction to HLP.</p> <p>Explain that this session aims to explore basic definitions which will be used as the foundations for the remainder of the course.</p> <p>Show slide: Trends in humanitarian action.</p> <p>Use this as a framing slide to introduce the next slide: HLP in a Global context.</p> <p>Explain that conflicts over natural resources are becoming more common, there is increased displacement globally and HLP is invariably relevant in such situations.</p> <p>Ask: What is HLP?</p> <p>Elicit some answers and then show slide: What is HLP?</p> <p>Explain that these are basic definitions but it is important to agree terms for the purpose of the training.</p> <p>Key Message: HLP legal issues include land access rights and all forms of residency (i.e. owners, tenants, cooperative dwellers, customary land tenure owners and users, informal sector dwellers and squatters).</p> <p>Key message: HLP rights include statutory and informal rights, and tangible and intangible property.</p> |  |

|                     |   |   |
|---------------------|---|---|
|                     | <p>Show slide: What are Housing Rights?<br/>         Show slide: What are Land Rights?<br/>         Show slide: What are Property Rights?<br/>         Allow some time in plenary to check everyone agrees with and has understood the concepts.</p>  |   |
| <p><b>11:00</b></p> | <p>Split into small groups of four or five (or run the exercise in plenary, depending on the time).<br/>         Show slide: Group Exercise with two questions:<br/>         What are the specific HLP issues in [insert name of country]?<br/>         Why is it important to address them?<br/>         Ask groups to chart their responses to question 1 on a flip chart and simply discuss question 2.<br/>         Allow ten minutes to discuss in groups (or in plenary) then ask for feedback to plenary.<br/>         Check that there is agreement on the key issues within the group.<br/>         Wrap up by showing two slides: Why is it important to address HLP?<br/> <b>Key Messages:</b> Humanitarian organisations should address HLP in their interventions because:<br/>         Land and natural resources underpin most conflicts.<br/>         Humanitarian responses have an impact on land tenure in urban and rural areas.<br/>         HLP assets can provide food and shelter.<br/>         The resolution of HLP disputes can contribute to peace processes.<br/>         Land is fundamental for poverty reduction and development.</p> | <p><i>Choose a method for splitting groups from the Training Guidance or do it in plenary if there is no time.</i></p> <p><i>Explain that it is important to agree the key issues for this context.</i></p> |
| <p><b>11:20</b></p> | <p>Split into different small groups of four of five (or maintain previous groups if time is short).<br/>         To introduce the group work show PowerPoint slide: Group Exercise with headings:<br/>         legal pluralism in land tenure systems<br/>         formal land tenure systems<br/>         customary land tenure systems.<br/>         Show the three slides explaining these concepts.<br/>         Distribute Task Sheet 1: Short Cases (in Training Guidance document) to each group.<br/>         Show slide: Group exercise to give the instructions for the group work.<br/>         Each group should sort the cases into different categories (such as legal pluralism and statutory land tenure) and identify the key HLP issue/s in each case (including access to land and security of tenure).<br/>         Allow 15 minutes for group work.<br/>         Feedback in plenary going through each case and its separate issues.</p>   | <p><i>Circulate to check everybody understands the task.</i></p>  |

|                     |   |  |
|---------------------|---|--|
|                     | <p><b>SOLUTIONS:</b></p> <p><b>Case 1:</b> Statutory Land Tenure</p> <p><b>Case 2:</b> Statutory Land Tenure</p> <p><b>Case 3:</b> Customary Land Tenure</p> <p><b>Case 4:</b> Customary Land Tenure</p> <p><b>Case 5:</b> Legal Pluralism</p> <p><b>Case 6:</b> Legal Pluralism</p> <p>Show slide: Cartoon</p> <p>Use the cartoon to demonstrate the key message: HLP legal pluralism occurs when different land tenure systems co-exist in one country (i.e. statutory and customary).</p> <p>Show four slides: Key concepts outlining the following issues:</p> <ul style="list-style-type: none"> <li>▪ access to land</li> <li>▪ security of tenure</li> <li>▪ land management, administration and registration</li> <li>▪ encroachment and secondary occupation.</li> </ul> <p><b>Key Message:</b> Access to land is the ability to use, control or transfer land and natural resources.</p> <p><b>Key Message:</b> Security of tenure is the right to protection by the State against forced evictions.</p> <p>Wrap up and ask if there are any outstanding questions.</p> |  |
| <p><b>12:30</b></p> | <p>Lunch break</p>  |  |
|                     | <p>Go to Module 2 for session details</p>   |  |



**N.B. For this Module, and elsewhere in the HLP Training Manual, please note that:**

- When a reference is not specifically mentioned in a footnote, it is contained in the reference materials listed at the end of each module.
- The term “land” also refers to “natural resources.”

**Module 1 is divided into four parts:**

1. Section 1 briefly describes housing, land and property.
2. Section 2 explains why humanitarian organisations should consider including HLP issues in their programmes.
3. Section 3 describes legal pluralism in land tenure systems (statutory land tenure systems, customary land tenure systems and religious land tenure systems).
4. Section 4 provides an overview of key concepts used throughout the Manual that are relevant to understanding HLP.
5. 1. Housing, Land and Property: different concepts of equal importance<sup>1</sup>

The origins of the HLP concept lie in international human rights law, particularly relating to the right to adequate housing. The concept of HLP embraces a variety of access rights to land, not just private property. Therefore, HLP refers to owners, tenants, cooperative dwellers, customary land tenure owners and users, informal sector dwellers and squatters without secure tenure. From a human rights perspective, the concept of HLP is essential to ensure the protection of people in all these categories.

HLP rights include a range of statutory and customary rights and entitlements relating to the right to use, control, transfer and enjoy properties. HLP refers to both tangible and intangible property, including land, homes, money, water sources, crops and livestock. HLP rights may be acquired through a variety of means depending upon jurisdiction, including sale, inheritance,

<sup>1</sup> This module is intended to give a brief introduction to the concept of Housing, Land and Property. For the international legal framework on HLP, see Module 2.

gift, grant from the State, adverse possession<sup>2</sup> and customary-use right (such as land clearing). HLP rights are applicable in times of peace and development, conflict and displacement, post-conflict restitution and/or compensation, disaster and climate change. They are rights and not simply needs.

## What are Housing Rights?

Since adoption of the Universal Declaration of Human Rights (UDHR)<sup>3</sup> in 1948 **the right to housing** has been reaffirmed and recognised in several international human rights instruments as a component of the right to an adequate standard of living. It has therefore become a universally accepted human right.

The right to housing is much more than just the four walls and a roof over one’s head. Housing is essential for normal healthy living. Housing provides security and protection, privacy and personal space, a gathering point where many important relationships are forged and nurtured. In many countries, a house also serves as an economic centre where essential commercial activities are performed.

## What are land rights?

**Land rights** are rights held to land and other natural resources. They can be held statutorily (through a title deed) or customarily (through customary or religious rights). More than one person can hold rights to a parcel of land and together they make up a complex bundle of rights, similar to a “bundle of sticks.” Separate sticks of the bundle are rights held by different people. Each stick corresponds to a separate right. Each right defines a way in which the land may be used,

<sup>2</sup> Under adverse possession (usucapion), a person can acquire title to land from the actual owner by using the land, out in the open for all to see. National laws regulate the different requirements for adverse possession, such as the length of time required (ten years, twenty years), the fact that the possession must be open for all to see, exclusive and hostile to the actual owner of the land. In some countries government-owned land (public land) is exempt from adverse possession.

<sup>3</sup> UN General Assembly, 1948, Universal Declaration of Human Rights (UDHR), adopted and proclaimed by UN General Assembly resolution 217A (III) on 10 December 1948. <http://www.un.org/en/documents/udhr/index.shtml>

the profit that may be derived from it or the manner in which some or all of the rights may be disposed of to others.

For example, one person may hold the overall registered right to a particular piece of land through a title deed. One part of this land may also be a servitude (easement) for the neighbour to access the main road. In addition, another parcel has been rented to a private company. In this example, we have three sticks for three different rights: ownership right, easement right and rental right.

#### Examples of land rights

- a right to use the land
- a right to exclude other people from using the land
- a right to control how land will be used
- a right to derive income from the land
- a right to protection from illegal expropriation of the land
- a right to transmit the rights to the land to one's successors, (i.e. a right held by descendants to inherit the land)
- a right to alienate all rights to the entire holding (e.g. through sale), or to a portion of the holding (e.g. by subdividing it)
- a right to alienate only a portion of the rights, (e.g. through a lease)
- a residuary right to the land, i.e. when partially alienated rights lapse (such as when a lease expires): those rights revert to the person who alienated them
- a right to enjoy the property rights for an indeterminate length of time a duty not to use the land in a way that is harmful to other members of society, (i.e. the right is held by those who do not hold the right to use the land)
- a duty to surrender the rights to the land when they are taken away through a lawful action, (e.g. in a case of insolvency where the right is held by the creditors or in the case of default on tax payments where the right is held by the State).

In general, all land and natural resources rights can be categorised into three main types:

1. **Use right:** the right to use the land for grazing, agricultural activities and collecting forestry and other natural products, for an easement or a right of way

2. **Control right:** the right to make decisions about how the land should be used and how benefits should be allocated

3. **Transfer right:** the right to sell or mortgage land, convey land to others, transmit the land through inheritance and reallocate use and control rights.<sup>4</sup>

### What are property rights?

The right to property is often mistakenly confused with the right to housing. Although there are certain areas of overlap the relationship between them is complex.

Property can be defined as “any external thing over which the rights of possession, use and enjoyment are exercised.”<sup>5</sup> There are two basic kinds of property:

1. **Real property:** is land and ordinarily anything erected on, growing on, or affixed to it, including buildings and crops and excluding anything that may be severed without injury to the land. Real property can be corporeal (soil and buildings) or incorporeal (easement).
2. **Personal property:** is any kind of property that can be the subject of ownership, including stocks, money, patents, and copyrights, as well as intangible property.<sup>6</sup>

One can have a statutory right or customary right to a property.

**Private property** is a property held by a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organisation.

Property rights are different from **possession/possessory rights**. The latter are the rights that accrue from physically occupying a land parcel or a house. A legal owner does not have to possess the land to be the owner. The person possessing it may have a legal claim or none at all. Legal recognition of possessory rights varies around the world. In some countries, possession

4 Food and Agriculture Organization, 2005, Access to rural land and land administration after violent conflicts, p.21. <http://www.fao.org/docrep/008/y9354e/y9354e00.htm>

5 Garner, Bryan A., 1997, Black's Law Dictionary. p.507.

6 Another way of categorising property is moveable or immoveable property.

can give rise to ownership claims through adverse possession.<sup>7</sup>

## 2. Why is it important to address HLP issues?

There are many reasons why humanitarian organisations should consider addressing housing, land and property issues in their interventions during both emergency relief and recovery programmes.

### Centrality of land and housing in many humanitarian crises

Firstly, it is important to recognise the fact that land, or the natural resources that lie beneath it, are at the centre of many humanitarian crises. Land ownership and territorial acquisition or defence underpin most current conflicts. Since 1990, at least eighteen violent conflicts have been fuelled by the exploitation of natural resources.<sup>8</sup>

Confiscation and destruction of crops and housing have often been a deliberate policy to displace or kill certain groups of people and reinforce military positions. Therefore, unless humanitarian actors understand how violations of rights relate to the onset and evolution of humanitarian crises their responses will invariably be handicapped.<sup>9</sup>

### Humanitarian responses have an impact on tenure, economic and livelihood opportunities

Humanitarian emergency and recovery responses impact land tenure and settlement patterns in

both urban and rural areas. A wide range of activities have substantial impacts on land tenure of the local communities and on the beneficiary's livelihood: these can include establishment of refugee/IDP camps, organising resettlement and return, surveying and clearing land of landmines and other explosive remnants of war (ERW), distributing seeds and agricultural tools and other interventions to restore and support livelihoods.<sup>10</sup>

Accommodation of war-affected populations in collective centres (public buildings such as schools, government offices or hotels) can limit access to certain rights such as education. While these may be justified as temporary solutions all too often they endure for years, leaving residents in very precarious living conditions, without tenure security and at constant risk of being asked to rapidly vacate their place of residence.

### Emergency

As an emergency measure, the allocation of HLP assets can provide food, shelter, and access to humanitarian assistance. For those who were forced to flee during the conflict, this represents a critical step for survival.

### Human rights

Housing, land and property are referenced and often defined in a number of international human rights laws in relation to a wide variety of rights. These include adequate housing, property, food, employment, protection against forced eviction, standard of living, access to basic services, schools, transportation and the rights of indigenous people, women and other vulnerable groups.

Using a human rights approach with HLP facilitates thinking beyond the mere economic and political elements of HLP.

### Displacement restitution and compensation

Considering that HLP violations often aim to displace populations, restitution or compensation of HLP assets should be a post-conflict priority as it provides a remedy for past violations and is a cornerstone of a sustainable return strategy. The right of return and to property restitution or compensation should be given at least as much attention as the process of return itself. Humanitarian organisations should not underestimate the fact that access to HLP assets for IDPs and refugees can reduce the number of land conflicts and promote a sustainable return. It can also facilitate other durable solutions: for example, renting a repossessed house or land can

<sup>7</sup> Adverse possession (usucapion) is a method of gaining legal title to real property by the actual, open, hostile, and continuous possession of it to the exclusion of its true owner for the period prescribed by state law. Adverse possession depends upon the intent of the occupant to claim and hold real property in opposition to the world and the demonstration of this intention by visible and hostile possession of the land so that the owner is, or should be, aware that adverse claims are being made. The legal theory underlying the vesting of title by adverse possession is that title to land must be certain. Since the owner has, by his/her own fault and neglect, failed to protect the land against the hostile actions of the adverse possessor, an adverse possessor who has treated the land as his or her own for a significant period of time is recognised as its owner. In some countries, government-owned land (public land) is exempt from adverse possession. In civil law systems usucapion implies continued, public and pacific (rather than hostile) possession.

<sup>8</sup> United Nations Environment Programme, 2009, *From Conflict to Peacebuilding: The Role of Natural Resources and the Environment*, p.8. [http://www.unep.org/pdf/pcdmb\\_policy\\_01.pdf](http://www.unep.org/pdf/pcdmb_policy_01.pdf)

<sup>9</sup> Pantuliano, Sara, 2009, *Uncharted territory: Conflict and Humanitarian Action*, HPG Policy Brief 39, Overseas Development Institute. pp.9-11. <http://www.odi.org.uk/resources/details.asp?id=4409&title=uncharted-territory-land-conflict-humanitarian-action>

<sup>10</sup> *ibid.*

provide income for displaced people who want to locally integrate, settle elsewhere or have not yet made up their minds about a desired durable solution.

### **Peace-building and conflict prevention**

Addressing HLP rights in areas emerging from conflicts can greatly contribute to peace processes. Dealing from the outset with HLP issues is key to ensuring that peace will be widely accepted. It is conducive to reconstruction and reconciliation, rather than to the deepening of grievances. Addressing HLP rights is, therefore, very important in transitional justice.

While conflict always creates new HLP disputes, pre-conflict grievances also represent a cause of tension which should be addressed in the post-conflict phase. In some cases, such grievances (typically, unequal distribution of land and landlessness) were among the primary drivers of conflict. Focusing exclusively on resolving HLP disputes created by the conflict through restitution of the land to pre-war owners and return to the status quo ante will not build a lasting peace. Addressing historical grievances may require significant changes in terms of land access. While humanitarians may not have the expertise or the mandate to engage in such changes, they should be aware of their relevance. They need to coordinate their actions with land specialists, responsible government authorities and development actors to ensure that all aspects of HLP disputes are adequately addressed.

The resolution of land disputes can remove politically, socially and economically destabilising factors and contribute to a sustainable peace process. Addressing competing claims for control and use of housing, land and resources such as water, fisheries and forests is a major step in fostering reconciliation. Engagement with existing local peace-making mechanisms, or development of new ones, can play a leading part in the processes of reconciliation and property restitution by facilitating dialogue and data collection (as well as contributing to conflict early warning indicators).

### **Poverty reduction and development**

Rural landlessness is often the main cause of poverty and hunger. The poorest are usually landless or land poor. Many would argue that empowerment of the poor is central to humanitarianism. Given that land is very often at the heart of livelihood strategies, humanitarian actors must consider land issues in their responses. Addressing HLP rights is essential for poverty reduction and sustainable development. Access to land is the first step for fostering

agricultural productivity that will prevent the outbreak of food crises. Access to secure land (whether through statutory, customary or other means), increases household food consumption and thus ensures its food security. In addition, access to secure land may allow the family to increase their income by producing a surplus for sale. This income generating activity can increase the chance of accessing credit and investment opportunities.

### **Urban contexts**

Currently, over half of the world's population lives in cities and towns and the United Nations (UN) estimates that by 2050 two-thirds of the world's population will live in urban areas.<sup>11</sup> During the last few decades, urbanisation has generally been a one-way process, moving from rural to urban areas. It is very unusual for IDPs and refugees displaced in urban areas during a conflict to move back to rural areas. This is particularly true in the case of protracted displacement. According to the Office of the UN High Commissioner for Refugees (UNHCR), almost half of the world's 10.5 million refugees now live in urban areas, compared to one-third who lives in camps.<sup>12</sup> The number of IDPs who live in cities has also recently increased: IDPs reside in urban environments in at least 48 countries.<sup>13</sup>

Humanitarian organisations should not overlook issues pertinent to the right to adequate housing in urban areas and should be alert to the possibility of complex emergencies and resultant HLP crises (such as forced evictions) in cities. Because of rapid urbanisation, urban emergencies are becoming more common and humanitarian organisations must consider how to address them. Humanitarians should also assist local government in urban planning and slum upgrading in order to improve both living conditions and tenure security.

### **Gender equality**

Addressing HLP rights will promote gender

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11 UN Department of Economic and Social Affairs, 2009, *UN World Urbanization Prospects, the 2009 Revisions*, p.1. [http://esa.un.org/unpd/wup/doc\\_highlights.htm](http://esa.un.org/unpd/wup/doc_highlights.htm)

12 UNHCR, 2009, Policy on Refugee Protection and Solutions in Urban Areas, p.2. <http://www.unhcr.org/refworld/docid/4ab8e7f2.html>; UNHCR, 2009, 2009 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons, p.1. <http://www.unhcr.org/4a375c426.html>

13 IDMC, 2009, Internal Displacement: Global Overview of Trends and Developments in 2009. p.8. [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/8980F134C9CF4373C1257725006167DA/\\$file/Global\\_Overview\\_2009.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/8980F134C9CF4373C1257725006167DA/$file/Global_Overview_2009.pdf)

equality and empower women. Women are the major contributors to local food and family nutrition in most countries, yet women often are denied HLP rights and inheritance of HLP assets. Women's right to land and housing is a critical factor in social status, economic growth and empowerment. Equal access to and security of tenure for women and men together with women's right to inherit and own HLP assets should be considered as the first step towards gender equality.

### **Economic stability and growth**

Addressing HLP rights can create new income-generating opportunities and provide the foundation for agriculture and industry. Smallholders will invest in productive assets and engage in land markets if their tenure rights are protected. In the same way, large companies will feel more confident and encouraged to invest when land administration is efficient and transparent.

### **Cultural identity**

In customary land tenure systems, access to HLP assets can provide IDPs and returnee refugees (RRs) with a sense of identity and cultural connection with the land.

The **UN Declaration on the Rights of Indigenous Peoples**<sup>14</sup> (Article 25) states that "indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."

Several donors and humanitarian organisations have recently recognised the social and cultural importance of land. The World Bank's Operational Policy and Procedure on Indigenous Peoples recognises that the identities and cultures of Indigenous Peoples are inextricably linked to the lands on which they live and the natural resources on which they depend. [...] Indigenous Peoples are frequently among the most marginalised and vulnerable segments of the population. [...] As a result, their economic, social, and legal status often limits their capacity to defend their interests in and rights to lands, territories, and other productive resources, and/or restricts their ability

14 UN General Assembly, 2007, *Declaration on the Rights of Indigenous Peoples* adopted by the UN General Assembly Resolution 61/295 on 13 September 2007. <http://www.un.org/esa/socdev/unpfii/en/drip.html>

to participate in and benefit from development."<sup>15</sup>

### **Ethnic cleansing and HLP**

In some countries, displacement and land seizure takes place in the context of ethnic cleansing. Ethnic cleansing is the attempt to create ethnically homogeneous geographic areas, often through the deportation, forcible displacement, killing or other measure against a particular ethnic group. Land seizure, forcibly removing people from their homes, destroying housing and property, confiscating HLP documents and destroying cadastral records have been used to alter the ethnic composition of particular areas and permanently prevent the return of those expelled from their homes.

## **3. Legal pluralism**

Legal pluralism is characterised by the co-existence of parallel sources of authorities considered as legitimate by those who use them and rendering justice on similar matters. Legal pluralism can be both an asset and a risk to the rule of law. It is an asset when, in comparison to an over-burdened, cumbersome, expensive, distant and lengthy judicial process, customary justice provides an accessible and speedy solution to various disputes. It can be a risk when customary justice is based on ambiguous and inconsistently applied rules that do not offer guarantees of transparency or predictability. Customary leaders often do not act democratically and may tend to perpetuate patterns of discrimination against outsiders, women or marginalised groups.

Depending on the circumstances, the co-existence of competing justice systems can be an increased opportunity to resolve a dispute or can allow those with means to appeal to multiple fora ("forum shopping"), with resultant risks to legal clarity as decisions in one system can be contradicted by others.

### **Legal pluralism in land tenure systems**

**Land tenure** is the way in which individuals and groups relate to land and its resources. Land tenure refers to the rights, rules, authorities and institutions that govern access to and control over land and related resources. In other words, land tenure determines who can use what resource of the land, for how long and under what conditions.

15 The World Bank, 2005, World Bank Operational Policy and Bank Procedure on Indigenous Peoples (OP/BP 4.10) Paragraph no. 2. <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTINDPEOPLE/0,contentMDK:20443667~menuPK:906528~pagePK:210058~piPK:210062~theSitePK:407802,00.html>



Figure no. 1 Legal pluralism in a land tenure system<sup>16</sup>

Legal pluralism in land rights occurs when different land tenure systems (statutory and customary/traditional), each with their own legal framework, are considered by actors to be legitimate authorities, defining rights and resolving disputes. Statutory HLP rights are those that are explicitly acknowledged by the States and are protected using legal means. Customary HLP rights are rights acquired by customs and traditions.

### Statutory land tenure systems

Such a regime exists where State legislation and institutions govern land and natural resource rights within national boundaries. Common types of statutory land tenure include freehold, leasehold, public and private rental and cooperatives.

In a statutory tenure system, land disputes are usually resolved in a court of law. However, in the aftermath of conflict, the court system may not exist or have become unreliable or even dysfunctional. Corruption may be widespread and court orders may not be implemented.

In common law countries, law is developed through statute and by precedent.

### Customary land tenure systems

**Customary law** is the set of rules regulating social behaviour that have developed in a particular community over time. Customary laws often

regulate land ownership and tenure rights. In Africa for example, statutory tenure covers only between two and ten per cent of the land.<sup>17</sup>

Customary land tenure systems regulate people's right to enjoy the use of land arising from customary practice, rather than through written or codified law. These often-unwritten rules define the right of access to particular natural resources by a specific social group. Customary tenures usually include some forms of community land rights, pastoralist rights, access to resources and use rights.

Customary land tenure systems derive from authorities such as a community, ethnic group or family. Decisions regarding land allocation, use and transfer are the responsibility of traditional authorities (usually male elders) and regulation often takes the form of negotiated interaction between communities members and leaders. Disputes are managed through negotiation, mediation or arbitration. Women's land rights are often, but not necessarily, embedded in family and community land rights.

In a number of countries, particularly in Africa, customary land rights also enjoy statutory recognition. Elsewhere, customary rights may not be recognised in law, but enjoy widespread social legitimacy (e.g. Liberia).

<sup>16</sup> Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), 1999, *Land Use Planning*, p.29. <http://www.gtz.de/de/dokumente/en-lup-engl.pdf>

<sup>17</sup> Deininger, K., 2003, *Land Policies for Growth and Poverty Reduction: Key Issues and Challenges Ahead*, World Bank. [http://www.fig.net/pub/mexico/papers\\_eng/ts2\\_deininger\\_eng.pdf](http://www.fig.net/pub/mexico/papers_eng/ts2_deininger_eng.pdf)

As a result of conflict, customary land tenure systems may be weakened, sometimes fatally. Knowledge can be lost when customary leaders are killed, displaced or lose respect and legitimacy. In addition, natural features used to demarcate property may have been lost or damaged by conflict.

### Religious tenure systems

Religious forms of tenure are a distinct form of tenure regulated by religious institutions. In some contexts, religious law dominates and religious leaders deal with all issues related to land tenure, including registration and dispute settlement. In many African countries, there is a religious dimension to customary law without religious law being state law.

## 4. HLP Key Concepts

### Access to land

Access to land generally refers to the ability to use land and other natural resources, to control the resources and to transfer the rights to the land.

The rights of access to land are governed through land tenure systems. There are several ways to gain access to land. These include:

- purchase
- leasing or renting
- inheritance or gaining access to land as a presumptive heir
- sharecropping or gaining access to land in return for paying the owner a percentage of the output
- belonging to a particular group, especially in those cases where States recognise customary tenure as a legitimate tenure system
- squatting illegally on land
- adverse possession.<sup>18</sup>

### Land tenure

Land tenure is the way in which individuals and groups relate to land and its resources. Land tenure refers to the rights, rules, authorities and institutions that govern access to and control over land and related resources. In other words, land tenure determines who can use what

<sup>18</sup> Food and Agriculture Organization, 2002, *Land tenure and rural development*, p.16. <ftp://ftp.fao.org/docrep/fao/005/y4307e/y4307e00.pdf>.

resource of the land, for how long, and under what conditions.<sup>19</sup>

Land tenure therefore is about the relationships among individuals in relation to their interest in land and associated resources such as water, trees, minerals and wildlife. Land tenure issues reflect cultural, historical and political influences. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, leasing, owner-occupation, emergency housing and informal settlements, including occupation of land or property.

The full range of land and natural resource tenures that exist in a given country and the rules that regulate them, is often referred to as the **land tenure system**.

Land tenure is often categorised into four types:

1. **Private:** rights are assigned to a private party (individual, a married couple, a group, a company and a non-profit organisation).
2. **Communal or collective:** rights held jointly by a group of people generally on the basis of ongoing use such as cultivation, clearance or access (i.e. each member of the community may use the land and resources of the community). Members from other communities may be excluded.
3. **Open access:** specific rights are not assigned to any individual or group and no one can be excluded. Forests may be under open-access tenure.
4. **State or public:** rights are assigned to a public sector State entity (e.g. a public hospital or airport)<sup>20</sup> and in some instances to a private company.

### Security of tenure

Tenure security refers to the certainty that a person's rights to HLP will be protected. According to the UN Committee on Economic, Social and Cultural Rights (CESCR),<sup>21</sup> security of tenure "guarantees legal protection against forced

<sup>19</sup> *ibid.*, p.7.

<sup>20</sup> *ibid.*, p. 8.

<sup>21</sup> The UN Committee on Economic, Social and Cultural Rights (<http://www2.ohchr.org/english/bodies/cescr/>) is the treaty body mandated to monitor States Parties' compliance with the ICESCR. Comprised of 18 independent experts, it has played a leading role in the promotion and implementation of housing rights.

eviction, harassment and other threats.”<sup>22</sup>

Security of tenure cuts across housing, land and property rights and represents the regulatory means by which people can be protected against forced displacement (including forced evictions), harassment or other threats. Whether statutory, customary or in other forms, security of tenure should be sufficiently strong to protect people against any form of arbitrary or unlawful displacement.<sup>23</sup>

Security is partly a matter of perception. The source of security may vary from country to country. In general, security of tenure may be achieved through:

1. the recognition of one’s HLP rights by the local community
2. the political recognition of squatter settlements and slums, and/or
3. the State’s legal system and regulation of land titles.<sup>24</sup>

Security of tenure is also one of the core contents of the right to adequate housing.<sup>25</sup> Although it is most commonly associated with the ownership of property or land, security of tenure includes all varieties of tenure arrangements.

The security provided by any form of tenure may change, particularly in times of conflict and natural disaster. At the same time, perceptions of increased insecurity of tenure can contribute to the outbreak of armed conflict. Insecurity of tenure can be both a cause and a consequence of conflicts.

**Land administration** “is the way in which the rules of land tenure are applied and made operational.”<sup>26</sup> It usually includes the administration of land rights, land use regulations and land valuation and taxation. Land administration may be carried out by agencies of the formal State, or through customary leaders.

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22 UN Committee on Economic, Social and Cultural Rights, 1991, *General comment 4 : The Right to Adequate Housing*, Paragraph 8. <http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument>

23 UN Human Settlements Programme (UN-HABITAT), 2010, *Count me in : Surveying for tenure security and urban land management*. p.151. <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2975>

24 Food and Agriculture Organization, 2005, *Access to rural land and land administration after violent conflicts*, p.23. <ftp://ftp.fao.org/docrep/fao/008/y9354e/y9354e00.pdf>

25 For more information on the right to adequate housing, see the Module on HLP International Legal Framework and Principles.

26 Food and Agriculture Organization, 2005, p.23.

**Land management** refers to allocation, use and development of land and land resources (e.g. how to use land efficiently for producing food, manufacturing, providing services, providing shelter or preserving valuable resources for environmental or cultural reasons).

**Land registration** is the process of recording rights and other interests in land in some form of public register. The procedures used and legal effects can differ greatly from country to country. Depending on the system, registration can be declaratory (confirming the existence of a right) or constitutive (clarifying that the existence of the right depends upon registration). Registration can be parcel-oriented (sometimes referred to as title registration) or based on the holder’s or transferrer’s documents (sometime referred to as deed registration).

**Secondary occupation:** secondary occupants are those who take up residence in a home or on land after the legitimate owners or users have fled. Secondary occupants can also be victims of a conflict. As secondary occupation is common to all post-conflict situations care must be taken not only to protect the rights of the original inhabitants but also to protect secondary occupants against homelessness, unreasonable eviction or any other human rights violation.

**Squatters** are illegal occupants, someone who occupies vacant land (either private or public) or takes possession of an unoccupied premises (either private or public) without a legal right to do so.<sup>27</sup>

**Encroachment** is the illegal occupation or use of a portion of land owned by someone else.

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27 For more information, see the Housing, Land and Property in Urban Contexts module.

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INSERT LOCATION AND DATE

**HOUSING, LAND AND PROPERTY (HLP) TRAINING**




1

**THE EFFECTS OF CONFLICT**





4



SESSION ONE

**AN INTRODUCTION TO HLP**




2

**HLP IN A GLOBAL CONTEXT**

- Since 1990 18 violent conflicts have been fuelled by the exploitation of natural resources




5

**THE EFFECTS OF CONFLICT**





3

**WHAT IS HLP?**

- HLP includes all types of property, not just private
- HLP refers to owners, tenants, cooperative dwellers, customary land tenure owners and users, informal sector dwellers and squatters without secure tenure
- HLP rights include a range of statutory and customary rights relating to the right to use, control, transfer and enjoyment of HLP assets




6

## WHAT ARE HOUSING RIGHTS?

- Universally recognised human rights
- Components of the right to an adequate standard of living
- Much more than just walls and a roof over one's head!

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- 1 What are the specific HLP issues in (name of country)?
- 2 Why is it important to address them?

GROUP EXERCISE

1

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## WHAT ARE LAND RIGHTS?

- Rights held to **land** and other **natural resources**
- More than one person can hold rights to the same parcel of land
- There are 3 categories of land rights:
  - Use rights
  - Control rights
  - Transfer rights

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## WHY IS IT IMPORTANT TO ADDRESS HLP?

- Centrality of land in many humanitarian crises
- Humanitarian responses have an impact on land tenure
- Emergency
- Human rights
- Displacement and restitution
- Peace-building and conflict prevention
- Poverty reduction and development

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## WHAT ARE PROPERTY RIGHTS?

- Property: any external thing over which the rights of possession, use and enjoyment are exercised
- There are two kinds of property:
  - Real property (land or anything attached to it)
  - Personal property (moveable things)
- Private property: held by a private party
- Possessory rights: rights that accrue from physically occupying a land parcel or a house

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## WHY IS IT IMPORTANT TO ADDRESS HLP?

- Urban contexts
- Gender equality
- Economic stability and growth
- Cultural identity
- Ethnic cleansing and land seizure

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QUESTIONS?

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10

QUESTIONS?

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- Legal pluralism in land tenure systems
- Statutory land tenure systems
- Customary land tenure systems

GROUP EXERCISE

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In your groups go through Task Sheet 1: Short Cases  
Decide for each case:

1. What is the legal category (legal pluralism, statutory land tenure etc.)
2. What are the key HLP issues? (access to land, security of tenure etc.)

GROUP EXERCISE

YOU HAVE 15 MINUTES

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19

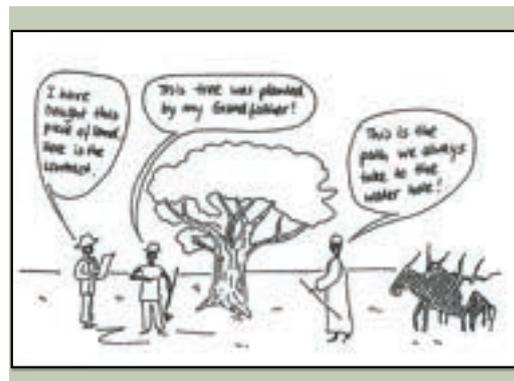
## LEGAL PLURALISM IN LAND TENURE SYSTEMS

- The co-existence of different land tenure systems within a country, each with their own legal framework, legal authority over rights and legitimacy to resolve disputes
- Example: statutory and customary / traditional

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20

## STATUTORY LAND TENURE SYSTEMS

- State legislation and institutions governing land and natural resource rights within national boundaries
- Common types of statutory land tenure include freehold, leasehold, public and private rental, and cooperatives
- Land disputes are usually resolved in a court of law

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- **Access to land:** the ability to use, control and transfer land and other natural resources
- **Land tenure:** rights, rules, authorities and institutions that govern access to and control over land.
- **Types:**
  - Private
  - Communal or collective
  - Open access
  - State or public

KEY CONCEPTS

1

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## CUSTOMARY LAND TENURE SYSTEMS

- Regulate people's right to enjoy the use of land arising from customary practice
- Derive from authorities such as a community, ethnic group or family
- Often unwritten rules
- Often include forms of community land rights, pastoralist rights, resource access, and use rights
- Land disputes are addressed by leaders

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- **Security of tenure:** the right of all individuals to have guaranteed legal protection against forced eviction, harassment and other threats
  - Security of tenure cuts across housing, land and property rights

KEY CONCEPTS

2

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- **Land administration:** the way in which the rules of land tenure are applied and made operational
- **Land management:** the way in which land and natural resources are used
- **Land registration:** the process of recording HLP rights in a public register



KEY CONCEPTS

# 3



23

- **Encroachment:** the illegal occupation/use of land owned by someone else
- **Secondary occupation:** the residence in a home/land after the legitimate owners/users have fled



KEY CONCEPTS

# 4



24

# QUESTIONS?



25



Frame of a yurt, Kyrgyzstan



# The Housing, Land and Property International Legal Framework and Principles

## SESSION OBJECTIVES

At the end of the session participants will be able to:

- list the key legal sources in the international legal framework that regulate housing, land and property rights
- outline two key principles of HLP international law.

## KEY MESSAGES

- Housing rights:
  - The Universal Declaration on Human Rights (UDHR) states that everyone has the right to a standard of living adequate for the health and well being of himself and family; this includes housing.
  - Adequate housing guarantees legal security of tenure, availability, affordability, habitability, accessibility, location and cultural adequacy.
  - Forced evictions are a violation of human rights.
- Land rights:
  - No right to land is explicit in the international legal framework.
  - However, rights to land can be derived from many human rights such as the right to food, work, non-discrimination in inheritance systems and self-determination.
  - Land rights are specifically protected for indigenous peoples and women under international human rights laws.
- Property rights:
  - The UDHR recognises property rights for individuals and community (as collective) and states that “no one shall be arbitrarily deprived of his property.”
  - Several regional conventions recognise the right to property.
- HLP rights held in customary tenure systems or under customary tenure systems are recognised and protected by law.
- The Guiding Principles on Internal Displacement sets out standards for the protection of HLP assets during and after displacement.

## PREPARATION FOR THE SESSION

- Prepare the projector and laptop to show the presentation.
- Photocopy for each participant:
  - Handout 1: Background on Human Rights and Housing Rights
  - Handout 2: Land Rights
  - Handout 3: Property Rights
  - Handout 4: HLP and Women’s Rights
- Buy a prize for the quiz (some chocolates or sweets)

**DAY ONE : The HLP International Legal Framework and Principles**

**Session 3**

| Time  | Activity  | Comments  |
|-------|---|---|
| 13:30 | <p>Ask participants to close their eyes in preparation for a short brainstorm.</p> <p>Ask them to think back to where they grew up.</p> <p>Ask them to list some of the basic rights associated with housing, land or property in your community.</p> <p>Take feedback in plenary and chart the responses.</p> <p>Explain that a conflict is now affecting your community. Now ask:<br/>What guarantees would you need to ensure you enjoy your rights?</p> <p>Take feedback in plenary and chart the responses.</p> <p>(If running out of time, skip this exercise and start immediately with the PowerPoint on basic definitions)</p> | <p><i>Possibly start with an example from your own experience: e.g. we had the right to say who lived in our house; we had the right to charge rent for our land; we had documentation to prove we owned the land</i></p> |
| 13:45 | <p>Show slide: Background on human rights.</p> <p>Explain the basic definitions of legal terms (e.g. the difference between covenants and declarations).</p> <p>Show slide: HLP International Legal framework.</p> <p>Explain that while a lot of international law exists, the most powerful law is national law as it is more readily enforceable.</p>  |   |
| 13:50 | <p>Show slides numbered 1- 5 on housing.</p> <p>Show slides numbered 1 – 3 on land rights.</p> <p>Show slides numbered 1 – 3 on property rights.</p> <p>Show slides numbered 1 – 3 on women’s rights.</p> <p>To make this section more dynamic try and elicit the sources of law from the participants before showing the slides.</p>   |   |
| 14:20 | <p>Split into four small groups</p> <p>Set up in a fun way. Make each group come up with a team name.</p> <p>Put the team names on the flip chart for scoring the quiz.</p> <p>Ask each group to take a different set of rights:</p> <ul style="list-style-type: none"> <li>▪ Housing</li> <li>▪ Land</li> <li>▪ Property</li> <li>▪ Women</li> </ul> <p>Ask groups to spend 30 minutes writing six (or three if running late) REASONABLE questions on the fundamental international legal principles for the other groups.</p>   | <p><i>Potentially use the ship is sinking to split groups (see the Training Guidance)</i></p>   |

**14:50** Once each group has formulated their questions begin the quiz. Allow 30 minutes for this part of the quiz. Select one group to start, they should ask one question to each of the other groups who score one point for each correct answer. Repeat the process until all the questions have been asked. Score on the flip chart, and at the end determine the winner. Award the prize. Make any legal clarifications needed as you go along and at the end. Distribute the following handouts of legal sources to everyone:  
Handout 1: Background on Human Rights and Housing Rights  
Handout 2: Land Rights  
Handout 3: Property Rights  
Handout 4: HLP and Women’s Rights

*Establish a spirit of competition – remember to give a prize*

**15:20** Break and go to Module 3 for session details



Human Rights are a core set of rights that human beings possess by simple virtue of their humanity. These rights are spelled out in a number of resolutions, declarations, covenants, conventions, treaties, protocols, general comments and other international human rights instruments which determine their validity as well as the extent to which they bind States. Familiarity with the different types of international standards is helpful in ascertaining their applicability in a particular context.

**Covenants, Conventions, Treaties and Protocols** are considered the strongest international instruments. They are adopted after negotiations and become directly legally binding on the countries that have signed and ratified them. Ratification means they have been approved by a relevant national body(ies).

**Protocols** contain supplementary provisions to a previous treaty and can provide procedures with regard to its implementation.

**General Comments** are interpretations of the content of human rights provisions, reflecting state practice, judicial decisions and the teaching of the most highly qualified human rights experts. They provide guidance to States on how to live up to their obligations to respect, protect and fulfill the respective rights.

**Resolutions** adopted by the UN General Assembly and UN Security Council also provide important guidance for the elaboration of international law. With the exception of those adopted by the Security Council, such resolutions are not legally binding *per se*. However, they both reflect the international community's understanding of international law (standards, principles and norms) and political willingness to work towards the achievement of the resolution's contents. **Declarations and Recommendations** are documents of intent, and are therefore not legally binding. However, these can gain the force of binding law if their content is widely accepted and practiced (i.e.

they become customary international law).<sup>28</sup>

**Platforms for Action or Agenda** have only political and moral persuasion value.

International human rights law offers States some degree of discretion regarding the adoption of national legislation as a means of implementing the standard. Therefore the adoption of national legislation is not necessarily obligatory but is, in many instances, indispensable for the comprehensive enjoyment of human rights at national level.

### Housing Rights

#### International Instruments on Housing Rights

Within the international framework of human rights, there are a number of articles directly tied to the right to housing and adequate housing. The right to adequate housing is enshrined in Article 25 of the Universal Declaration of Human Rights (UDHR)<sup>29</sup> and in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>30</sup>

The **Universal Declaration of Human Rights**, (Article 25(1)) states:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of

<sup>28</sup> Customary international law consists of law derived from the consistent practice of a majority of States, acting out of a sense of legal obligation to act responsibly. Declarations, recommendations and general comments often reflect developing practices of customary law. A number of human rights are regarded as customary and are therefore also applicable where there is a gap in national legislation or where countries have not ratified respective treaties.

<sup>29</sup> UN General Assembly, 1948, Universal Declaration of Human Rights (UDHR), adopted and proclaimed by UN General Assembly resolution 217A (III) on 10 December 1948. <http://www.un.org/en/documents/udhr/index.shtml>

<sup>30</sup> UN General Assembly, 1966, International Covenant on Economic, Social and Cultural Rights. adopted by UN General Assembly resolution 2200A(XXI), 16 December 1966, entered into force on 3 January 1976. <http://www2.ohchr.org/english/law/cescr.htm>. State compliance with the Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights.

unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

The **International Covenant on Economic, Social and Cultural Rights**, Article 11(1) states:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

It is important to remember that both nationals and non-nationals, including refugees and asylum seekers, are entitled to the benefits of the rights listed in the ICESCR such as the right to adequate housing.<sup>31</sup>

The scope of the right to adequate housing has been more precisely defined by two General comments of the UN Committee on Economic, Social and Cultural Rights: General comments no. 4 and no. 7.

**CESCR General comment No. 4 on the Right to Adequate Housing**<sup>32</sup>, the most authoritative legal interpretation of the right to adequate housing, specifies the standard of “adequate” as:

1. Legal security of tenure: all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats regardless of the type of tenure.
2. Availability of services, materials, facilities and infrastructure: all beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.
3. Affordability: affordable housing costs.
4. Habitability: adequate space, physical safety, and protection from cold, damp, heat, rain, wind, structural hazards and disease vectors.

31 Subject to the limitation permitted by Article 2(3) to developing countries in respect of the guarantee of economic rights to non-nationals.

32 UN Committee on Economic, Social and Cultural Rights (CESCR) 1991, *General comment 4: The Right to Adequate Housing*, p.8. <http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument>

5. Accessibility: adequate housing must be accessible to those entitled to it, including disadvantaged or vulnerable groups.
6. Location: the house has to be in a location that allows access to employment and services such as health care, education and child-care.
7. Cultural adequacy: the way in which the house is constructed has to allow for the expression of cultural identity.

The right to adequate housing is a basic human right and serves to protect individuals and communities from being arbitrarily evicted and displaced from their homes and land. This right applies to everyone, including owners, renters and possessors (under customary tenure forms) and without discrimination based on their status, wealth, religion, gender, age or ethnic background.

It should be noted that land is a critical element to fulfilling the right to housing. In 2005, the UN Special Rapporteur on Adequate Housing noted that “land is often a necessary and sufficient conditions on which the right to adequate housing is absolutely contingent for many individuals and even entire communities.”<sup>33</sup>

**CESCR General comment No. 7 on the Right to Adequate Housing: Forced Evictions**<sup>34</sup> defines forced evictions as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” This definition indicates the arbitrary and illegal nature of forced evictions as the practice violates civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions. Security of tenure is a fundamental component of housing rights and forced evictions thus deny one’s security of tenure. Security of tenure is the certainty that a person’s right to housing will be recognised by others and protected in cases of specific challenges. Some degree of security is recognised in all the type of housing rights: ownership, lease, cooperative

33 “Kothari, Miloon, 2005, Study by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, UN Economic and Social Council 41, U.N. Doc. E/CN.4/2005/48. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/117/55/PDF/G0511755.pdf?OpenElement>

34 Committee on Economic, Social and Cultural Rights, *General Comment No. 7 (1997) on the Right to Adequate Housing* (Art. 11 (1) of the Covenant): Forced Evictions. <http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50?Opendocument>

housing and informal settlement.

Forced evictions are often implemented violently in the course of armed conflicts or ethnic violence and entail further violations of interrelated rights (for example the right to water and the right to freedom of association). Other forced evictions may be carried out during development projects such as construction of dams, housing renovation and city beautification.

In general, States are obligated (by Article 2.1 of the Covenant on Economic, Social and Cultural Rights) to use “all appropriate means” to realise the right to housing. States should refrain from carrying out forced evictions and ensure that the law is enforced against its perpetrators. Specific measures should be taken to protect women, children, older persons and other vulnerable groups who suffer disproportionately from forced eviction. Women, in particular are especially prone to violence and sexual abuse when made homeless.

In general, justified evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. However, evictions that meet the following procedural protections could be justifiable and permissible:

1. substantive justification
2. consultation on alternatives
3. due process
4. right to alternative accommodation
5. non-discrimination.

General comment no. 7 lists the guidelines on involuntary resettlement adopted by the World Bank as a good example of standards for resettlement to be implemented in case of development-induced displacement.<sup>35</sup>

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35 The World Bank was the first multilateral agency to adopt a policy for Resettlement and Rehabilitation (R&R). The Bank’s policy is contained in the Involuntary Resettlement Operational Directive (OD) 4.30, adopted in June 1990 and subsequently updated. The policy aims to minimise involuntary resettlement, providing people displaced by a project with compensation for land and other assets affected by the project, the means to improve, or at least restore, their former living standards, earning capacity, and production levels and involving both re-settlers and hosts in resettlement activities. The overall objective of the Bank’s resettlement policy is to ensure that the population displaced by a project receives benefits from it. These procedures and standards have to be applied for all physical/economic displacement resulting from expropriation and other compulsory procedures of property owners or those with customary rights to land. These are mandatory procedures for all Bank-funded projects that displace people involuntarily. For more information, see <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

**The 1951 Refugee Convention**<sup>36</sup> (Article 21) states that “the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.”

Article 21 only applies to refugees “lawfully staying” in the territory of a Contracting State. It thus excludes asylum seekers and other individuals who meet lesser degrees of attachment to the Contracting State. In addition, Article 21 only requires that a state provide treatment to refugees “not less favourable than that granted to aliens generally.” Article 21 overlaps with Article 13<sup>37</sup> which guarantees the protection of moveable and immovable property of refugees, particularly, as the latter right includes “leases and other contracts relating to moveable and immovable property.”

**The International Covenant on Civil and Political Rights (ICCPR)**<sup>38</sup>, protects persons from arbitrary or unlawful interference with their home (Article 17). In addition the ICCPR reaffirms that these rights cannot be seen in isolation but as interrelated to the right to food, water and work.

**The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**<sup>39</sup>, the central human rights convention relating to girls and women, obliges States Parties to eliminate discrimination against women in rural areas in order to ensure they enjoy adequate living conditions, particularly in relation to housing (Article 14(2)(h)).

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36 The 1951 Refugee Convention was signed when a special UN conference approved the Convention relating to the Status of Refugees. The 1951 Refugee Convention is the first truly international agreement covering the most fundamental aspects of a refugee’s life. The Convention clarifies who is a refugee (by establishing refugee status determination procedures) and what kind of legal protection and assistance s/he should receive from signatory States. <http://www.unhcr.org/pages/49da0e466.html>

37 For more information, see the section on Property Rights.

38 International Covenant on Civil and Political Rights (1966) adopted by UN General Assembly resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976. (<http://www2.ohchr.org/english/law/ccpr.htm>). States’ compliance with the Covenant is monitored by the UN Human Rights Committee (<http://www2.ohchr.org/english/bodies/hrc/index.htm>).

39 International Convention on the Elimination of All Forms of Discrimination Against Women (1979) adopted by UN General Assembly resolution 34/180 on 18 December 1979, entered into force on 3 September 1981 (<http://www.un.org/womenwatch/daw/cedaw/>). States’ compliance with CEDAW is monitored by the UN Committee on the Elimination of All Forms of Discrimination Against Women (<http://www.un.org/womenwatch/daw/cedaw/committee.htm>).

The **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**<sup>40</sup> prohibits discrimination on account of race, colour, or national or ethnic origin with respect to the right to housing (Article 5(e)(iii)).

The **International Convention on the Rights of the Child (CRC)**,<sup>41</sup> obliges States Parties to provide, in cases of need, material assistance and support programmes to families and children, particularly with regard to housing (Article 27(3)).

### UN Resolutions, Principles and Guidelines

Throughout the past two decades, resolutions recognising and reaffirming housing rights have been adopted by the General Assembly (1986, 1987) and other bodies.

The **UN Basic Principles and Guidelines on Development-based Evictions and Displacement**<sup>42</sup> reaffirm the importance of ensuring that feasible alternatives to eviction are explored with the affected community, and that the community is given adequate notice of the eviction. In addition, they lay down stringent criteria under which displacement can occur and enumerate all the steps that a State has to take in order to protect human rights prior to, during and after evictions.

### Other international instruments on housing rights

References to housing rights have been included in the Habitat Agenda, Agenda 21<sup>43</sup>, the Vancouver Declaration on Human Settlements<sup>44</sup> and other texts. The **Habitat Agenda** reaffirms the role of national governments in promoting

and protecting secure tenure.<sup>45</sup> In addition, the Habitat Agenda provides a strong statement of global support for the implementation of housing rights. It enjoins governments to recognise they all have a “responsibility in the shelter sector” and that they “should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing.”<sup>46</sup>

### Regional Instruments on Housing Rights

Several regional human rights instruments also guarantee to every individual the right to adequate housing. Under the Charter of the Organization of American States (OAS), article 34(k), “Member States agree to dedicate every effort to achieve [...] adequate housing for all sectors of the population”. The European Social Charter<sup>47</sup>, the European Convention on Human Rights and Fundamental Freedoms<sup>48</sup>, the European Convention on the Legal Status of Migrant Workers<sup>49</sup>, the Resolution on Shelter for the Homeless in the European Community, and the Helsinki Final Act<sup>50</sup> all contain express provisions and references to the right to adequate housing.

#### The Cartagena Declaration on Refugees<sup>51</sup>

The Cartagena Declaration emphasises the need to establish minimum standards of treatment for refugees, on the basis of the provisions of the 1951 Convention (which also include housing and property rights).

#### Housing rights in practice:

In 1995, the UN Special Rapporteur on Minorities clarified that the right to adequate housing does not imply:

“a) That the State is required to build housing for the entire population;

(b) That housing is to be provided free of charge by the State to all who request it;

40 International Convention on the Elimination of All Forms of Racial Discrimination (1965) adopted by UN General Assembly resolution 2106A(XX), entered into force on 4 January 1969 (<http://www2.ohchr.org/english/law/cerd.htm>). States' Compliance with the Convention is monitored by the UN Committee on the Elimination of All Forms of Racial Discrimination (<http://www2.ohchr.org/english/bodies/cerd/>).

41 International Convention on the Rights of the Child (1989) adopted by UN General Assembly resolution 44/25 on 20 November 1989, entered into force on 2 September 1990 (<http://www.unicef.org/crc/>). Compliance with this Convention is monitored by the UN Committee on the Rights of the Child (<http://www2.ohchr.org/english/bodies/crc/>).

42 [http://www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf)

43 <http://www.un.org/esa/dsd/agenda21/>

44 <http://habitat.igc.org/vancouver/van-decl.htm>

45 UN-Habitat, Habitat Agenda, 1996, Paragraph 40 (b). [http://www2.unhabitat.org/declarations/habitat\\_agenda.asp](http://www2.unhabitat.org/declarations/habitat_agenda.asp)

46 *ibid.*, Paragraph 61.

47 <http://www.coe.int/socialcharter>

48 <http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf>

49 <http://conventions.coe.int/Treaty/en/Treaties/Html/093.htm>

50 <http://www.osce.org/mc/58376>

51 *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984,.: <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>

(c) That the State must necessarily fulfil all aspects of this right immediately upon assuming duties to do so;

(d) That the State should exclusively entrust either itself or the unregulated market to ensuring this right to all; or

(e) That this right will manifest itself in precisely the same manner in all circumstances or locations.”<sup>52</sup>

It is important to note that the State has the primary duty to create conditions so that all residents may enjoy in full the entitlements implied in the right to housing and within the shortest possible timeframe. This is also known as progressive implementation.

## Land Rights

### International Instruments on Land Rights

Land rights are increasingly recognised as fundamental to social and economic well-being. Land is a cross-cutting issue, yet there is no explicit international legal right to land. States’ obligations toward individuals and communities with regard to land access have not been adequately identified.

The following review of the international legal framework on land rights shows that while land rights are not entirely defined they are invoked in a number of key areas (housing, food and water rights), implying their relevance in achieving the fulfilment of these rights. Land rights can be derived from many human rights: these include the rights to secure tenure, housing, land for agriculture, to food/work, to non-discrimination in inheritance systems and to self-determination. In addition, the specific right to access land for particular groups (for example indigenous people) has been established in the international legal framework. Finally, general principles in international law provide protection to access land (e.g. non-discrimination in ownership and inheritance).

### Indigenous rights and women’s rights

Rights to land have been established for two important groups of people within international human rights: indigenous people and women.

There is no universal definition of indigenous people. However they are generally understood to share the following characteristics: 1) historical

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52 Commission on Human Rights, 1995, *The Realization of Economic, Social and Cultural Rights. The Right to Adequate Housing*. UN Doc. E/CN.4/Sub.2/1995/12, paragraphs 4-5. <http://graduateinstitute.ch/faculty/clapham/hrdoc/docs/housingfinalSubComm.htm>

continuity, usually in a specific traditional geographic region; 2) non-dominant demographic and political status – they represent an ethnic minority; 3) the subject of efforts to preserve and revive their traditional social values and customary ties; and 4) self-recognition as indigenous and distinct from other societies, and recognition as such by others. Indigenous peoples tend to have strong connection with their land (traditional homeland) and usually hold it in customary right tenure.<sup>53</sup>

### The ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries<sup>54</sup>, is the only legally binding universal instrument related to the rights of indigenous peoples.<sup>55</sup> It lays down the right to non-

discrimination for all (Article 3); requires special measures to safeguard property (Article 4) and recognises the right of indigenous and tribal peoples to their own decisions regarding the land they occupy and use (Article 7). Article 13 states that: “1. [...] the governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the land or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship”. In addition, Article 13 specifies that land “shall include the concept of territories, which covers the total environment of the area which the people concerned occupy or otherwise use.”

The **UN Declaration on the Rights of Indigenous Peoples**,<sup>56</sup> (Article 25) states that “indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”

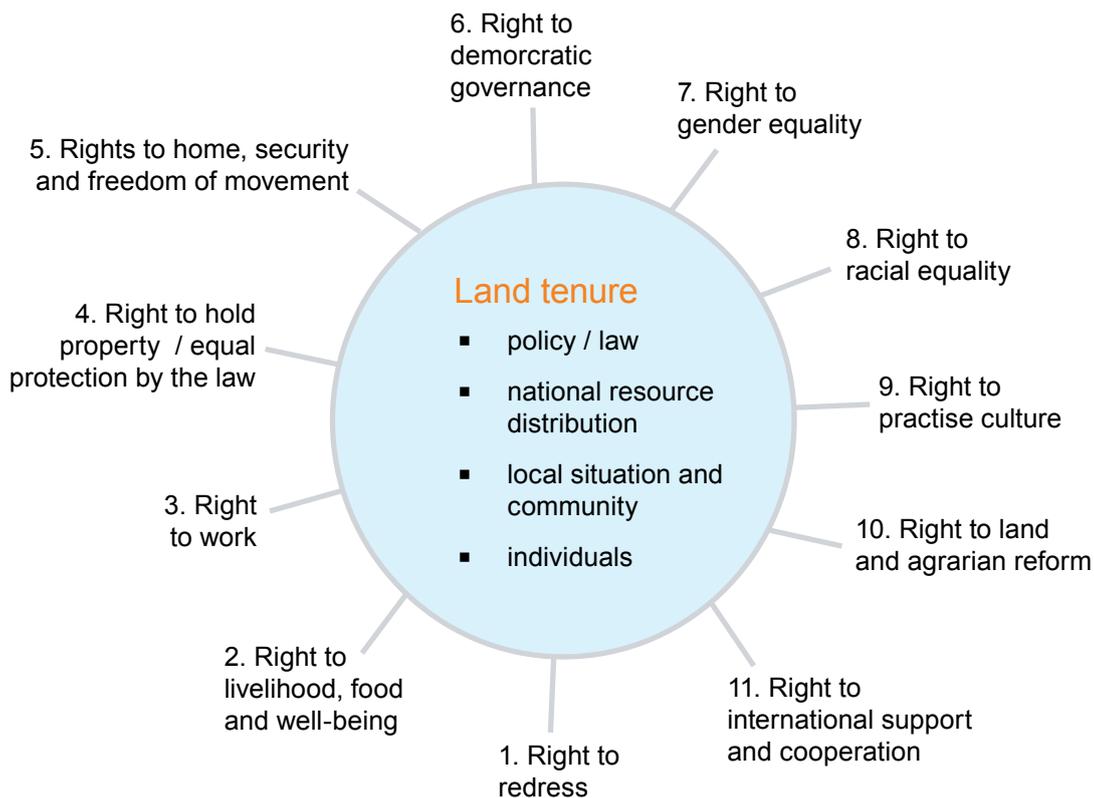
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53 For further information, see Williams, Rhodri, forthcoming, *IDMC Module on HLP and Special Groups: Women, Indigenous Peoples and Pastoralists*.

54 *Convention concerning Indigenous and Tribal Peoples in Independent Countries* adopted in 1989 by the International Labour Organization (ILO), entered into force September 5, 1991. <http://www1.umn.edu/humanrts/instreet/r1citp.htm>

55 There are important Protocols recognising rights of indigenous people at a regional level, such as the *International Conference on the Great Lakes Region Protocol on the Property Rights of Returning Persons*. See Section on Regional Instruments.

56 *UN Declaration on the Rights of Indigenous Peoples*, adopted by the UN General Assembly Resolution 61/295 on 13 September 2007. <http://www.un.org/esa/socdev/unpfii/en/drip.html>



**Table no. 1 Land tenure is a human rights issue** <sup>57</sup>

Article 26 states that:

“1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned”.

The Declaration makes States responsible for establishing and implementing a transparent process to recognise and adjudicate land, territories and resource rights of indigenous peoples. In addition, as also indicated in the ILO Convention (169), the UN Declaration requires free and informed consent with respect to decision-making about lands that are occupied by an indigenous community.

In general, land remedies for indigenous peoples are challenging because land issues are usually considered as an integral part of a community’s spiritual and cultural identity and because of the existence of customary tenure systems. In addition, communities rarely have the capacity and the means to argue their cases in court.

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** contains a number of provisions which *explicitly* protect women from discrimination with respect to matters relating to HLP. 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 establishes that “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations” (i.e. the right to enter into marriage and identical rights as men with regard to responsibilities during marriage and its dissolution). It particularly enjoins “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

<sup>57</sup> Van Banning, Theo R. G. , 2002, *The Human Right to Property*, p.207.

consideration.” (Article 16(h))

A third section of relevant CEDAW protections relates to the livelihood needs of rural women (Article 14). Some of the rights it lists are directly HLP-relevant (such as the guarantee of equal treatment in land reform programmes and the right of rural women to enjoy adequate living conditions, particularly in relation to housing). CEDAW also specifically covers HLP-related access to economic resources for women (such as guarantees related to access to extension services and agricultural credits) (Articles 13 and 15).

Article 11 of the **UN International Covenant on Economic, Social and Cultural Rights (ICESCR)** establishes that States should carry out agrarian reforms, which implies regulation of land rights, where such reforms can lead to efficient and sustainable use of natural resources.

In addition to the rights mentioned above, land rights can be derived from other human rights:

1. the right to redress for past violation of human rights (UDHR 8; ACHPR 20 and 21)
2. the right to livelihood and welfare with particular emphasis on vulnerable groups (UDHR 25, ICESCR 11.2, RC 4 and 6)
3. the right to work and to just and favourable conditions of work, including equal pay and human dignity (UDHR 23, ICESCR 6 and 7)
4. the right to hold property (UDHR 17.1, ACHPR 14 and 18)
5. protection against challenges in rights other than by legal procedures consistent with human rights (UDHR 17.2; ACHPR 3 and 14)<sup>58</sup>
6. rights to privacy, housing security and freedom of movement (UDHR 3, 12 ad 25 ICCPR 17, ACHPR 6 and 12, ICESCR 11)
7. the right to democratic governance (UDHR 2 and 21.1, ACHPR 3, 9, 10, 11 and 13, ICCPR 26)
8. the right to real racial equality in access, ownership and governance of land (UDHR 1, 3 and 7, ICERD 1 and 2, ACHPR 2, 4 and 5)
9. State obligations to provide international assistance and cooperation in support of welfare and livelihood and redress for past injustices (ICESCR 2.1 and 11, ACHPR 21 and 22, UDHR 8).

For more information on the protection of customary land rights and the protection of

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<sup>58</sup> For more information, see the next session on International Instruments on Property Rights.

indigenous land rights, see the section below on Regional Instruments on Customary HLP rights.

## Property Rights

### International Instruments on Property Rights

In comparison with land and housing rights, the right to own and possess property is controversial among the internationally protected human rights. The only universal formulation of the right to property is included in UDHR Article 17 which states:

1. “Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property”.

The UDHR establishes property rights as individual or collective and protects against arbitrary deprivation. It should be noted that when the ICCPR and the ICESCR were being drafted, governments could not agree on the protection of property rights. The rights contained in Article 17 of the Universal Declaration where thus not included in either Covenant.

**The 1951 Refugee Convention** (Article 13) states that “the Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property”.

The treatment “as favourable as possible and, in any event, not less favorable than that generally accorded to aliens” reflects adherence to the principles of non-discrimination. The inclusion of the phrase “in the same circumstances” also provides protection for refugees, since the limitations imposed on non-citizens may only be validly applied to refugees who are “in the same circumstances” as other aliens. The protection of Article 13 can be invoked by any refugee under a State’s authority, including those not yet formally recognised as refugees.

Article 13 overlaps with Article 21 which guarantees the right of refugees to housing.<sup>59</sup>

### Regional Instruments on Property Rights

**The Organization of American States (OAS)** has recognised some land and property rights.

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<sup>59</sup> For more information on the right to housing, see section on Housing Rights.

The **American Convention on Human Rights (ACHR)**<sup>60</sup> (Article 21, Right to Property) states:

1. “Everyone has the right to the use and enjoyment of his [or her] property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his [or her] property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.” [...]

The **African Charter on Human and Peoples’ Rights**<sup>61</sup> states (Article 14) that “the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.” Article 21 notes that “in case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.”

The **European Convention on Human Rights (ECHR)**<sup>62</sup> establishes (Article 1 of Protocol 1) the protection of property: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”.

### Controversies about Property Rights

The UDHR is only a UN Declaration adopted by the General Assembly. It is thus “soft law”, not directly enforceable in courts and tribunals. The principles and rights of the UDHR are, however, widely recognised and accepted. Therefore it could be argued that the UDHR has acquired the force of binding law (i.e. customary international

law). Unfortunately there is no unanimous consensus on this issue.

In addition, there is very little jurisprudence under international law on the right to property in comparison with the right to housing. It should be noted that given the importance of property rights in economies, interpretations of property rights are often ideological and linked to models of economic development, rather than as human rights.

### Regional instruments covering Customary HLP rights

The **Great Lakes Protocol**<sup>63</sup> recognises and protects statutory and customary HLP rights and establishes that these assets should be protected from destruction during conflicts. Signatory States are encouraged to establish property registration schemes under which title to property, held under both customary and statutory land tenure systems, will be recognised.<sup>64</sup> The Protocol requires States to give special attention to HLP claims made by women, children and communities with special attachment to land.<sup>65</sup>

The **Kampala Convention on IDPs**<sup>66</sup> establishes that member States should “protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests” (Art. 4.5) and restore this land to the communities upon their return, reintegration, and reinsertion (Art. 11.5). The Convention also requires member States to “establish appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons.” (Art. 11.4)

European countries also have customary property rights. The Council of Europe’s Resolution

60 The American Convention on Human Rights (also known as the Pact of San José) was adopted by the nations of the Americas meeting in San José, Costa Rica, in 1969 and came into force in July 1978. <http://www.oas.org/juridico/english/treaties/b-32.html>

61 The *African (Banjul) Charter on Human and Peoples’ Rights* was adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) and entered into force 21 October 1986. <http://www1.umn.edu/humanrts/instree/z1afchar.htm>

62 The European Convention for the Protection of Human Rights and Fundamental Freedoms. <http://212.33.133.101/~dadwatch/echr/echr.html>

63 International Conference on the Great Lakes Region, Protocol on the Property Rights of Returning Persons (Great Lakes Protocol), adopted 30 November 2006. [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/84E06BF26DBB560BC12572FB002C02D6/\\$file/Final%20protocol.PropertyRights%20-En%20r.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/84E06BF26DBB560BC12572FB002C02D6/$file/Final%20protocol.PropertyRights%20-En%20r.pdf)

64 *Great Lakes Protocol*, Article 4.

65 *ibid*, Articles 5, 6 and 7.

66 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) adopted on 23 October 2009 and ratified on 24 June 2010. <http://www.unhcr.org/refworld/docid/4ae572d82.html>

1708 (known as the **Poulsen's Principles**)<sup>67</sup>, recognises the Pinheiro principles on property restitution (see below) as guidance on how to address issues on redress for loss of property and calls on States to use them. Council members are also invited to “ensure that refugees and displaced persons who did not have formally recognised rights prior to their displacement, but whose enjoyment of their property was treated as de facto valid by the authorities, are accorded equal and effective access to legal remedies and redress for their dispossession (para. 10.3).” In a European context, this mainly refers to the situation of Roma who have often lived for decades in informal settlements and who, as a result, are at risk of eviction from their homes or unable to repossess or rebuild them in the absence of property title.

### **The Guiding Principles on Internal Displacement and the Pinheiro Principles**<sup>68</sup>

The Guiding Principles on Internal Displacement set out the rights and guarantees relevant to the protection of IDPs in all phases of displacement. The Guiding Principles are not a binding international convention on the rights of IDPs. However, they are based upon and reflects binding international human rights and, in situation of armed conflicts, international humanitarian law.<sup>69</sup> HLP rights are dealt with directly in four key provisions:

- Principles 9 on the prevention of displacement
- Principle 18 on adequate housing
- Principle 21 on protection during displacement
- Principle 29 on return, resettlement and reintegration.

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67 “Poulsen's principles”, Council of Europe, Resolution 1708 Solving property issues of refugees and internally displaced persons (2010), January 2010. <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1708.htm>

68 For more information on the Guiding Principles on Internal Displacement, cf. Modules on HLP during internal Displacement and HLP and Durable Solutions.

69 The Guiding Principles were presented to the UN Commission on Human Rights in 1998 by the then Representative of the UN Secretary General on Internally Displaced Persons. The UN Commission and the General Assembly have taken note of the Principles in several resolutions, welcomed their use as an important tool and standard, and encouraged UN agencies, regional organisations, and non-governmental organisations (NGOs) to disseminate and apply them. Recently, national governments have begun to incorporate them in national policies and laws.

The **Pinheiro Principles**<sup>70</sup> broadened the scope of restitution as defined in the Guiding Principles from “property and possession” to “housing, land and property”, a term meant to protect tenancy rights and encompass interests in land and housing not based on title and agreement.<sup>71</sup>

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70 The UN Principles on Housing and Property Restitution for Displaced Persons and Refugees (Pinheiro Principles) were adopted by the UN Sub-Commission on Protection and Promotion of Human Rights on 11 August 2005, resolution 2005/21. ([http://www.unhcr.org/ua/main.php?part\\_id=4&article\\_id=179](http://www.unhcr.org/ua/main.php?part_id=4&article_id=179)). The Principles are not a treaty or a formal law and thus are not legally binding. However, they have persuasive authority and are explicitly based on existing international, regional and national laws. Paulo Sérgio Pinheiro, the Special Rapporteur on Housing and Property Restitution for Refugees and Internally Displaced Persons, drafted the principles or guidelines on housing and property restitution.

71 For more information on the Pinheiro Principles, see the HLP and Durable Solutions module.

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2

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### THE HLP INTERNATIONAL LEGAL FRAMEWORK AND PRINCIPLES



26

SESSION TWO

### HLP INTERNATIONAL LEGAL FRAMEWORK

- Housing rights
- Land rights
- Property rights
- Women's HLP rights

→ National laws are the strongest instruments



29

What are some of the basic rights associated with HLP in your country?

How might a conflict affect those rights?



27

- **Universal Declaration on Human Rights (UDHR):** "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing..."
  - Adopted in 1948 by UN
- **International Covenant on Economic, Social and Cultural Rights (ICESCR):** "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing"
  - (check ratification status of the country)



30

HOUSING RIGHTS

# 1

### BACKGROUND ON HUMAN RIGHTS

- **Covenants, Conventions, Treaties and Protocol:** legally binding on the countries that have signed and ratified them (strongest instruments)
  - **General Comments** used to guide
- **Resolutions (UN)** not legally binding *per se* (except those of Security Council)
- **Declarations and Recommendations** not legally binding (NB: Universal Declaration of Human Rights is somewhat binding)



28

### ICESCR General Comment 4: adequate housing:

1. Legal security of tenure
2. Availability of services, materials, facilities and infrastructure
3. Affordability
4. Habitability
5. Accessibility
6. Location
7. Cultural adequacy



31

HOUSING RIGHTS

# 2

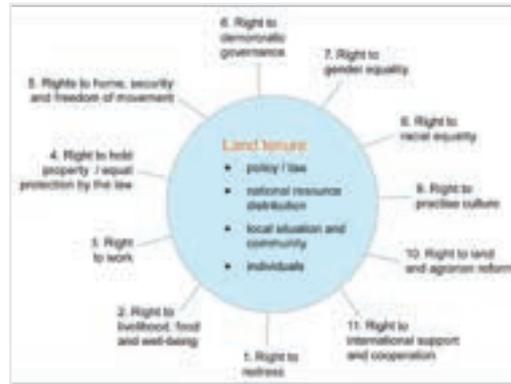
- **ICESCR General Comment 7: Forced eviction:** temporary or permanent removal against their will of persons from the homes or lands they occupy without the provision of / access to legal protection
- Violation of human rights
- International human rights law requirements for evictions
  - Substantive justification
  - Consultation on alternatives
  - Due process
  - Right to alternative accommodation
  - Non-discrimination.

HOUSING RIGHTS

3

IDMC NRC

32



36

- **1951 REFUGEE CONVENTION Article 21** states that the Contracting States have to guarantee to refugees lawfully staying in their territory with regard to housing treatment as favourable as possible (and in any event, not less favourable than that granted to aliens)

HOUSING RIGHTS

4

IDMC NRC

33

- **Indigenous people:** ILO Convention 169 (recognises the right of indigenous and tribal peoples to make their own decisions regarding the land they occupy and use)
  - (check ratification of the country)
- **Women:** Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (*explicitly* protects women from discrimination with respect to matters relating to HLP)
  - (check ratification of the country)

LAND RIGHTS

3

IDMC NRC

37

- **The right to adequate housing does not imply:**
  - That the State is required to build houses for the entire population free of charge
  - That housing rights will manifest themselves in the same way in all locations.
- however, the State has the duty to create conditions so that all residents can enjoy the right to adequate housing within the shortest possible timeframe

HOUSING RIGHTS

5

IDMC NRC

34

- **UDHR Article 17** establishes:
- “Everyone has the right to own property alone as well as in association with others.
- No one shall be arbitrarily deprived of his property”.

PROPERTY RIGHTS

1

IDMC NRC

38

- Land rights are not specifically defined in international law
- Land rights can be derived from many human rights

LAND RIGHTS

1

IDMC NRC

35

- **Controversies:**
  - UDHR is “soft law” but widely recognised and accepted
  - Very little jurisprudence under international law
  - Interpretations of property rights are linked to models of economic development rather than as human rights

PROPERTY RIGHTS

2

IDMC NRC

39

- 1951 Refugee Convention**
  - Article 13** states that Contracting States have to accord to refugees a treatment as favorable as possible (and in any event, not less favorable than that accorded to aliens) with regard to the acquisition of movable, immovable property and other rights pertaining to lease and other contracts related to the properties

PROPERTY RIGHTS

3

40

QUESTIONS?

44

2

- UDHR** contains a number of provisions which support women's claim to land, housing and property as human rights
- International Covenant on Civil and Political Rights (ICCPR)** Art. 17 protects women's rights to be free from discrimination with respect to HLP
  - (check ratification of the country)

WOMEN'S RIGHTS

1

41

LAW QUIZ

45

- ICCPR General comment 28 on the equality of rights between men and women:** the capacity of women to own property may not be restricted on the basis of marital status or other discriminatory grounds.
  - equal rights and obligations for both spouses with regard to the ownership or administration of property (including inheritance)

WOMEN'S RIGHTS

2

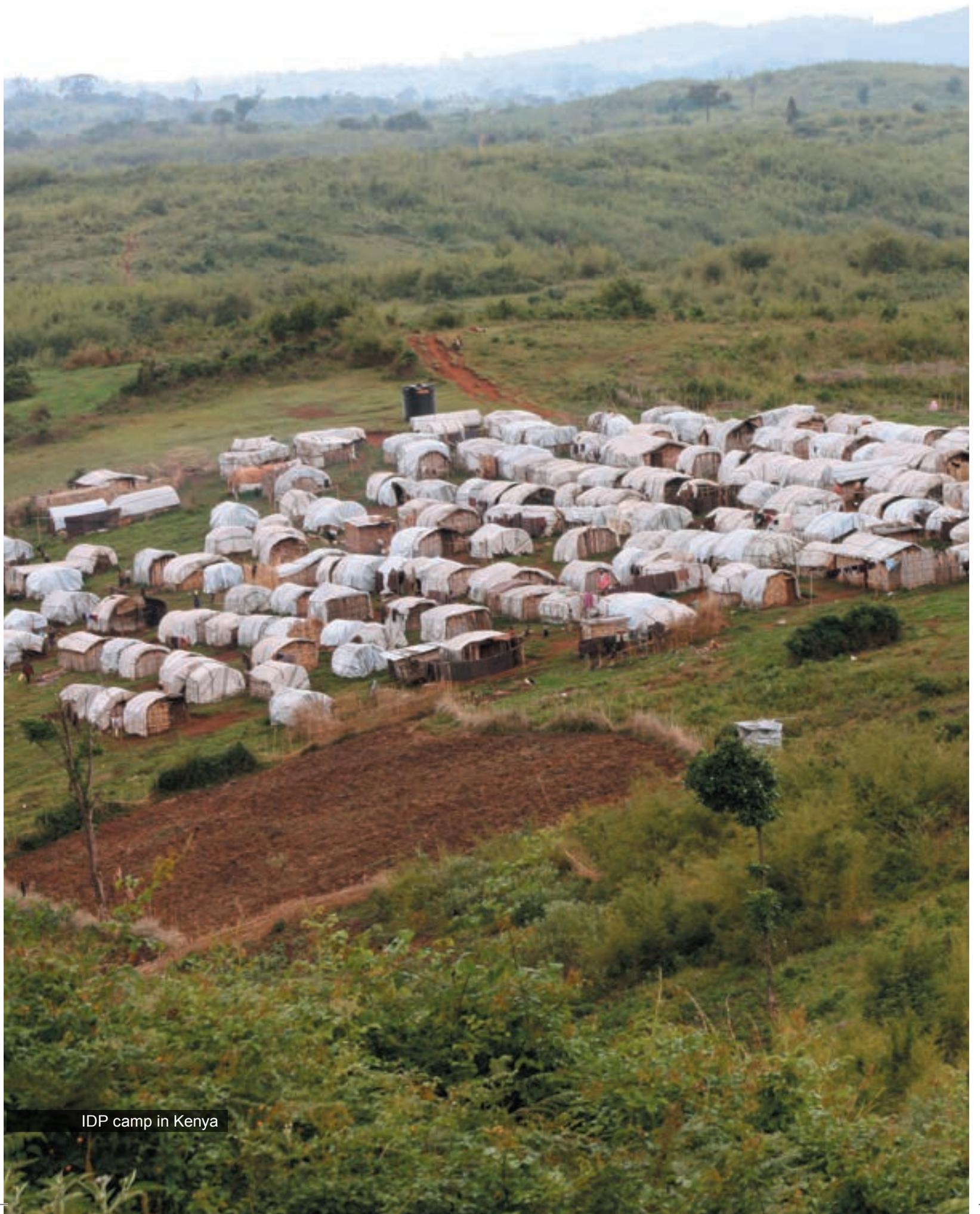
42

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):** explicitly protects women from discrimination with respect to matters relating to HLP
  - Same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment/disposition of property
  - (check ratification of the country)

WOMEN'S RIGHTS

3

43



IDP camp in Kenya

# 3 module

## Housing, Land and Property during Internal Displacement

### SESSION OBJECTIVES

At the end of the session participants will be able to:

- describe vulnerabilities encountered during displacement relating to HLP assets
- list the Guiding Principles on Internal Displacement and international standards that deal with HLP rights
- appreciate the need to programme with sensitivity to HLP issues in emergency response and early recovery phases.

### KEY MESSAGES

- Displacement negatively impacts IDPs' ability to assert and enjoy a wide range of fundamental rights including HLP rights. Beyond the loss of physical assets, IDPs lose civil, political, economic, social and cultural rights that derive from the enjoyment of their HLP assets (e.g. the rights to freedom of association, food and access to basic services).
- IDPs' rights in relation to HLP assets are set out in the Guiding Principles on Internal Displacement and Covenants such as the International Covenant on Economic, Social and Cultural Rights (ICESCR). Under these instruments, the State has a particular obligation to protect particularly vulnerable groups from the loss of their land and all IDPs have the right to adequate housing.
- Humanitarian actors can play an important role in assisting governments to protect IDPs' HLP assets and promoting their enjoyment of these rights.

### PREPARATION FOR THE SESSION

- Prepare the projector and laptop to show the presentation.
- Prepare the flip chart for the first activity.
- Prepare four cards for the second activity (Shelter and Education, Food Security and Livelihoods, Legal Aid and Camp Management).
- Photocopy for each participant:
  - Handout 5: HLP during displacement and durable solutions

| DAY ONE : HLP during internal displacement |  | Session 4  |
|--|--|--|
| Time                                       | Activity   | Comments   |
| 15:30                                      | Show slides: HLP during displacement numbered 1 – 4.<br>Use the slides to remind participants of the legal standards for protecting IDPs during displacement.  |  |
| 15.40                                      | Split into three small groups.<br>Ask each group to stand in front of one of the three flip charts with the headings: <ul style="list-style-type: none"> <li>▪ Challenges relating to displaced location</li> <li>▪ Challenges relating to location of origin</li> <li>▪ Challenges emanating from other actors (including the State).</li> </ul> Explain they should list challenges for five minutes and then rotate to the next flip chart on the ring of the bell.<br>Explain that they cannot delete anything from the previous group but can put a question mark if they disagree and then add any further challenges.<br>Repeat the process until each group has written on all of the three flip charts.<br>Give a few examples to start the groups off.<br>Run quick feedback in plenary.   | <i>Pre-prepare flip charts with the headings</i>   |
| 16.15                                      | Split into four small groups representative of: <ul style="list-style-type: none"> <li>▪ Shelter and Education</li> <li>▪ Food Security and Livelihood</li> <li>▪ Legal Aid</li> <li>▪ Camp Management</li> </ul> To split the groups ask for a volunteer for each topic, ask the volunteer to hold the card with the topic written on it<br>Once all the topics are assigned ask the four volunteers to come to the front of the room (or wherever there is space)<br>Explain that when you say go everyone else in the room should go and join a group (indicate the maximum for each group).<br>Ask groups to choose two or three main areas of concern for their topic.<br>Explain that we will look at challenges relating to location of origin the following day, so concerns should only relate to two categories.<br>Ask groups to address the following questions (on PowerPoint slide):<br>How might you address the challenge to ensure people achieve their HLP rights?<br>Where could you go for further support?<br>Allow 20 minutes.<br>Tell groups to write their answers LEGIBLY on flip charts. | <i>Use the cards to split the groups</i><br><br><i>Remember flip charts need to be clear and relate to the questions so groups can easily understand each others' work in the feedback</i> |

|                     |  |  |
|---------------------|--|--|
| <p><b>16:45</b></p> | <p>Ask the groups to post their flip charts around the room.</p> <p>Give each group either coloured stickers or a green and red flip chart pen and ask them to circulate round the flip charts to view other groups' work.</p> <p>They should use the coloured stickers (or flip chart pens) to remark on the other groups' work.</p> <p>i.e. if they agree they should put a green sticker/mark and if they require further clarification or disagree they should put a red sticker/mark.</p> <p>Allow ten minutes for the 'gallery walk' (see HLP Training Guidance for explanation).</p> <p>Once all groups have viewed each others' work ask them either to join you at a particular flip chart or ask them to sit down.</p> <p>Give feedback by going through the green and red marks on the flip charts.</p> <p>End the feedback by asking participants if there are additional activities we have overlooked or areas for collaboration between groups.</p> |  |
| <p><b>17.15</b></p> | <p>Distribute Handout 5: HLP during displacement and durable solutions.</p> <p>Quick evaluation to check how people are feeling and close.</p>   | <p><i>For ideas on wrap-up and evaluation go the Training Guidance</i></p> |
|                     | <p>Go to Module 4 for session details for Day 2.</p>   |  |



IDPs in Kenya

**N.B. This module focuses only on HLP during internal displacement.**

### Definition

According to the Guiding Principles on Internal Displacement, the term “internal displacement” describes situations in which individuals and groups have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.<sup>72</sup>

### Displacement as a strategy

While displacement is often a by-product of war and conflict, in some instances, displacement is a military strategy of armed groups in order to gain territorial control, augment their resources or modify the ethnic composition of certain areas. In such cases, evictions, confiscation or occupation of housing, land and property is used both as an initial tool of displacement and as a longer term means to prevent the return of those affected. In situations of conflict caused by ethnic cleansing and other practices that aim at altering the ethnic, racial or religious composition of the affected population, the expropriation, reallocation or destruction of property and houses seized from displaced persons is typically used in a manner to consolidate territorial claims and prevent returns.

### Displacement disrupts people’s lives and access to rights

Displacement has devastating effects on refugees and IDPs themselves, as well as on the local communities that host them. Conflict and resulting forced displacement negatively impacts their ability to assert and enjoy their HLP assets, pursue livelihoods and access social services. The access to housing and land during displacement is crucial to ensure basic living conditions of shelter and subsistence. The effectiveness of the protection of housing, property and land rights often proves crucial for the ability of IDPs and refugees to find a

<sup>72</sup> Guiding Principles, paragraph 2.

solution to their displacement, both for those who choose to return to their former homes and also those who choose to settle elsewhere.

### Protecting IDPs’ rights

During internal displacement, IDPs remain citizens and habitual residents of a particular country and are therefore entitled to enjoy the rights available to its citizens, irrespective of their displacement. Since the State is formally responsible for the protection of their rights there is no special international status akin to that enjoyed by refugees. However, the Guiding Principles on Internal Displacement gathers international human rights and humanitarian provisions defining the rights which are particularly relevant in contexts of internal displacement in order to guide national and international responses.

### Challenges encountered by IDPs during displacement with regard to HLP

During displacement, IDPs encounter several problems with respect to matters related to their HLP rights. These issues can be categorised in three groups depending on whether the HLP problems regard the location of displacement, the location of origin or are emanating from the State:

#### Group 1 – Challenges in the location of displacement

**1. Homelessness and landlessness:** The combination of conflict, forced displacement, looting, secondary occupation, non-existent rule of law and other factors often leads to various levels of homelessness and landlessness.

**2. Insecurity of tenure:** The temporary provision of shelter is often without any secure tenure in either rural or urban informal settlements.<sup>73</sup> Very often IDPs find shelter through host family arrangements in which friends, relatives, or other private individuals take them in, sometimes as

<sup>73</sup> Security of tenure is defined in CESCR Comment 7 as the “legal protection against forced eviction, harassments and other threats”. Committee on Economic, Social and Cultural Rights, General Comment No. 7 (1997) on the Right to Adequate Housing (Art. 11 (1) of the Covenant): Forced Evictions. <http://www.unhcr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50?Opendocument> For more information, see the HLP introductory module

| Challenges in the location of displacement   | Challenges in the location of origin  | Challenges emanating from other actors (including the State)  |
|--|---|---|
| <ol style="list-style-type: none"> <li>1. Homeless and Landless</li> <li>2. Insecurity of tenure</li> <li>3. Lack of adequate housing</li> <li>4. Lack of livelihood inputs</li> <li>5. Lack of identity</li> <li>6. Lack of access to financial capital</li> <li>7. Rapid urbanisation</li> <li>8. IDPs camp and collective centre</li> <li>9. Tension with host community</li> </ol> | <ol style="list-style-type: none"> <li>1. Land grabbing</li> <li>2. Official confiscation and re-allocation</li> <li>3. Secondary occupation and conflict</li> <li>4. Destruction and looting of HLP assets</li> <li>5. Lack of HLP documents</li> <li>6. Land contaminated with landmines and other explosive remnants of war</li> </ol> | <ol style="list-style-type: none"> <li>1. Lack of recognised customary HLP rights by the statutory system</li> <li>2. Existence of pre-displacement disputes and inequalities</li> <li>3. Weak State and traditional institutions' capacity</li> <li>4. Presence of non-state actors</li> <li>5. Legal pluralism and rule of law</li> </ol> |

tenants required to pay rent.<sup>74</sup> However such arrangements may not last if the displacement is protracted. State and other actors may encourage integration with a “host community” in order to minimise the disruption and isolation caused by displacement. In other cases, IDPs take up residence in vacated buildings such as hotels, schools and administrative buildings therefore becoming illegal occupants or “squatters”.<sup>75</sup> In all these cases IDPs are exposed to arbitrary evictions.

**3. Lack of adequate housing:** Housing provides safety and shelter from weather hazards as well as privacy and protection of possessions from intruders. Adequate housing also supposes secure tenure which protects from arbitrary eviction, and provides access to basic services such as water, electricity and sanitation. Without such conditions, IDPs’ lives and health are put at risk.

**4. Lack of livelihood inputs:** Homes and land left behind by IDPs during conflict are often their most valuable assets. Without these, the displaced population faces difficulty realising fundamental economic and social rights, particularly those related to an adequate standard of living. Access to appropriate land and property is crucial to the development or achievement of independent

livelihoods, the means by which to realise the right to food. This holds most obviously for agricultural land, grazing land, fisheries and forests, but also applies to urban areas where secure tenure can be crucial to maintaining small businesses and developing new social and economic networks.

**5. Lack of identity:** In many countries, in particular in rural areas, land is held collectively by communities. As land is an integral part of their subsistence and survival, it is central to the community’s identity. Land is often not considered as a commodity which an individual can dispose of: it belongs collectively to the group. The land where ancestors are buried forms part of the community’s history and a link to its future. In such circumstances, identity, access to power and, in turn, access to natural resources, (including land) interact closely. This is particularly true for groups whose culture, survival and livelihoods are inextricably related to the land such as pastoralists.

**6. Lack of access to financial capital:** Legal recognition of housing and land rights is typically a prerequisite for productive use of land and access to credit. IDPs not enjoying such rights prior to conflict, or those who did but are no longer able to prove it because of lost or destroyed documents, may become vulnerable. Increasing land values and prices present may further restrict their access.

**7. Rapid urbanisation:** Conflict often results in large-scale migration to cities for security, services or jobs, swelling the ranks of existing informal settlements. Their arrival may place new pressures

74 Brookings Institution—University of Bern: Project on Internal Displacement, 2008, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, p.131. [http://www.brookings.edu/papers/2008/1016\\_internal\\_displacement.aspx](http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx)

75 For a definition of “squatters” see the Introduction to Housing, Land and Property module.

on peri-urban land (which is often converted from agriculture to shelter or other urban uses) and on available resources and health and education services. In such situations it can be particularly difficult to identify and establish contact with IDPs, assess their humanitarian and protection needs, protect their rights and deliver adequate assistance.<sup>76</sup>

**8. IDPs camps and collective centres:** There are several land issues related to camps, beginning with the identification and selection of sites, then moving to operations and finally decommissioning.

**9. Tensions with “host communities”:** Conflicts inevitably impact social, economic, environmental and political relationships and these changes have consequences for all members of the community, including those who were not displaced. Influxes of IDPs often provoke resentment among “host communities” by placing new strains on already over-burdened social services, job markets and land assets. When assistance targets mainly IDPs, and ignores host communities, this contributes to increasing tensions that can lead to discrimination and economic exploitation of IDPs or even attacks and gender-based violence.

## Group 2 - Challenges in the location of origin

**1. Land grabbing:** HLP assets left behind by the displaced are often occupied and used by others. Land grabbing occurs when people use force to seize land or benefit from discriminatory laws to arbitrarily acquire abandoned property. Land grabbing by powerful economic or political interests is also a cause of displacement. For example, displacing people in order to grab their land and use it for profitable crops such as narcotics or palm oil has been a major cause of forced displacement in Colombia. Rewarding potential political supporters through distribution of land confiscated during conflict is a means to retain power. Land grabbing is also frequent in the immediate aftermath of conflict as institutions and security forces are often unwilling or unable to protect returnees’ housing, land and property.

**2. Official confiscation and reallocation:** The confiscation of displaced persons’ HLP assets is a recognised human rights violation. However, local actors may have vested interests in blocking return where abandoned property has been clientelistically allocated. Claims on such property can face stubborn, and even violent, resistance.

**3. Secondary occupation and HLP conflicts:**

Secondary occupants are those who take up residence in a home or on land after the legitimate owners or users have fled. These occupants may also be victims of the conflict (i.e. displaced or vulnerable populations).

As IDPs seek to reclaim their original homes and land, serious disputes can emerge, many of which can result in violence and greater insecurity. Problematic situations arise when the property rights of displaced persons are legally contested. This can include application of prescription and abandonment laws and fraud. Even where there is good faith on all sides respect for property claims and the complications involved in balancing the claims of the displaced against the rights of secondary occupants are challenging. Such situations are major impediments to sustainable return. The existence of land disputes not only prolongs displacement, but also may negatively affect the entire peace process. Therefore, the resolution of land, housing and property disputes is pivotal to sustainable return, recovery and livelihoods restoration.<sup>77</sup>

**4. Destruction and looting of HLP assets:** All conflicts result in massive property and assets losses, large-scale damage and destruction of housing, cultivated land and infrastructure.

**5. Lack of HLP documents:** IDPs may have fled their home without having had time to bring with them documentation proving their identity, HLP rights, qualifications and education. Moreover, central government records, property cadastres and archives may no longer exist, having been looted or destroyed. Invariably this complicates and delays resolution of land and property disputes, access to housing and loans and restoration of livelihoods. All are major, often fatal, obstacles to the achievement of durable solutions.

**6. Mine/ERW contaminated land:** Clearing land of landmines and other ERW can create or exacerbate existing land grievances, particularly in situations where demining agencies are unaware of local tensions. The release of previously contaminated land can lead to an increase in its value, spurring land grabbing by powerful elites. If insufficient information is provided to IDPs about the status of released land it may be claimed by others. Return programmes and camp closures may not be well coordinated with survey and clearance activities. For example, IDPs may be encouraged to return in situations where residential land has been rendered safe, but not agricultural land or access routes to it. This can lead both to extended dependence on food aid or

<sup>76</sup> For more information, see the HLP in urban context module.

<sup>77</sup> For more information, see the Addressing HLP disputes module.

encroachment on other peoples' uncontaminated land in order to meet food security needs.

## Group 3 – Challenges emanating from the State

**1. Lack of recognition of customary HLP rights by the statutory system:** Displaced persons may have held their HLP assets in customary tenure not recognised by public officials nor integrated with adjudicatory mechanisms. Female heads of household and unaccompanied children may have been denied HLP rights under customary land tenure regulations. Such persons, together with renters, sharecroppers and pastoralists, face difficulties returning and re-claiming property as they cannot provide official documents to support their claims. In these cases, mechanisms such as the use of witnesses, or community mapping (whereby members of the group jointly work) can assist in re-establishing "ownership" or user's rights over particular pieces of communal land.

Even in cases where informal rights are given recognition, one obstacle to HLP restitution is that the customary right to land is tied to the use of the land. Some might thus conclude that people displaced by war lose their right to use the land as a result of their absence. It is thus imperative to advocate that displacement was forced and that displaced persons' rights cannot be violated twice (first through forced displacement and then by removal of land rights).

**2. Existence of pre-displacement disputes and inequality:** IDPs may never have had land or may have suffered discrimination or exclusion prior to displacement which rendered them homeless, landless or land-poor. This may have resulted from existing social practices or legal frameworks that discriminate against certain ethnic groups, women and/or others. In other cases, displacement may reinforce longer-term patterns of migration from untenable places of origin due to endemic poverty, overpopulation or environmental degradation.<sup>78</sup>

**3. Weak State and traditional institutions' capacity:** Conflict undermines the capacity of statutory and customary authorities to administer land, address HLP disputes and provide restitution. During and after conflict, many countries do not have land administration frameworks that provide security to land users and clear, fair and equitable regulatory arrangements.

**4. Presence of non-state actors:** in recent years, there has been a growing phenomenon of non-state armed groups (such as ethno-religious local

militias, vigilantes, warlords and criminal gangs. The relationship between state and non-state actors in conflict or post-conflict settings is often ambivalent. Their presence often represents a challenge for post-conflict governance as they may both violate and protect the security needs of local populations.

**5. Legal pluralism and rule of law:** Countries emerging from conflict and crisis are vulnerable to weak or non-existent rule of law and inadequate law enforcement and judicial and enforcement capacity. Non-existent, malfunctioning or seriously over-burdened judicial or dispute resolution systems may leave IDPs liable to HLP abuse and without any recourse. In such circumstances, IDPs may have to resort to informal and customary adjudicatory bodies, if they exist, or be forced to try to find funds to bribe corrupt officials.

In addition, in many countries, particularly in Africa, it is common to find customary land arrangements can govern some of the territory concerned while statutory laws are in place elsewhere in the same country. This scenario of legal pluralism is particularly difficult to manage in post-conflict situations.<sup>79</sup>

## Guiding Principles and International Standards

The **Guiding Principles on Internal Displacement** set out the rights and guarantees relevant to the protection of IDPs in all phases of displacement. The Guiding Principles is not a binding international convention on the rights of IDPs, however it is based upon and reflects binding international human rights and, in situation of armed conflicts, international humanitarian law. They are intended to serve as standards to guide governments, international organisations and all actors in providing assistance and protection to IDPs.

HLP rights are dealt with directly in four key provisions:

- Principles 9 on the prevention of displacement
- Principle 18 on adequate housing
- Principle 21 on protection during displacement
- Principle 29 on return, resettlement and reintegration.<sup>80</sup>

Under **Guiding Principle no. 9** "States are under

<sup>79</sup> Legal pluralism is the co-existence of parallel sources of authorities considered as legitimate by those who use them and rendering justice on similar matters. For more information, see the Module: HLP an introductory module.

<sup>80</sup> See HLP and Durable Solutions module.

<sup>78</sup> UN-HABITAT, 2009, *Land and Conflict: A Handbook for Humanitarians: September Draft 2009*, p.19.

a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a *special dependency* on and *attachment* to their lands.” This principle reflects a number of treaties that protect the right of indigenous people with particular focus to the land rights of such people, therefore recognising informal tenure regimes.

#### Under Guiding Principle 18:

1. “All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: [...];  
(b) Basic shelter and housing; [...].”

This reflects the need to respect IDPs’ rights to adequate housing (which includes tenure security) through the provision of safe, habitable emergency and transitional shelter during displacement and assistance that meets their housing needs. The right to adequate housing entails the right of every person to gain and sustain a safe and secure home and community in which to live in peace and dignity. During displacement, the burden of implementing the right to an adequate standard of living falls to authorities with jurisdiction over IDPs themselves, rather than those with jurisdiction over the homes and lands they may left behind.<sup>81</sup> Even if authorities in the place of displacement are responsible for fulfilling the right to an adequate standard of living on a temporary basis, authorities in the place of IDPs’ origin may have been responsible for the violations that led to the original displacement (for example in case of forced eviction). Where this is the case, and where these authorities have failed to protect IDPs’ assets, the resulting loss of access and rights to homes and lands can constitute a major obstacle to the achievement of durable solutions.<sup>82</sup>

The **International Covenant on Economic, Social and Cultural Rights** (Article 11 (1) states that “States Parties recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential

81 Williams, Rhodri, forthcoming, *IDMC Module on HLP issues in durable solutions: basic concepts and principles*, p.7.

82 *ibid.* p.8.

importance of international co-operation based on free consent.”

The right to adequate housing is understood to include the right to legal security of tenure in one’s home regardless of whether one owns it or not. Where security of tenure does not exist, persons affected face the risk of forced evictions. Forced evictions are a violation of human rights laws. The expression forced eviction in facts seeks to convey a sense of arbitrariness and of illegality and as such, forced evictions can be seen as a form of arbitrary displacement.

The right to adequate food is also understood to include the right of affected people to the means necessary to provide themselves with food through equitable access to land and natural resources.<sup>83</sup>

According to the **ICESCR General comment 4** “adequate housing” is that which affords its occupants: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location and cultural adequacy.<sup>84</sup>

In addition, according to the **Inter-Agency Standing Committee’s Operational Guidelines on Human Rights and Natural Disasters**, the housing has to be in compliance with safety standards aiming at minimising damage from future disasters.<sup>85</sup>

In practice, this means that competent authorities in displacement settings should strive to meet relevant minimum standards regarding safety and habitability by continually seeking to provide better housing alternatives and by improving, upgrading or replacing the least adequate forms of shelter occupied by IDPs.<sup>86</sup>

83 Williams, Rhodri, forthcoming, *IDMC Module on HLP issues in durable solutions: basic concepts and principles*. p.7. For more information on forced eviction, see the HLP International Legal Framework and Principles module.

84 For more information, see the HLP International Legal Framework module.

85 Inter-Agency Standing Committee, 2008, *Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters*, p.27. <http://www.humanitarianinfo.org/iasc/downloadDoc.aspx?docID=3429&type=pdf>

86 Brookings Institution—University of Bern: Project on Internal Displacement, 2008. *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, pp.130-31. [http://www.brookings.edu/papers/2008/1016\\_internal\\_displacement.aspx](http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx)

### Guiding Principle no. 21:

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
  - Pillage;
  - Direct or indiscriminate attacks or other acts of violence;
  - Being used to shield military operations or objectives;
  - Being made the object of reprisal; and
  - Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.”

Guiding Principle no. 21 therefore sets out obligations related to rights in property, possessions, homes and land that should be respected and ensured to all individuals without discrimination. Paragraph 2 reflects the general principle of immunity of civilian population and property.

**Guiding Principle 14** grants to IDPs, once they have been displaced “the right to liberty of movement and freedom to choose his or her residence”. By implication, this right also includes freedom from involuntary movement or residence in a place not of one’s choosing. This implies States are responsible for facilitating the voluntary return of IDPs to their original place of residence and, additionally, should IDPs desire it, local integration or settlement in another part of the country.

### Guidance during displacement with regard to temporary HLP assets

#### Shelter

According to the IASC Framework on Durable Solutions for IDPs, IDPs have a right to basic shelter and adequate housing during displacement, regardless of the settlement option IDPs choose.<sup>87</sup> The six options of IDPs for

<sup>87</sup> IASC Framework on durable solutions for internally displaced persons, pp.31-2.

transitional settlements can be schematised as:<sup>88</sup>

#### Dispersed transitional settlements for displaced populations

##### Option 1: HOST FAMILIES



Local families shelter the displaced population within their household or on their property.

##### Option 2: URBAN SELF-SETTLEMENT



Urban unclaimed properties or land unaffected by the disaster are used informally by displaced populations.

##### Option 3: RURAL SELF-SETTLEMENT



Displaced populations create a settlement on collectively owned rural land.

#### Grouped transitional settlements for displaced populations

##### Option 4: COLLECTIVE CENTRES



Existing, large structures such as transit facilities can serve as collective shelters.

##### Option 5: SELF-SETTLED CAMPS



Independent of support from government or other organizations, camps are formed by the displaced population.

##### Option 6: PLANNED CAMPS



Government or aid organisations plan camps including infrastructure to house displaced populations.

<sup>88</sup> The six alternatives for settlement of displaced population have been categorised in Corsellis, T and Vitale, A., 2005, *Transitional settlement: displaced populations*, Oxfam GB, chapter 3. <http://sheltercentre.org/library/transitional-settlement-displaced-populations-tsdp>. The diagram and information on 18 assistance methods in relation to displaced population can be found in UN/OCHA, Shelter Centre, DFID, 2010, *Shelter after disaster: strategies for transitional settlement and reconstruction*, p.105 and p.113 ff. (<http://sheltercentre.org/library/shelter-after-disaster>). The six categories can also be found in World Bank, 2010, *Safer Homes, Stronger Communities: A Handbook for reconstructing after natural disasters* (<http://www.housingreconstruction.org/housing/>), p.13 and Sphere Project, 2011 forthcoming, *Humanitarian Charter and Minimum Standards in Disaster Response*, Oxfam GB.

All standards for “adequacy” are listed above. In emergency situations, the minimum requirements that need to be fulfilled in relation to the right to adequate shelter would be privacy, security of person, health and food.<sup>89</sup>

In the context of humanitarian responses to displacement, housing for IDPs and refugees often takes the form of shelter. A shelter is essential to survival and provides privacy, security and dignity. While urgent operational requirements tend to impose certain shelter solutions, the participation of the community in decisions-making is essential. Where safe and appropriate, displaced populations should be supported in their respective settlement options. Groups with specific needs such as unaccompanied children and single women, require additional attention to ensure their access to shelter.<sup>90</sup>

The right to housing is inextricably related to other human rights and involves access to such things as safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage, rubbish disposal and site drainage. The displaced population should have adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors. They should have access to emergency services.

While the need for shelter is similar in most emergencies, considerations such as the kind of housing needed, type of materials, size and design, will differ significantly in each situation, depending on climate and terrain. In addition, individual household shelter solutions can be short or long-term depending on whether it is emergency relief or recovery support. These criteria for adequacy together with considerations for the different emergency phases and the local contexts, should be used as guiding principles in implementing shelter projects aimed at providing equitable and sustainable solutions.

It is clear that during emergencies, where, for example, displaced populations are housed in emergency and transitional shelters, all the standards articulated in the definition of adequate housing often cannot be realised. Affordability and access to services such as child care and employment opportunities are issues of public policy and may not be within the control of humanitarian actors. In such circumstances, however, the adequate housing standards offer

guidance to those implementing the shelter project.

In general, public buildings such as schools or administrative buildings should be used only as short-term accommodation pending efforts to provide more suitable shelter. Public buildings should never be used as permanent humanitarian shelters, unless the government has agreed to such use and has granted some security of tenure.<sup>91</sup>

In some situations, the State may claim that it does not have the ability to protect the right to adequate shelter. Nonetheless, the State has to make the maximum effort to use all of the resources at its disposal and is under a continuous obligation to take all necessary steps to achieve adequacy of housing (by improving, upgrading, or replacing the least adequate types of shelter occupied by IDPs).

Wherever possible, competent authorities should support and facilitate “self-help” by IDPs who are willing and able to take steps to house themselves.

### Guidance during displacement with regard to former HLP assets

**Identify displaced HLP authorities:** Identify authorities that have played a role in the administration of HLP assets or adjudication of HLP disputes prior to displacement. Support their continuing role in discussions around durable solutions and abandoned HLP assets.

**Recognise and document rights of IDPs to abandoned property:** From the earliest instances of displacement, humanitarian actors should work together with local authorities to recognise the rights of IDPs to their abandoned homes, property and land, including the right to protection and restitution.

In addition, humanitarian actors should assist local governments to record basic information from each displaced household regarding abandoned assets, duration of ownership/use, available evidence to prove the claim and circumstances under which it was abandoned. Any other evidence that might be useful to prove ownership (such as community maps or witness statements) should be preserved. When neighbouring or nomadic groups have traditionally enjoyed rights of periodic use or access to the land and properties of such communities, those rights should also be recorded. Whenever possible, this information

89 Global Protection Cluster Working Group, 2008, *Handbook for the Protection of Internally Displaced Persons*, Part IV 10 Shelter. [http://oneresponse.info/GlobalClusters/Protection/Pages/Handbook for the Protection of IDPs.aspx](http://oneresponse.info/GlobalClusters/Protection/Pages/Handbook%20for%20the%20Protection%20of%20IDPs.aspx)

90 *ibid.*

91 Sphere, *Humanitarian Charter and Minimum Standards in Disaster Response*. pp.207-11. [http://www.sphereproject.org/component/option,com\\_docman/task,cat\\_view/gid,70/Itemid,203](http://www.sphereproject.org/component/option,com_docman/task,cat_view/gid,70/Itemid,203). For more information on shelter, see <http://www.sheltercentre.org/>

should be entered into a database. Principles of informed consent, privacy and confidentiality must be maintained.

Competent authorities should be called upon to prevent any tampering with land records or cadastres.

**Protection of HLP assets during displacement:**

Humanitarian actors should assist local government to take basic steps to protect properties abandoned by IDPs from destruction, unlawful use and occupation, legal and/or physical appropriation, looting and trespassing. Police and military personnel should assist in maintaining civil order in the affected area and prevent destruction and appropriation.

**Request to temporarily suspend legal**

**transfer of property titles:** Where appropriate, humanitarian actors should advocate for the temporary suspension of legal transfer of property titles in the affected areas.

**Identify vulnerable groups:** It is important to seek information on categories of people denied equal rights or access to HLP assets due to the displacement, as well as groups that were homeless, landless or had precarious access or insecure or disputed tenure in HLP assets prior to displacement.

**Disseminate HLP information and durable**

**solutions to IDPs:** Provide displaced persons with updated information regarding the condition of their HLP assets, the security situation and their rights under domestic and international law. Displaced communities should always be encouraged to discuss possibilities for durable solutions and what is needed to achieve them.<sup>92</sup>

**Resolve HLP disputes:** In case of HLP disputes between individuals and/or communities, facilitate mediation efforts and provide support to support informal dispute resolution bodies that take into account human rights laws in order to avert eventual conflicting claims.<sup>93</sup>

**Support spontaneous return:** Where spontaneous return takes place, humanitarian actors should provide support by, as appropriate, seeking humanitarian access to returning communities, providing assistance and advocating restoration of HLP rights.

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92 Brookings Institution—University of Bern: Project on Internal Displacement, 2008, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, p.147. [http://www.brookings.edu/papers/2008/1016\\_internal\\_displacement.aspx](http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx)

93 For more information, see the Addressing HLP disputes module.

**Coordinate with mine action organisations:**

Where return is planned to areas which are/may be contaminated by mines/ERW, contact the national mine action authorities and/or locally operational demining agencies to learn scheduling of survey and clearance activities and prospects of ensuring there is sufficient safe residential and agricultural land for returnees. Facilitate communication between mine action organisations and IDPs about the release of their land to ensure they are able to return and reassert their rights.

## Management of Camps and Collective Centres

During displacement, camp management projects may come across HLP issues in connection with the site selection, water, pastoral and agricultural access for informal and formal camp settlements and collective centres. Very often it can be difficult to determine who has the right to the land.

In addition, some camps are not planned, but self-settled, which creates an additional challenge/ conflict of interest regarding land ownership and protection during displacement.

Usually the State has primary responsibility when it comes to identifying sites of camps and collective centres. Therefore the role and responsibility of local and central authorities is of fundamental importance in ensuring displaced populations enjoy exclusive rights to use selected sites. The NRC Camp Management Toolkit recommends in all cases to seek the engagement of both the displaced and host communities in site selection.<sup>94</sup>

Often, sites are provided on public land by the government. However, if the land is privately owned, the State should also take responsibility for negotiating compensation for the owners. Any use of private land must be based on formal legal arrangements made by the State and in accordance with national laws. Most refugee and IDPs operations last longer than initially planned. Therefore it is important to secure the land for a long period of time, in order to avoid future relocation of the camp.

After the site has been identified and agreed upon, a Memorandum of Understanding (MoU) that outline the rights/responsibilities of all stakeholders (typically including the government, cluster/sector lead, humanitarian actors, host and camp population) should be signed. In case of a collective centre, the MoU should also include information regarding ways in which the structure

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94 Norwegian Refugee Council. 2008, *Camp Management Toolkit*, pp.187-93. <http://www.nrc.no/?aid=9380323>



IDP camp in Kenya

may be modified and how authorisation to do so can be obtained.<sup>95</sup>

Often national and local officials may have pecuniary or political considerations when recommending or not recommending certain sites. Therefore, once a possible site is identified, it is important to clarify land-ownership and land rights. In some countries these rights may not be documented, for the land may be held under customary rights. In these instances it is important to involve local communities and leaders throughout the selection process. Traditional land-use rights are highly sensitive. The validity of a formal agreement with national authorities to use a site may be contested by both displaced and host community leaders. The involvement of local leaders will allow the identification of other important rights of the displaced populations such as rights to:

1. collect wood and timber for shelter, cooking or animal fodder
2. graze animals
3. engage in agriculture and other subsistence activities.

The camp's location should be identified with respect to:

- Security: the location should enhance the

<sup>95</sup> UNHCR and International Organisation for Migration, 2010, *Collective Centre Guidelines*, p.68. [http://oneresponse.info/GlobalClusters/Camp\\_Coordination\\_Management/publicdocuments/Collective\\_Centre\\_Guidelines\\_2010\\_small.pdf](http://oneresponse.info/GlobalClusters/Camp_Coordination_Management/publicdocuments/Collective_Centre_Guidelines_2010_small.pdf)

protection of the displaced population, (e.g. the camp should not be located in an area with high hazard risks).

- Access: the camp should be accessible during the whole year in order to ensure the provision of supplies, as well as freedom of movement of the displaced population, access to public services such as schools, health care centres, and markets.
- Availability of resources such water, fuel and construction materials
- The size of the camp<sup>96</sup>, environmental considerations and topography.<sup>97</sup>

The camp should be located in a way to ensure the most efficient use of land. Ideally the needs of the displaced population should determine the size and layout of the site. In practice, a pragmatic compromise is usually required.

It is important that camps be surrounded by some vacant land, in order to allow scope for expansion as a result of natural population increase or an influx of new arrivals.<sup>98</sup>

<sup>96</sup> NRC *Camp Management Toolkit*, p.195.

<sup>97</sup> Ibid., p.194.

<sup>98</sup> Ibid., pp.187-93 and UNHCR *Handbook for Emergencies*, pp.207-11.

## References

Brookings Institution—University of Bern: Project on Internal Displacement. Protecting Internally Displaced Persons: A Manual for Law and Policymakers. [http://www.brookings.edu/papers/2008/1016\\_internal\\_displacement.aspx](http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx)

Global Protection Cluster Working Group. Handbook for the Protection of Internally Displaced Persons. <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=4790cbc02>

NRC Camp Management Toolkit, <http://www.nrc.no/camp>

The Sphere Project. Humanitarian Charter and Minimum Standards in Disaster Response. [http://www.sphereproject.org/component/option,com\\_docman/task,doc\\_view/gid,12/Itemid,203/lang,english/](http://www.sphereproject.org/component/option,com_docman/task,doc_view/gid,12/Itemid,203/lang,english/)

UNHCR, UNHCR Handbook for emergencies. <http://www.unhcr.org/refworld/pdfid/46a9e29a2.pdf>

UNHCR IOM Collective Centre Guidelines. [http://onerresponse.info/GlobalClusters/Camp\\_Coordination\\_Management/publicdocuments/Collective\\_Centre\\_Guidelines\\_2010\\_small.pdf](http://onerresponse.info/GlobalClusters/Camp_Coordination_Management/publicdocuments/Collective_Centre_Guidelines_2010_small.pdf)

UN-HABITAT, Land and Conflict: A Handbook for Humanitarians, September Draft 2009. [http://onerresponse.info/.../LAND\\_AND\\_CONFLICT - A Handbook for Humanitarians.docx](http://onerresponse.info/.../LAND_AND_CONFLICT_-_A_Handbook_for_Humanitarians.docx)

Working Groups of the Protection and the Early Recovery Clusters. Checklist on Housing, Land and Property rights and broader land issues throughout the displacement timeline from Emergency to Recovery. [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/430298C3C285133DC12576E7005D360D/\\$file/HC Checklist on HLP and Land Issues\\_Final2.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/430298C3C285133DC12576E7005D360D/$file/HC_Checklist_on_HLP_and_Land_Issues_Final2.pdf)

For more information on shelter, see <http://www.sheltercentre.org>

### Legal Framework

Guiding Principles on Internal Displacement. <http://www.idpguidingprinciples.org/>

IASC Framework on Durable Solutions for Internally Displaced. [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.21.Add.4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.21.Add.4_en.pdf)

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International Covenant on Economic, Social and Cultural Rights (ICESCR) General comment no. 4 The Right to Adequate Housing .[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument)



SESSION  
FOUR

### HLP DURING INTERNAL DISPLACEMENT

IDMC

SWEDISH  
REFUGEE COUNCIL NRC

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### HLP DURING INTERNAL DISPLACEMENT (3)

- **Guiding Principle 18:**
  - All internally displaced persons have the right to an adequate standard of living.
  - At the minimum, competent authorities shall provide IDPs with and ensure safe access to basic shelter and housing
- **International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 11 (1)**
  - Adequate housing

IDMC

SWEDISH  
REFUGEE COUNCIL NRC

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### HLP DURING INTERNAL DISPLACEMENT (1)

- **Guiding Principles on Internal Displacement:** not legally binding, but based on binding international law.
- HLP rights are dealt with directly in four key provisions:
  - Principle 9 on the prevention of displacement
  - Principle 18 on adequate housing
  - Principle 21 on protection during displacement
  - Principle 29 on return, resettlement and local integration

IDMC

SWEDISH  
REFUGEE COUNCIL NRC

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### HLP DURING INTERNAL DISPLACEMENT (4)

- **Guiding Principle no. 21**
  - No one shall be arbitrarily deprived of property/possessions.
  - The property/possessions of IDPs shall in all circumstances be protected; in particular, against pillage, attacks or violence, being used to shield military operations or object of reprisal, and being destroyed as a form of collective punishment.
  - Property and possessions left behind by IDPs should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

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REFUGEE COUNCIL NRC

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### HLP DURING INTERNAL DISPLACEMENT (2)

- **Guiding Principle no. 9** "States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands."

IDMC

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REFUGEE COUNCIL NRC

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- Challenges relating to the location of internal displacement
- Challenges relating to the location of origin
- Challenges emanating from other actors (including the State)

IDMC

GROUP  
EXERCISE

51

Groups:

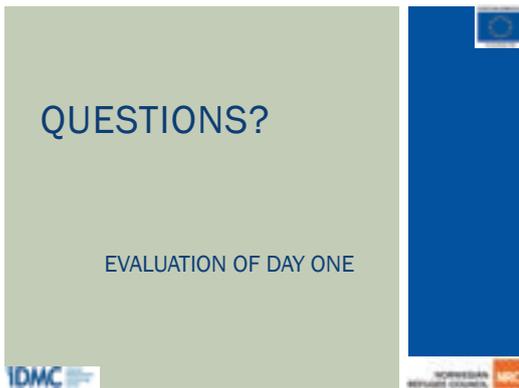
- Shelter and Education
- Food Security
- Legal Aid
- Camp Management

Questions:

- 1 Choose two areas of concern for your group and explain how you might address them to ensure people achieve their HLP rights?
- 2 Where could you go for further support?



52



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3



Squatters in Robertsport, Liberia

# 4 module

## Women's Housing, Land and Property Rights

### SESSION OBJECTIVES

At the end of the session participants will be able to:

- outline key issues related to women and HLP rights
- list the key sources of international law relating to women's HLP rights
- describe how to include best practices in programmes to ensure women's HLP rights are considered.

### KEY MESSAGES

- Women's lack of rights in relation to access and control over land, housing and property constitutes a violation of human rights.
- Humanitarian actors can play an important role in working for increased equitable enjoyment of HLP rights by women.
- Programmes should include support to women's livelihoods to ensure women achieve their rights.
- Providing for gender-inclusiveness in HLP rights can benefit families, communities and nations. Grassroots women's organisations can help change attitudes and behaviours regarding women's HLP rights.

### PREPARATION FOR THE SESSION

- Prepare the projector and laptop to show the presentation
- Photocopy for each participant:
  - Handout 6: Guidance for considering women's rights in HLP

| DAY TWO : Women's Housing, Land and Property right |  | Session 5  |
|--|--|--|
| Time   | Activity   | Comments   |
| 08:30  | <p>Briefly give a potted version of the evaluation feedback from day one.</p> <p>Recap on all the four sessions from the previous day by asking participants to list the key activities and learning points.</p> <p>Learning review of previous day.</p>   | <i>To review the learning run a snowball fight (see the Training Guidance)</i>   |
| 09:00  | <p>Explain that women often face specific challenges in relation to their rights and HLP.</p> <p>Show slide: Women's access to land and housing.</p>   |  |
| 09:15  | <p>Distribute Handout 6: Guidance for considering women's rights in HLP to all the participants.</p> <p>Remind groups of the themes of the previous day's session and ask them to reform into the same groups.</p> <p>Show slide: Group task them to answer the questions in pairs in relation to their country.</p> | <p><i>To save time either answer in plenary or assign two questions per group</i></p> <p><i>Priority questions to focus on are 1, 2, 3, 8 and 10</i></p> |
| 09:45  | <p>Once pairs have finished, ask them to focus on one question and suggest a practical way to assist women or promote women's right in this situation.</p> <p>Feedback in plenary.</p>   |  |
| 10:30  | Break  |  |
|  | Go to Module 5 for session details   |  |



Palmyra, Syria

Generally, women have less access to housing, land and property than male. These gender-specific differences require special measures to enhance gender equality in HLP through ensuring better access for women. The focus of this module will be on women and HLP.

Equitable property rights of women and men are fundamental to achieving social and economic gender equality.<sup>99</sup> In particular, women's access to and control over land, housing and property is a determining factor in women's overall living conditions, particularly in developing countries. Studies have shown that when women have an increase in one area of their rights then well-being in other areas of their lives will increase significantly.

In several countries, women face discrimination in statutory and customary systems of land tenure. Women encounter significant barriers due to cultural and social customs or a lack of adequate provisions to hold land rights independently of their husbands or male relatives.

In some customary societies women's direct access to land through purchase or inheritance is often limited or impossible. Women are unable to access the same rights as men but are treated as if they themselves were the "property" of father, husband and male relatives and thus not themselves holders of rights. Such explicit discrimination is now generally banned in some countries, however, in practice women are still often denied rights to adequate housing and to own and inherit property and particularly vulnerable to forced evictions.

**Statutory law** often provides for women's independent rights to ownership. However enforcement mechanisms are often tokenistic or non-existent and women are not encouraged, supported and empowered to access their rights. Without documentation attesting to land rights, women cannot access credit, and therefore are less likely to invest in their property. In countries where agriculture plays a predominant role, ownership of land is directly associated with

power and usually ensures economic security. When women are denied equal property rights, they experience reduced social, economic and political status. Women's lack of rights to access and/or control land, housing and property can also render them vulnerable to violence. Without security of tenure it is difficult for women to leave abusive and violent households. By contrast, access to land facilitates women's bargaining power within their household, as well as their participation in community decision-making.

A significant number of women in rural areas who disinherited or become widowed, migrate to slums. Female-headed households typically represent high proportions of the poorest living in informal settlements worldwide: for example, 26 per cent in Brazil and 20 per cent in Bosnia and Herzegovina.<sup>100</sup> In cities, women face discrimination from slum landlords, who consider them to be unreliable tenants. Women who struggle to pay rent, become vulnerable to sexual exploitation and intimidation by landlords. In some instances, the lack of access to adequate housing forces women victims of domestic violence to stay with abusers.

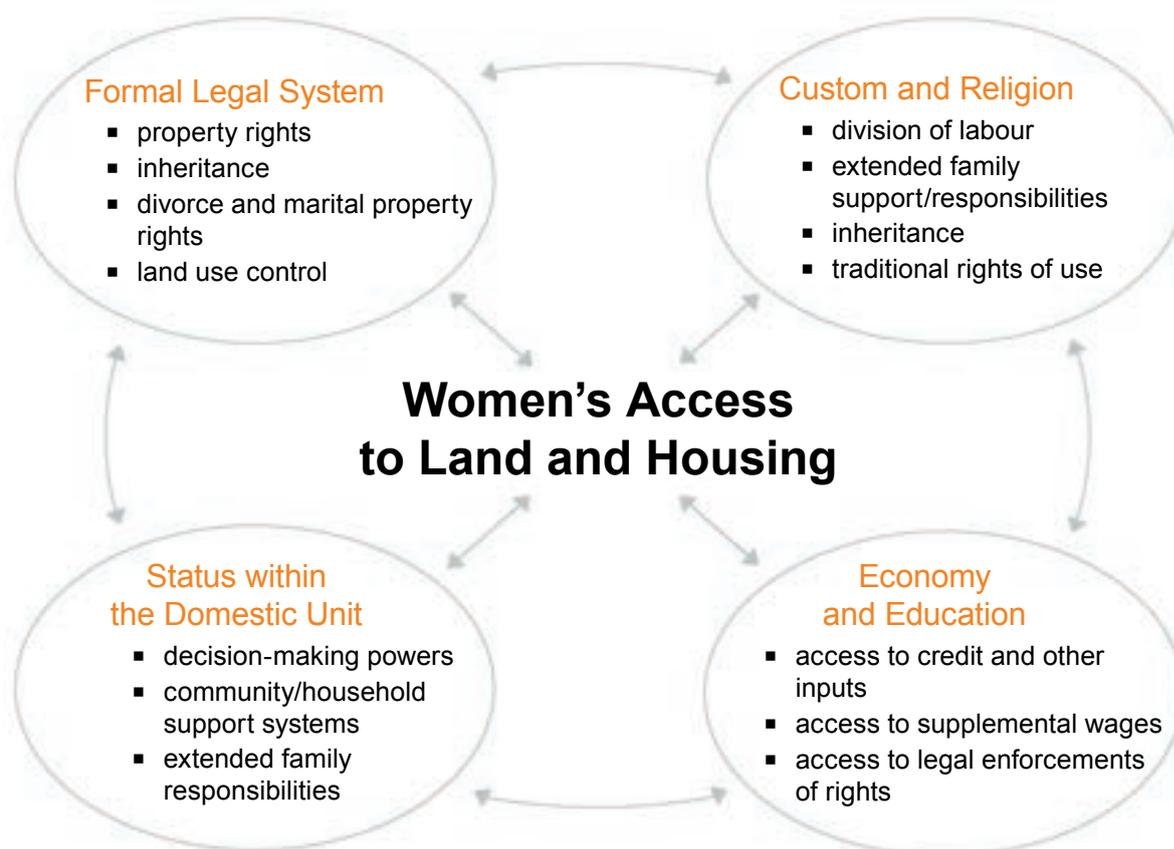
The loss of housing or shelter in camps or collective centers has tremendous negative impacts on women's physical security and health. In some instances, women have to resort to prostitution in order to support their family.

Low literacy levels of women in some countries further impede their ability to claim their HLP rights.

Access to safe and adequate housing is a key factor in a woman's ability to escape an abusive relationship and remain safe and independent. Surveys carried out amongst homeless women have indicated that a large number of them initially stayed on in an abusive relationship

<sup>99</sup> The term "equity" is usually linked to an idea of fairness and justice, especially when used in relation to distribution of resources, while the term "equal" usually means identical. Often an equal distribution of resources between men and women may not be seen as equitable and fair.

<sup>100</sup> UN-HABITAT, 2007, *Policy Makers' Guide to Women's Land, Property and Housing Rights Across the World*, p. 8. <http://www.unhabitat.org/pmss/getPage.asp?page=bookView&book=2355>



**Figure no. 2 Institutions that affect women's access to land rights<sup>102</sup>**

because they had nowhere else to live.<sup>101</sup>

If women's enjoyment of their HLP rights is obstructed during times of peace, their enjoyment of these rights during conflict is virtually zero. In general, conflict and displacement disproportionately affect women's land rights because: 1) conflict draws men away from their families and requires women (not yet displaced) to perform all the functions of a household head; 2) women often have to flee their homes and lands and in most cases are responsible for caring for infants and /or other dependents and important decisions for the sustainability of the family; and 3) women who return to their homes after conflict either face the same lack of access as they did pre-conflict or, if widowed or with a missing

101 Research in Kerala, India indicates a strong co-relationship between women's ownership of land and housing and vulnerability to domestic violence. 49 per cent of the women who owned neither land nor a house had suffered long-term physical violence, compared with 18 per cent and 10 per cent respectively of land or house owners. . Panda, P.K., 2003, *Rights-based strategies in the Prevention of Domestic Violence*, Centre for Development Studies, Working Paper 344, pp.612. [http://econpapers.repec.org/scripts/redir.pf?u=http%3A%2F%2Fwww.cds.edu%2Fdownload\\_files%2F344.pdf;h=repec:ind:cdswpp:344](http://econpapers.repec.org/scripts/redir.pf?u=http%3A%2F%2Fwww.cds.edu%2Fdownload_files%2F344.pdf;h=repec:ind:cdswpp:344)

102 Food and Agriculture Organization, 2002, *Gender and access to land*. p.10.

husband, are confronted by male relatives who rely on custom or power to deny women's claims to stand in their spouse's stead.<sup>103</sup>

### Marital property and inheritance rights

**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).

Currently, most States mandate joint ownership for marriage, and this is sometimes referred to as community property. However, while national laws may give women equal rights to marital property as wives, customary practices often override them, recognising only husbands as owners of property acquired by couples. Cultural prohibitions against women's ownership or use of land are often more powerful than written law. It is thus commonplace

103 UN-HABITAT, 1999, *Women's Rights to Land, Housing and Property in Post- conflict Situations and During Reconstruction: A Global Overview*, pp.2-3.

to find widows evicted from marital property. In these situations women often have no alternative but to rely on some relationship to a male.

**Inheritance of property**<sup>104</sup> on the death of relatives is a universal concept, included in most international and national legislation. Although broadly accepted, succession is not merely an issue of who should inherit and how much, but it is influenced by social and economic relations, religious and cultural structures. Inheritance reflects the nature of a society and, in the case of inheritance by women, the level of respect for women's social roles and rights. In most cultures customs and social practices governing property have their roots in patriarchy, in which land, houses and other family property are passed down from father to son. A female child is often not allowed to inherit property on equal terms with her brother as it is argued she will not require it as it is inevitable she will eventually marry and relocated to land owned by a future husband. Resistance to acknowledging women's rights is often justified by fears that giving women equal property rights will lead to disintegration of family and clan holdings or allow their alienation by people outside the community. Disagreements over the allocation of rights to land after the death of its recognised owner may be exacerbated in settings where polygamy is common or rules regarding inheritance derive from overlapping customary, religious and/or statutory laws. Where the customary system disadvantages women, they may have little recourse before the statutory system if their marriage is customary and, as it is often the case, not recognised by the statutory system. In addition, the statutory system in legally pluralistic countries often defers to customary systems when it relates to family matters. This is almost invariably prejudicial to women who end up deprived of any protection offered by statutory law.

Polygamous systems, where men are allowed to take multiple wives, disadvantage even more women because all co-wives are not regarded as legal individuals. When it comes to inheritance, the share to which a sole wife is entitled has to be divided equally among all of them.

### Why mainstreaming gender in HLP rights is important

It is generally accepted that secure tenure encourages investment in the resource, which

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104 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. This module focuses on inheritance.

leads to higher productivity and efficiency in its use. Security of tenure affects the time horizon for resource use, and the incentives for conservation, as well as for investment in improving the resource. Without rights to manage the resource, dispose of it through sale or inheritance, or protect it from abusive use, it is difficult for users to sustain the resource condition. Providing **gender-inclusiveness in HLP rights** is critical in fighting poverty. Equal HLP rights for women can benefit families, communities and nations with regard to:

- improved land management
- increased investment in land and food production
- improved family security during economic and social transitions
- increased economic opportunities
- better housing.

Research proves a strong correlation between improving women's land rights and the alleviation of poverty. The adage that "when women benefit, the whole community benefits" is certainly true when it comes to HLP rights. When women control land assets, there is a rise in family welfare in general due to women's traditional patterns of work distribution within the households. According to traditional patterns of work distribution within households, women have the obligation to cover the basic needs of their families. Women play a key role in coping strategies of poor households, in ensuring food security, shelter and in reducing risk. Women tend to spend a higher share of their cash incomes on providing food and education to the family than men. Female-headed households, can benefit enormously from the security, status and income-earning opportunities which secure rights to, for example a small plot of land or a shop. Secure land rights for female farmers and businesswomen can improve investment, increase land use and productivity, and ensure access to sources of credit with women frequently regarded as at lower risk of credit default than men. In addition women with some economic independence are more likely to participate in community/leadership positions.<sup>105</sup>

### The International Legal Framework

This review reveals that there is a comprehensive set of norms that provide an international framework for efforts to promote women's rights and gender equity and equality as well as giving them their legitimacy. Under the international human rights system, women have the right to

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105 UN-HABITAT. Gendering Land Tools: Achieving secure tenure for women and men. Pp.5-6.

be free from discrimination; have the right to an adequate standard of living; have the right to adequate housing; have the right to enjoy financial independence and to earn a livelihood and therefore have the right to own, manage, enjoy and dispose of property.

## Declarations and Resolutions

**The Universal Declaration on Human Rights (UDHR)**<sup>106</sup>, the international lynchpin of all human rights instruments, contains a number of provisions which support women's claim to land, housing and property as human rights. It stipulates that everyone is entitled to the rights and freedoms laid down in the Declaration, without discrimination on the ground of sex (Article 2); entitles women and men to equal rights before and during marriage and at its dissolution (Article 16); recognises every person's right to own property alone as well as in association with others; stipulates that "no one shall be arbitrarily deprived of his property" (Article 17); and confirms the right to an adequate standard of living, including housing (Article 25). Women's HLP rights can be read into the right to Article 25 on the basis that these rights are essential to an adequate standard of living for women and to women's security when widowed, unemployed or without a livelihood.

Since 1948, several other UN Resolutions dealing with specific aspects of HLP rights and re-affirming the equal rights of women and men, have been adopted by the General Assembly, the Commission on Human Rights and UN-HABITAT among others. In these resolutions, States are urged to comply fully with all their international and regional standards regarding women's equal rights to land and property, inheritance and adequate housing, including security of tenure and an adequate standard of living.

## Conventions, Covenants and Treaties

The **International Covenant on Civil and Political Rights (ICCPR)**<sup>107</sup> adopted in 1966 does not explicitly codify the right to land, housing and property for women, but contains an important anti-discrimination provision that protects women's rights to be free from discrimination with respect to land, housing and property. In fact Article 17 prohibits arbitrary or unlawful interference with a

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106 *Universal Declaration on Human Rights (UDHR)* adopted and proclaimed by UN General Assembly resolution 217A (III) on 10 December 1948.

107 *International Covenant on Civil and Political Rights*, adopted on 16/12/1966 by General Assembly Resolution 2200 (XXI), Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171. The ICCPR entered into force on 23/3/1976. For status of ratification, reservation and declaration, cf. <http://www2.ohchr.org/english/law/ccpr.htm>.

person's privacy, family and home and recognises the right of every person to protection of the law against such interference or attacks. In addition, Article 3 requires States Parties to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant.

**General comment 28 on the equality of rights between men and women**<sup>108</sup>, identify "the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given together with the property of the deceased husband to his family". States must ensure that the matrimonial regime contains equal rights and obligations for both spouses, among others with regard to the ownership or administration of property, "whether common property or property in the sole ownership of either spouse". Upon the dissolution of marriage, the decisions with regard to property distribution should be the same for men and for women, and "women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses."

**The International Covenant on Economic, Social and Cultural Rights (ICESCR)**<sup>109</sup> adopted in 1966 recognises the right to adequate housing (Article 11(1)), as one of those rights for which the State has to take all steps necessary to achieve full realisation. *General comment No. 4 on the Right to Adequate Housing* and *General comment 7 on forced evictions* give guidance and further interpret the ICESCR protecting women from arbitrary eviction.<sup>110</sup>

The **1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**<sup>111</sup>, contains a number of provisions

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108 ICCPR General Comment 28 on "Equality of Rights between Men and Women" (Article 3), adopted on 29 March 2000, CCPR/C/21/Rev.1/Add.10.

109 *International Covenant on Economic, Social and Cultural Rights* adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27. For status of ratification, reservation and declaration cf. <http://www2.ohchr.org/english/law/cescr.htm>

110 For more information, see the HLP International Legal Framework and Principles module.

111 *Convention on the Elimination of All Forms of Discrimination Against Women*, adopted on 18/12/1979, General Assembly Resolution 34/180, U.N. G.A.O.R., 34th Session, Supp. No. 46, U.N. Doc. A/34/36 (1980), entered into force 3/9/1981. For status of ratification, reservation and declaration cf. <http://www2.ohchr.org/english/law/cedaw.htm>

which *explicitly* protect women from discrimination with respect to matters relating to HLP.

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 establishes that “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations” (i.e. the right to enter into marriage and to enjoy equal rights with husbands during marriage and its dissolution) and in particular shall ensure, on a basis of equality of men and women “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.” (Article 16(h))

Finally, a third section of relevant protections in CEDAW relate to the livelihood needs of rural women. While some of the rights listed here are directly HLP-relevant (such as the guarantee of equal treatment in land reform programmes, the right of rural women’s to enjoy adequate living conditions, particularly in relation to housing), CEDAW also specifically cover women’s access to economic resources (such as guarantees related to access to extension services and agricultural credits) (Article 13 and 15).

**General Recommendation No. 21 on Equality in Marriage and Family Relations**<sup>112</sup> confirms that the right to own, manage, enjoy and dispose of property is essential to women’s right to enjoy financial independence, and in many countries is critical to women’s ability to earn a livelihood and provide adequate housing and nutrition for themselves and their families.

### Platforms, Programmes and Agendas

As previously indicated, Plans of Action, Programmes of Action and Agendas, which are usually attached to a Political Declaration or Declaration, carry only political and moral persuasion.

Women’s equal access to land, housing and property is one of the overall guiding principles of the **Habitat Agenda**<sup>113</sup> which states that

112 General Recommendation No. 21, 13th Session, 1994.

113 Habitat Agenda adopted in 1996, <http://www.unhabitat.org/content.asp?ID=1176&catid=10&typeid=24&subMenuId=0>

governments should ensure and enhance gender equality in policies and programmes related to shelter and sustainable human settlements development (Paragraph 7); protection from discrimination and equal access to affordable housing for all (Paragraph 8); access to land and credit (Paragraph 9). Among the Goals and Principles of the Habitat Agenda are: (a) adequate shelter for all; and (b) sustainable human settlements development in an urbanising world (Paragraph 25); and the full realisation of human rights, particularly the human right to adequate housing (Paragraph 26).

Other important Declarations include the **Vienna Declaration and Programme of Action**<sup>114</sup> (adopted in 1993), the **Cairo Declaration at the International Conference of Parliamentarians on Population and Development**<sup>115</sup> (adopted in 1994), the **Copenhagen Declaration on Social Development**<sup>116</sup> of 1995, the **Beijing Declaration of 1995**<sup>117</sup> and the **Beijing Platform for Action**.<sup>118</sup>

Finally, the **Millennium Development Goals (MDGs)**<sup>119</sup> adopted in 2000 through the UN Millennium Declaration, establish that by 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers (Goal 7, Target 11); promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.<sup>120</sup>

### Regional instruments

- The **African Charter on Human and People’s Rights (ACHPR)**<sup>121</sup> makes clear that States Parties have to ensure that “every” discrimination against women is eliminated and that the rights of women and children, as stipulated in international instruments,

114 [http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en)

115 <http://www.un.org/popin/icpd/conference/bkg/egypt.html>

116 [http://www.un.org/esa/socdev/wssd/copenhagen\\_declaration.html](http://www.un.org/esa/socdev/wssd/copenhagen_declaration.html)

117 <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>

118 <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm>

119 UN Millennium Declaration, adopted as General Assembly Resolution A/55/L.2 on 8 September 2000.

120 UN Millennium Declaration. Goal 3: promote gender equality and empower women.

121 African Charter on Human and People’s Rights, adopted on 17/6/1981 by the Eighteenth Assembly of the Heads of State and Government of the Organisation of African Unity, entry into force on 21/10/1986.

are protected.<sup>122</sup> Thus, the possibility of referring to ““traditional values”” as a basis for an unequal relationship between men and women is firmly ruled out since “every” discrimination of women is to be eliminated.

- The **African Union Protocol on the Rights of Women in Africa**<sup>123</sup> recognises women’s equal right to an equitable sharing of the joint property deriving from the property of separation, divorce or annulment of marriage. (Article 7(d))
- The **Great Lakes Protocol**<sup>124</sup> recognises the protection of the property of returning spouses (Article 5).
- The **European Convention on Human Rights and Fundamental Freedoms (ECHR)**<sup>125</sup> recognises the right to a home (Article 8(1)) and the right to peaceful enjoyment of property (Article 1 of the first Protocol to this Convention).

## Relevance of the International Legal Framework

In applying these rights during displacement and post-displacement situations characterised by human right abuses, it is important to keep in mind that measures such as property restitution often constitute a form of reparations for violations related to forced displacement.

For women who were marginalised prior to displacement, remedies should take into account not only the displacement but also the root cause of their vulnerability. In these settings, restitution and reintegration by themselves are not sufficient since the violation of human right existed before the conflict situation. Restitution and reintegration have to be combined with other mechanisms that address the risks and threats identified by women. It is important to ensure the direct participation of women during all stages of this process.

HLP responses should also build on a full gender analysis of the roles of men, women, girls and boys in land and property administration and

livelihoods.<sup>126</sup>

The **Guiding Principles on Internal Displacement** establishes the equal access to rights and prevention of discrimination in all areas including HLP rights. There are two important components: first, as set out in Guiding Principle 1(1), IDPs must be treated equally and cannot be discriminated against on the basis of their displacements. In addition, as set out in Guiding Principle 4, the Principles themselves are to be applied without any discrimination and special protection and assistance measures are required for particularly vulnerable sub-groups within broader displaced populations.

While the Guiding Principles include a number of forms/measures of protections applicable to women during displacement, there are no corresponding specific measures recommended in relation to durable solutions.<sup>127</sup>

The **IASC Framework on Durable Solutions for Internally Displaced Persons**<sup>128</sup> clearly recognises the need to address obstacles that women face in accessing and using HLP asset in durable solutions settings. “Problems that women and children may face in obtaining recognition of their ownership or access to property need special attention, particularly where there are legal barriers to women or children inheriting property. Claims of particularly vulnerable groups of IDPs and refugees (e.g. families with many children or IDPs/refugees living in dilapidated collective centres) should be processed as a priority.”

## Guidance for considering women’s rights in HLP

Actions to improve gender equality in access to and security of tenure in land should be based on a solid understanding of the local situation. This knowledge can be obtained through baseline studies, monitoring project implementation and evaluation at the beginning and at the end of a project.

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122 Article 18, paragraphs (2) and (3).

123 Adopted on 11 July 2003 in Maputo, Mozambique. Assembly/AU/Dec. 19 (II).

124 International Conference on the Great Lakes Region Protocol on the Property Rights of Returning Persons (Great Lakes Protocol) adopted 30 November 2006.

125 The European Convention on Human Rights and Fundamental Freedoms adopted on November 4, 1950.

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126 Williams, Rhodri, forthcoming, *IDMC module on HLP and Special Groups: Women, Indigenous Peoples, Pastoralists*, pp.6 -7.

127 Guiding Principles no. 18.3, 19.2, 20.3 and 23.3.

128 *IASC Framework on Durable Solutions for Internally Displaced Persons* endorsed by the IASC Working Group in December 2009.

### An assessment process can address issues such as:

1. Does national legislation support or limit the rights to land of women and men?
2. Do the customary law and practice support or limit the rights to land of women and men? How are customary rights (e.g. seasonal rights to harvesting and grazing) held by women recognised?
3. Are there conflicts between customary law and legislation, e.g. with regard to marital rights and inheritances?
4. Are land titles and other documents given in the names of men and women, or only in the name of the head of household?
5. Do courts and community tribunals provide effective protection of rights of both women and men?
6. Are women included as decision-makers in their households, farmers' organisations, local governments and at the national level?
7. Do women and men have equal opportunity to access legal assistance, credit, and farm inputs?
8. What changes are taking place in land tenure as a result of the conflict and what effect are they having on the rights of women and men?
9. Are people who implement development projects aware that a lack of gender perspective in land tenure projects is a major obstacle for gender equity? Do they have appropriate knowledge of how to incorporate gender concerns into projects?
10. Do women and men have equal opportunities to participate in all stages of development projects affecting their HLP rights?<sup>129</sup>

Information on the quality of rights of women and men with regard to HLP rights can also be found in codes of law, court decisions, religious law, customary law and studies on land and gender issues. Further sources include exchanging experience with operational UN agencies, NGOs, and civil society organisations and with local women's organisations. In order to ensure that the information collected is as accurate as possible. It

<sup>129</sup> Food and Agriculture Organization, 2006, Improving gender equity in access to land, pp.10-11. <http://www.fao.org/docrep/010/a0664e/a0664e00.HTM>

is essential to include women in the consultation process. Where it is difficult to access women or where women are reluctant to provide information, mechanisms that ensure their contributions should be identified.

## Gender Mainstreaming in HLP

The European Community defines gender mainstreaming as concerning “planning, (re) organisation, improvement and evaluation of policy processes, so that a gender equality perspective is incorporated in all development policies, strategies and interventions, at all levels and at all stages by the actors normally involved therein”.<sup>130</sup> NGOs and humanitarian actors can be effective in gender mainstreaming, for example through the following actions:

### Project implementation

- ensure the full participation of both men and women in all phases of the project from planning to implementation and finally to evaluation of the results
- consult project beneficiaries (both female and male) directly and help to eliminate obstacles to participation: for example, provide childcare support or transportation to enable attendance in meetings
- pay special attention to divorcees, single parent households and the elderly
- obtain knowledge of the local situation: document the different roles and responsibilities of women and men, and how land resources are used in these different roles
- identify women's HLP issues using the gender analysis template in the section of this module entitled Evaluating gender equity with regard to HLP
- ensure effective access to land through other support/resources such as for example financing, roads construction and marketing co-operatives
- Where appropriate, include a spouse's or partner's name in all legal documents. The identification of the spouse helps to prevent fraud and adds security for both partners. In particular, property that people get while they are married should be registered in the name of the husband and the wife (joint title), and

<sup>130</sup> European Commission, *Toolkit on Mainstreaming Gender Equality in EC Development Cooperation*, Section 3: Glossary of gender and development terms, p.3. <http://ec.europa.eu/europeaid/sp/gender-toolkit/en/content/toolkit.htm>

they should administer it jointly.

- Provide opportunities for all rights holders to be explicitly recognised. If a land titling, land registration or information system process is carried out by the State, then decisions need to be made as to:
  - rights to be included
  - whose name will be documented
  - how name(s) will be updated when required.
- Remember that privatisation of a resource (for example through formalisation of title) does not necessarily empower women. In fact privatisation usually cuts off those who formerly had customary access rights to use the resources (i.e. women in the majority). Moreover, women have less access to information, money, political connection and other resources needed to acquire title.
  - Where appropriate, propose alternative forms of ownership such as cooperatives and marketing associations.
  - Develop indicators disaggregated by sex to measure the effectiveness of projects with regard to gender inclusiveness. Examples of gender-differentiated data that could be collected are: size and location of the parcels, use of the land holding, labour and other inputs, value in terms of market price and productivity, and the number of beneficiaries of proceeds from the land.
  - Where appropriate, advocate for women's equal access to and security of tenure. Advocacy efforts must take into account the fact that their vulnerability may result not only from discriminatory laws, but also from the cultural practices of their own communities. Community mobilisation is critical to building consensus to change such practices.
  - Refer specific cases to legal aid organisations and institutions. Legal aid and information programmes are important measures to support the land rights of vulnerable groups, particularly when those rights are recognised by law but not implemented due to political resistance, lack of information or lack of will by local authorities.

- Do not consider and treat women as a homogeneous group. Sources of variance may include: class and caste; land-owning versus landlessness; tenant and owner; life cycle stage; marriage order in polygamous households; whether the household is female-headed, male-headed or joint-headed and the nature of household composition.

### Informing beneficiaries about their HLP rights

- know what rural communities understand about HLP and what they do not understand
- provide opportunities to discuss and explore gender issues related to land in a neutral forum
- take into consideration daily schedules (that can be different for women and men)
- provide education and sensitisation on gender issues to local leaders in order to build support for the involvement of women and men
- disseminate information in a way that is easily understood by both women and men bearing in mind that literacy rates for women and for rural inhabitants are lower
- deploy different strategies to present information for men and women: community meetings are effective as they allow the message to be tailored to the needs and interests of the audience, but separate meetings may be necessary for women in order to allow them to ask questions freely
- explain rights and obligations associated with holding title to land and also the opportunities: include all the consequences such as taxes and fees
- when dealing with a couple, ensure that both spouses are involved in the conversation.

## BOX NO. 1 An overview of NRC's work around women's HLP rights in Liberia

In Liberia, as in many countries, women's livelihoods are closely tied to the land. Women comprise 80 per cent of the agricultural labour force and account for 76 per cent of cash crop production and 93 per cent of food crop production. Despite their intense economic interest in land, land rights tend to be held and governed by men, rendering women dependent on male relatives for access. Data gathered by the World Bank indicates that only ten per cent of women, compared to 44 per cent of men, own the land they cultivate. Decisions around ownership, inheritance and land use in Liberia are based on male-biased customary and statutory systems that render women acutely vulnerable to violence and economic marginalisation. Several women supported by an NRC project addressing gender-based violence (GBV) report that they feel unable to leave abusive homes as they have nowhere else to go and are dependent on the land for their economic survival.

In an effort to address these issues, the NRC's GBV and ICLA projects have cooperated to facilitate one-day training on land, property and inheritance rights for 18 NRC WISE (Women's right through information, sensitisation and education) groups. The training made use of a pictorial flip book, jointly developed by the GBV and ICLA teams, that uses pictures and simple terminology to explain Liberian women's options in statutory and customary legal systems when accessing land, and claiming inheritance and divorce rights.

For many women this was the first time that they had had a chance to ask, in a supportive space, what their rights really are when it comes to holding land, inheritance and divorce and how they might contest decisions made by customary leaders.

The ICLA project mediates land disputes for IDPs and returned refugees seeking to consolidate a

durable solution to their displacement. Of the 259 disputes involving women resolved by the project in 2010, 64 per cent related to inheritance, access to land and forced evictions. Only 75 of the women had any proof of customary or statutory tenure. The project has developed various approaches to address the challenges women in Liberia face in accessing land and securing tenure in land. Staff mediating land disputes work to ensure that imbalances in information and power between negotiating parties are minimised, the negotiation process is fair and comfortable for both parties and women are able to freely express their views and advance their interests throughout the process.

The project regularly conducts two type of seminars (on land and property acquisition and on mediation) to prevent and support the resolution of land disputes. Approximately 35 per cent of participants are women. They acquire knowledge and skills to access or acquire land lawfully and securely, identify and access remedies to secure their rights in divorce and inheritance proceedings and to articulate their rights and interests during dispute resolution processes.

Since early 2010, the project has been actively promoting the joint titling of land and property as a means of increasing women's security of tenure in cases where existing land title deeds only represent male members of a household. The project has also started to counsel women on the importance of acquiring tribal marriage certificates in situations where a couple has married under the customary system. This document can be used as evidence of marriage and the right to property in inheritance or divorce proceedings.

There is a continuing need in Liberia to promote land rights for women and support them to access and secure their tenure in land.

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Farming in Ganta, Liberia

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UN-HABITAT, 1999, Women's Rights to Land, Housing and Property in Post- conflict Situations and During Reconstruction: A Global Overview. [http://www.unhabitat.org/downloads/docs/1504\\_59744\\_Land.pdf2.pdf](http://www.unhabitat.org/downloads/docs/1504_59744_Land.pdf2.pdf)

For more information on female refugees, see <http://www.unhcr.org/pages/49c3646c1d9.html>

### Legal Framework

Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW). <http://www.un.org/womenwatch/daw/cedaw/>

General comments no. 28 on the Equality of Rights between Men and Women. [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/13b02776122d4838802568b900360e80?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument)

General comments no. 21 on Equality in Marriage and Family Relations. <http://www2.ohchr.org/english/bodies/cedaw/comments.htm>

Guiding Principles on Internal Displacement. <http://www.idpguidingprinciples.org/>

Habitat Agenda. <http://www.unhabitat.org/content.asp?ID=1176&catid=10&typeid=24&subMenuId=0>

IASC Framework on Durable Solutions for Internally Displaced. [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.21.Add.4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.21.Add.4_en.pdf)

International Covenant on Civil and Political Rights (ICCPR). <http://www2.ohchr.org/english/law/ccpr.htm>

International Covenant on Economic, Social and Cultural Rights (ICESCR). <http://www2.ohchr.org/english/law/cescr.htm>

Millennium Development Goals (MDGs). <http://www.un.org/millenniumgoals/>

Universal Declaration on Human Rights (UDHR). <http://www.un.org/en/documents/udhr/index.shtml>



**DAY TWO**

**HOUSING, LAND AND PROPERTY (HLP) TRAINING**

IDMC SWEDISH REFUGEE COUNCIL NRC

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Evaluation feedback from Day One

Learning review of Day One

IDMC SWEDISH REFUGEE COUNCIL NRC

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**GROUP EXERCISE**

**Groups:**

- Shelter and Education
- Food Security
- Legal Aid
- Camp Management

Assess women's HLP rights in (name of the country).

Suggest a practical way to promote women's HLP rights

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**SESSION FIVE**

**WOMEN'S HLP RIGHTS**

IDMC SWEDISH REFUGEE COUNCIL NRC

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**QUESTIONS?**

IDMC SWEDISH REFUGEE COUNCIL NRC

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Aleppo, Syria



## Housing, Land and Property in Urban Contexts

### SESSION OBJECTIVES

At the end of the session participants will be able to:

- list relevant sources of law relating to HLP rights in urban areas, particularly in informal settlements and squatter settlements
- specify the challenges IDPs and refugees face in informal settlements and squatter settlements, when it comes to accessing land and housing and securing these assets
- consider actions to mitigate challenges faced by IDPs and refugees in urban contexts.

### KEY MESSAGES

- Currently half of the global population lives in urban areas.
- A third live in urban slums.
- Slums are densely populated areas characterised by poor quality of housing, insecure tenure and inadequate access water, sanitation and electricity.
- Squatters are people who occupy vacant lands or unoccupied buildings without any legal right to the land/building. Squatter settlements refer to areas where people are squatting.
- Currently half of the world's refugee population lives in urban areas: the number of IDPs who live in cities has similarly increased.
- IDPs and refugees who settle in slums face challenges accessing land and often become squatters.
- IDPs and refugees living in urban areas are as entitled to adequate housing as IDPs and refugees living in camps.
- Forced eviction (i.e. the removal of people from their homes or land against their will and without respecting rules such as prior consultation, prior notice and provision of alternative accommodation) is a violation of the human right to adequate housing. It is thus prohibited except when carried out in accordance with international human rights law.

### PREPARATION FOR THE SESSION

- Prepare the projector and laptop to show the presentation.
- Check Internet availability to stream the video on forced eviction or use a saved file.
- Photocopy for each participant:
  - Handout 7: Preventive measures and legal remedies for forced eviction

| DAY TWO: HLP in urban contexts |  | Session 6  |
|--------------------------------|--|--|
| Time                           | Activity   | Comments   |
| 11:00                          | <p>Explain we will be considering issues related to HLP in urban contexts.</p> <p>Show slide: Image of city (this is an animated slide showing an image of the city in 2003 and a later image in 2006).</p> <p>Ask participants: What do you see in the first image?</p> <p>Show the next image and ask what they see.</p> <p>Explain that this city is called Kirkuk, it is in Iraq and demonstrates how fast cities can grow.</p> <p>Show slide: Global population.</p> <p>Explain that urban HLP issues will inevitably increase as urban populations grow.</p> <p>Show slides: Urban and rural populations of the world 1950-2050 and Urban and rural populations by development group 1950-2050.</p> <p>Show slide: Global population (facts and figures)</p> <p>Ask participants what urban challenges they think will arise with the increase in urban growth.</p> <p>Show slides x 4: Refugees and IDPs in urban areas.</p> <p>Ask participants what urban challenges they think will arise with the increase in urban growth.</p> <p>Chart responses.</p> |  |
| 11.45                          | <p>Show video.</p> <p><a href="http://www.youtube.com/watch?v=UTcFiKKR_DQ">http://www.youtube.com/watch?v=UTcFiKKR_DQ</a></p> <p>Discuss participants' feedback after viewing.</p>   | <p><i>If technical gremlins prevent the video from being watched use the saved file or move straight to the next exercise.</i></p> |
| 12:00                          | <p>Split into four groups (could use card exercise – see Training Guidance for other ideas)</p> <ul style="list-style-type: none"> <li>▪ The dam builders</li> <li>▪ The humanitarian actors</li> <li>▪ Civil society</li> <li>▪ The government</li> </ul> <p>Ask groups to answer the following questions displayed on the PowerPoint:</p> <ul style="list-style-type: none"> <li>▪ What are the rights of slum dwellers?</li> <li>▪ What procedures should be put in place to protect slum dwellers?</li> <li>▪ What are the responsibilities of your group?</li> </ul> <p>Allow groups 25 minutes to discuss.</p> <p>Ask groups to chart only the third question.</p>   |  |
| 12:30                          | Lunch  |  |

**13:30**

Take feedback from the group exercise.

Ask one group to go through question 1, other groups to add only additional information (i.e. they do have to repeat what the group before them said).

Use the same process for question 2.

Ask each group to present third question.

Show slide: Refugees and IDPs in urban areas to wrap up.

Distribute Handout 7: Preventive measures and legal remedies for forced eviction.

Highlight that although there are equal rights among different groups i.e. urban poor and IDPs, the mandate and resources of response agencies inevitably means differing levels of assistance and protection levels.

**14:00**

Go to Module 6 for session details.



5

## BACKGROUND: HLP in Urban Contexts

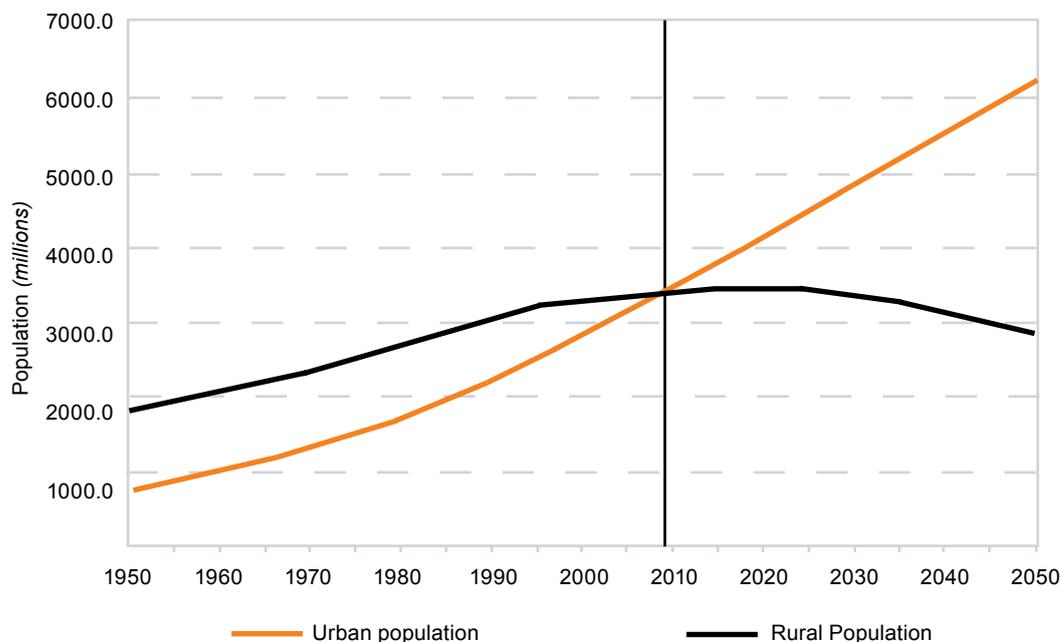
N.B. Please note that:

- The terms “slum” and “informal settlement” will be used interchangeably in this module (and elsewhere in the manual).
- The terms “squatter” and “illegal occupant” will be used interchangeably here and elsewhere. It is important to note that the term “squatter” usually has a derogatory connotation. The term “squatter settlement” will be used to identify the area where squatters reside.
- Camp Management and Collective Centre Management are described in the Module on HLP during displacement.
- The urban population is expected to increase from around 3.4 billion in 2009 to 6.3 billion by 2050. Thus, the urban areas of the world are expected to absorb all the population growth expected over the next four decades and, at the same time, draw in some of the rural population. Most of the population growth expected in urban areas will be concentrated in the cities and towns of the less developed countries.
- The world’s rural population is projected to begin to decrease in about a decade and there will likely be 500 million fewer rural inhabitants in 2050 than today.

### Cities of the 21st century: an urbanising world

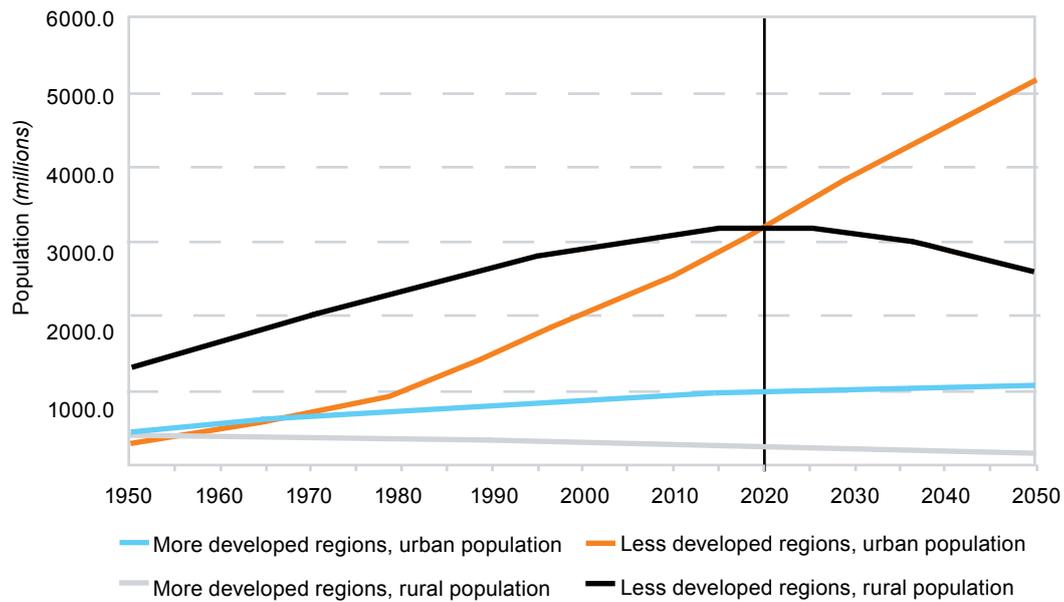
- The global population may increase from about 6.8 billion in 2009 to about 9.1 billion by 2050 - most growth will take place in urban areas.
- At present just over half the world’s population lives in urban areas.
- In 2001, 924 million people, or 31 per cent of the world’s urban population, lived in informal settlements (slums). In developing countries, slum dwellers account for 43 per cent of the urban population, compared to 6 per cent of the urban population in developed countries. In 2001, Asia, Africa and Latin America accounted for 94 per cent of the world’s slum dwellers.<sup>132</sup>

**Figure no. 3 Urban and rural populations of the world, 1950-2050<sup>131</sup>**



131 UN Department of Economic and Social Affairs, 2009, *UN World Urbanization Prospects. 2009 Revisions*. p.2.

132 UN Department of Economic and Social Affairs, 2009, *UN World Urbanization Prospects. 2009 Revisions*. p.1.



**Figure no. 4 Urban and rural populations by development group, 1950-2050<sup>133</sup>**

- The Millennium Development Goals, Target 7d requires States to “achieve significant improvement in lives of at least 100 million slum dwellers, by 2020”. A hundred million is equivalent to a mere ten per cent of the world’s current slum population.

## Slums

Most cities and densely populated regions in developing countries are surrounded by informal settlements. These settlements are illegal residential formations, characterised by lack of connection to basic infrastructure and services and inadequate housing conditions.

In general slums are areas that combine, to various extents, the following characteristics:

1. insecure residential status
2. inadequate access to safe water and sanitation
3. inadequate infrastructure
4. poor structural quality of housing overcrowding.<sup>134</sup>

<sup>133</sup> *ibid.* p. 3.

<sup>134</sup> UN-HABITAT at <http://ww2.unhabitat.org/mdg/> at [http://www.unhabitat.org/documents/media\\_centre/sowcr2006/SOWCR%205.pdf](http://www.unhabitat.org/documents/media_centre/sowcr2006/SOWCR%205.pdf) and at [http://www.unhabitat.org/downloads/docs/4625\\_51419\\_GC\\_21\\_What\\_are\\_slums.pdf](http://www.unhabitat.org/downloads/docs/4625_51419_GC_21_What_are_slums.pdf)

Not all slums are homogeneous and not all slum dwellers suffer from the same degree of deprivation.

The formation of informal settlements is caused by several major factors:

1. rapid urbanisation and influx of people into selected urban areas
2. insufficient and inefficient planning regulations and land administration
3. conflicts and natural disasters leading to the massive movement of people to cities
4. poverty and the lack of low cost housing.

Informal settlements can include:

1. squatter settlements (illegal occupation) on public or private land
2. buildings without approval (even in areas unsuitable for building) and ignoring of building laws
3. upgraded squatters settlements<sup>135</sup>

<sup>135</sup> These refer to squatters settlements that have benefited from some improvement of land tenure security, environmental (water and sanitation) or housing infrastructure.

4. unauthorised- land development and illegal suburban land subdivisions of private or public land <sup>136</sup>
5. overcrowded housing without adequate facilities in city centres or densely urbanised areas.

All of the above may host refugees and/or IDPs.

Informal settlements' buildings are often hastily and precariously erected through self-help processes. They require continuous work and do not meet minimum standard requirements for adequate housing.<sup>137</sup>

Slums are not only characterised by deprivation of proper housing, and basic services. They are also associated with a reduced number of schools, clinics and other public and private entities. Slum dwellers suffer the combined impact of poverty, social exclusion, inadequate housing and basic services such as sanitation, running water and electricity.

### Non-Proprietary Rights Holders: Renters, Squatters and the Homeless

**Renters:** renters or tenants are those who pay rent to use land or a building that is owned by someone else.

**Illegal occupants or squatters:** the word “squatter” carries a negative connotation. The definition of squatter varies from country to country. However usually a squatter is someone who occupies a vacant land (either private or public) or takes possession of an unoccupied premise (either private or public) without a legal right to the land/premises. In other words, squatters have no legal rights (ownership, use) to the land/premise they occupy, they have no security of tenure and can be exposed to eviction.<sup>138</sup>

Squatters can obtain security of tenure through government's land proclamations, moratoriums, land reforms, resettlement and reallocation programmes. In addition, in some countries, squatters can acquire title through adverse

<sup>136</sup> These refer to settlements where the land has been subdivided, resold, rented or leased by its legal owner to people who built their houses upon the plots that they bought. These settlements are illegal due to a combination of the following: low standard of services and infrastructure, breach of zoning laws, lack of planning and building permits and the irregular nature of subdividing of land.

<sup>137</sup> For more information on the standards for “adequate housing”, see the International Legal Framework module.

<sup>138</sup> It should also be noted that in certain countries people who hold customary land rights may be classified by authorities as squatters or homeless.

possession (i.e. obtain title to land through use).

In general, squatters are chronically poor and it is evident that squatting is based on the concept of self-help and mutual aid. If the squatters occupy vacant land, building a dwelling is usually a joint effort of family members, relatives and friends, with neither assistance nor permission from public authorities. The land used is usually vacant government land (e.g. along railway lines) or private land that is not under “productive” use by the owner. If the squatters occupy an unoccupied building (e.g. a school, hotel and bank) this is done without the permission of the private or State owner. Often, squatters occupy land for long periods of time with the knowledge and lack of opposition from the owner. This creates a perception among squatters that because the government or private owner does not react, they have acquired property rights. These instances often lead to conflict when the government/private owner decides to remove occupiers from the land.

**Squatter settlements** usually are residential areas that have developed without legal claims to the land or permission from the concerned authorities to build/occupy. Squatter settlements can have different sizes and features depending on the context. Infrastructure and services are generally inadequate. The key characteristic that delineates a squatter settlement are residents lack of ownership and use rights of land and buildings.

While **slum** usually refers to the conditions of a settlement (see definition above), **squatter settlement** refers to the legal position of the settlement.

Refugees and IDPs become illegal occupants when they settled in vacant land (either private or public) or an unoccupied premise (either private or public) without legal rights.

**Homeless: homelessness** “is perhaps the most visible and most severe symptom of the lack of respect for the right to adequate housing”.<sup>139</sup> A homeless person is someone without a home and this definition includes people living on the streets, under bridges and also people moving between various forms of temporary shelter such as refuges, boarding houses, hostels or friends. Victims of forced and arbitrary eviction become homeless and displaced. There are many diverse and multifaceted causes of homelessness, including a lack of affordable housing, speculation in housing and land for investment purposes,

<sup>139</sup> Kothari, Miloon, 2005, Study by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, UN Economic and Social Council 41, U.N. Doc. E/CN.4/2005/48, p.13. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/117/55/PDF/G0511755.pdf?OpenElement>

privatisation of civic services, unplanned urban migration and destruction and displacement caused by conflicts or natural disasters.

### Refugees and IDPs in urban areas

IDPs and refugees have increasingly settled in urban areas rather than in camps. The reasons are varied and include socio-economic choice (such as livelihood opportunities and access to services by the displaced persons and/or a governmental preference to not open camps.)

UNHCR estimates that almost half of the world's 10.5 million refugees now live in urban areas, compared to one-third who live in camps. The number of refugees living in urban areas has exceeded those in camps since 2007. According to UNHCR, the world's urban refugee population is also changing in composition. In the past, a significant proportion of the urban refugees were young men who possessed the capacity and determination needed to survive in the city. Today, however, large numbers of refugee women, children and older people are present in urban areas, especially in those countries where there are no camps.<sup>140</sup>

The urban IDP population has also increased over the past decade. According to the Internal Displacement Monitoring Centre (IDMC), currently there are at least 48 countries with IDPs residing in urban environments.<sup>141</sup> Obtaining information on IDPs dispersed in cities is difficult because IDPs often prefer to remain "invisible" and avoid the attention of the authorities. In several countries, IDPs are without personal documents which can prevent access to housing, collective centres and IDP assistance. Such people may then be constrained to live in informal settlements in some of the worst housing conditions.

Generally, refugees and IDPs seek refuge in cities, rather than rural areas or organised camps, because they find better chances of making a living, accessing services, and being supported by relatives already there. The rapid movement of IDPs and refugees to the cities can place considerable pressure on resources and services that are already unable to meet the needs of the urban population. The integration of an increasing number of IDPs and refugees presents major challenges for many countries who are largely unprepared to face the pressure on land, housing

and services created by these movements.

IDPs and refugees face the same challenges as the urban poor: lack of secure tenure, overcrowded homes, slum conditions, poor access to basic services, high crime rates, unemployment and significant health risks. Squatters are often viewed and treated like criminals and social deviants. In many countries squatters are arrested, physically abused, beaten, and sometimes even killed.

In addition, IDPs and refugees lack any supportive social networks and are more vulnerable to discrimination, violence and exploitation than the urban poor. In some countries refugees and IDPs are abused, arrested and treated like criminals. Refugees without documents are vulnerable to exploitation by landlords, employers and others. Without legal status, they cannot gain legal help without the risk of expulsion. The urban displaced who chose not to register as IDPs are incapable of accessing services and are also among those most likely to be affected by food crises.

In some cases IDPs, refugees, the urban poor, and economic migrants are so interlinked that it is almost impossible to determine their status and to address their needs individually.

Sudden influxes of migrants, internally displaced persons or refugees can trigger conflict between the migrant/displaced and host community. Conflict may result when resources become scarce due to the increased population.<sup>142</sup>

Finally, female refugees and IDPs are often confronted with a range of protection risks: the threat of arrest and detention, *refoulement* (the expulsion by a government of persons entitled to refugee status to a place where they are at risk of persecution), harassment, exploitation, discrimination, inadequate and overcrowded shelter, as well as vulnerability to sexual and gender-based violence, HIV-AIDS, human smuggling and trafficking.<sup>143</sup>

### Forced evictions

Some of the challenges faced by slum dwellers are access to safe drinking water, sanitation services and other infrastructures, access to public services and lack of space for recreational and commercial use. However, the most important challenge in slums is tenure insecurity and the fear of forced evictions. Regardless of whether they are IDPs or

140 UNHCR policy on refugee protection and solutions in urban areas, p.2, and 2009 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons, p.1. <http://www.unhcr.org/4c11f0be9.html>

141 IDMC NRC. Internal Displacement: Global Overview of Trends and Developments in 2009. p.8. <http://www.internal-displacement.org/idmc/website/resources.nsf/>

142 For more information on conflicts between the displaced population and the host community, see the Addressing HLP Disputes module.

143 For more information on challenges faced by women in accessing land and housing in urban areas, see the Women's HLP rights module.

refugees or slum dwellers, all victims of eviction become displaced.

Forced eviction refers to the “permanent or temporary removal against their will of people from the homes or lands they occupy without the provision of and access to appropriate forms of legal or other protection”.<sup>144</sup>

The consequences of forced evictions for families and communities, and particularly for IDPs and refugees, are severe and traumatic. Consequences include: displacement, destruction of property, loss of productive assets, broken social networks, compromise of livelihood strategies and loss of access to essential facilities and services.

Forced evictions are a gross violation of human rights depriving women, men and children of the human right to adequate housing and other human rights.<sup>145</sup>

Evictions are justifiable and permissible when they are carried out in accordance with international human right laws. This is when they meet at least the following five requirements: substantive justification, consultation on alternatives, due process, right to alternative accommodation and non-discrimination.<sup>146</sup>

Substantive justification is for example, the case of non-payment of rent or of damage to the rented property without any reasonable cause. In these situations, the landlord has the right to obtain forced eviction of the tenant, provided he/she acts in line with national laws and policies. In addition, substantive justification can be given by a development project such as infrastructure development or extractive industries projects, energy projects, slum upgrades, urban redevelopment, city beautification schemes and large international events such as the Olympic Games, provided there is consideration for public interest. In these cases, however, the State still has to meet the other four requirements.<sup>147</sup>

International attention to the human rights dimension of the practice of forced evictions

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144 ICESCR *General Comment no. 7 Forced Eviction*, Paragraph 3.

145 For more information on the international legal framework of housing rights, see the HLP International Legal Framework and Principles module.

146 For more information, see the HLP International Legal Framework and Principles module.

147 For more information, see the *Basic principles and guidelines* on development-based evictions and displacement contained in Annex I of the report of the Special Rapporteur, A/HRC/4/18, <http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx>

has grown strongly in recent years. Several institutions, including the World Bank and regional development banks, have adopted guidelines on relocation and resettlement that aim at minimising the effects of involuntary resettlements caused by development projects. These policies are considered as good practices on how to find a way out to forced eviction.<sup>148</sup>

## Preventive measures against forced evictions

Preventive measures and policies against forced eviction are by far the best way to approach the problem. Forced eviction usually reflects the lack of adequate national policies and legal framework on land and housing. Currently in numerous countries, new national and local laws consistent with international housing standards, aim at preventing and regulating forced evictions. In addition to national legislation and policies, several countries have some innovative, community-driven initiatives that have provided viable and sustainable solutions to forced eviction. These include:

- investigating with threatened communities viable alternative to forced eviction
- providing victims of forced eviction with adequate assistance and financial compensation
- negotiating relocation and resettlement of affected populations
- formally recognising informal settlements
- requiring the State to declare and enforce a moratorium on forced eviction.

Well-organised communities with strong mobilisation skills, play a key role in finding positive alternatives to forced eviction. Dialogue between municipal and central government authorities, civil

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148 The World Bank was the first multilateral agency to adopt a policy for Resettlement and Rehabilitation (R&R). The Bank's policy is contained in the Involuntary Resettlement Operational Directive (OD) 4.30, adopted June 1990. The policy aims at minimizing involuntary resettlement; providing people displaced by a project with compensation for land and other assets affected by the project; the means to improve, or at least restore, their former living standards, earning capacity, and production levels and involving both re-settlers and hosts in resettlement activities. The overall objective of the Bank's resettlement policy is to ensure that the population displaced by a project receives benefits from it. These procedures and standards have to be applied for all physical or economic displacement resulting from expropriation and other compulsory procedures of property owners or those with customary or traditional rights to land. These procedures have to be applied during all projects that displace people involuntarily funded by the World Bank. For more information, see [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol\\_Resettlement/\\$FILE/OD430\\_InvoluntaryResettlement.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_Resettlement/$FILE/OD430_InvoluntaryResettlement.pdf)

society and vulnerable communities can identify alternative solutions to evictions and thus promote, protect and defend the right to adequate housing.

Humanitarian actors can play an instrumental role in working with local communities, civil societies and governments to stop the threats of eviction. International NGOs and the UN agencies can provide technical assistance and financial support to local civil society organisations and facilitate their dialogue with the national government with the aim of searching for negotiated alternatives. The lack of communication between threatened communities and claimants is always an obstacle to finding alternatives to eviction. In some countries, the provision of detailed legal information on the prohibition of forced eviction by the international community has been critical in stopping evictions.<sup>149</sup>

### Legal remedies for forced eviction

According to the ICESCR General comment no. 7, States have the primary obligation for prohibiting, preventing and remedying forced evictions in their jurisdiction, whether carried out by the State or private individuals.

The victim of a forced eviction has the right to a fair hearing in a competent, impartial and independent court of law. In addition, when a remedy (e.g. compensation or relocation) is granted by the court, the State should ensure that the competent authorities enforce such remedy.<sup>150</sup> According to General comment no. 7 the State should provide, where possible, “legal aid to persons who are in need of it to seek redress from the courts”.<sup>151</sup> The State should apply appropriate civil and/or criminal penalties against the person or entity that carried out the forced eviction.

However, in post-conflict countries often characterised by weak rule of law and judicial institutions, the victim of a forced eviction faces serious challenges when claiming the violation of their human right. Very often those left homeless lack the financial means to defend themselves in court and are not familiar with court procedures.

### Adequate housing

High rates of urbanisation require careful planning to avoid critical problems in meeting the increased

demand for housing, jobs and urban services. Governments have to improve their urban management tools in order to cope with rapid urban growth rates.<sup>152</sup> There is no “one-size-fits-all” solution to problems of informal settlements. Political will is crucial.

The legalisation of informal squatter settlements requires significant investment. In particular, access to adequate housing in urban areas requires the provision of well-located land, infrastructure, affordable housing financing, durable building materials and other inputs. However, availability alone will not ensure equality of opportunity to access housing by all, especially the most vulnerable like IDPs and refugees. The government must therefore articulate measures for their equitable use. These can include: inclusive land policies, availability of a range of financial products, the provision of public services such as water, sanitation and roads and the availability of building materials at affordable prices.

It is very important that the government regularises and upgrades such settlements by improving residents’ security of tenure (i.e. by providing legal protection against forced eviction, harassment and other threats). Security of tenure is a key element for the full realisation of housing rights. It applies to all forms of land/property assets for individuals and communities alike. Thus it applies to rental and owner-occupied housing, informal and formal settlements, and in urban and rural areas. Research shows that the achievement of security of tenure increases the likelihood of a household increasing their savings and making investments in the improvement of homes and neighbourhoods.

Security of tenure is mainly achieved through land proclamations, moratoriums, land reforms, resettlement, reallocation, and alternative housing systems for informal settlements. These mechanisms should be designed with careful consideration of the local context. Combining innovative tenure policies with responsive urban planning and infrastructure provision programmes is usually the most effective means of improving access to land and security of tenure in urban areas. Governments should be aware of the fact that regularisation and legalisation can increase housing prices and create affordability problems. More importantly, regularisation and legalisation of HLP rights in urban areas can attract more people

149 For more information and examples, see UN Economic and Social Commission for Asia and the Pacific, *Housing the Poor in Asian Cities*. <http://www.housing-the-urban-poor.net/index.asp>

150 International Covenant on Civil and Political Rights. Art. 2.3.

151 CESCR General comment no. 7 Paragraph 15 (h).

152 Urban Management is defined by UN-HABITAT as the “planning, organizing, staffing, directing, coordinating, reporting and budgeting to realise the most efficient (not wasting resources) and effective (using resources to their full potential) use of resources, including social, economic and financial, environmental and spatial resources, within a city”. UN-HABITAT, 2010, Count me in, p.152. <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2975>

to cities and therefore create new displacement.

It should also be noted that formalisation of HLP rights is not always the preferred method. Titling programmes can be extremely expensive and often may discriminate against other forms of tenure which may be more appropriate for large sections of the population (e.g. customary and collective) and also discriminate against women.

Other measures that a government can take are slum upgrading<sup>153</sup>, city spatial planning, land use planning and equitable land taxation for financial and land management.

### IDPs' and refugees' HLP rights in urban areas

IDPs and refugees in urban areas are entitled to the same rights that IDPs and refugees enjoy in organised camps or in rural areas. These rights include, but are not limited to, the right to life; the right not to be subjected to cruel or degrading treatment or punishment; the right not to be tortured or arbitrarily detained; the right to family unity; the right to adequate food, shelter, health and education, as well as livelihoods opportunities.

When it comes to housing, land and property, these include:

- The right to enjoy adequate housing:
  - security of tenure
  - adequate services, materials, infrastructure
  - affordability
  - habitability
  - accessibility
  - location
  - culturally adequacy.<sup>154</sup>
- the ability to gain legal and secure residency rights and obtain relevant documentation (when applicable)
- protection from *refoulement*, eviction, arbitrary detention, deportation, harassment or extortion by security services and other actors
- the right to enjoy freedom of movement and association and expression, and protection of their family unity

<sup>153</sup> Slum upgrading is the systematic improvement of land tenure security, housing and sanitation infrastructure in poor or slum communities within a city.

<sup>154</sup> For the definition of the right to adequate housing, see the HLP International Legal Framework and Principles module.

- access to livelihoods and the labour market
- protection from exploitative treatment by employers, landlords and traders
- the right to enjoy harmonious relationships with the host population, other refugees and migrant communities.

Building knowledge and capacity, particularly in relation to their rights and responsibilities, becomes an essential element in IDPs and refugees' decision-making process in slums. It is also critical for creating an enabling environment for IDPs and refugees.

Finally, it is important to remember that urban IDPs and refugees also should be able to benefit from the durable solutions of voluntary repatriation, local integration and resettlement.<sup>155</sup>



<sup>155</sup> UNHCR policy on refugee protection and solutions in urban areas. pp. 4-5. UNHCR's policy on refugees in urban areas has two principal objectives: 1) to ensure that cities are recognised as legitimate places for refugees to reside and exercise the rights to which they are entitled; and 2) to maximise the protection space available to urban refugees and the humanitarian organisations that support them.

## BOX NO. 2

## Improving tenure security for IDPs in Georgia

In 2009, the Government of Georgia initiated a process of privatising collective centres used by IDPs. The privatisation process is part of the government's Action Plan for the State Strategy on IDPs that aims to provide durable housing solutions for IDPs and promote their socio-economic integration. The Municipal Development Fund rehabilitates collective centres and through a privatisation process IDPs become owner occupiers of their flats. The Georgian Law on Condominium establishes mechanisms through which apartment owners can maintain their buildings. Unfortunately IDPs' level of understanding of the laws and regulations is very low and therefore few have actually benefited

from these mechanisms. The ICLA project has implemented activities to assist IDPs overcome legal obstacles during the privatisation process and to enhance the sustainability of privatised housing through promotion and establishment of mechanisms to manage blocks of flats. An assessment was carried out to assess IDPs' awareness and opinions of the government's scheme in a selection of targeted collected centres. The ICLA team also developed training modules and a training of trainers course. More than 750 IDPs in 60 collective centres have now been trained on all legal aspects of setting up blocks of privately owned flats, community mobilisation and coordination.

## References

For more information on forced eviction, see OHCHR. <http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx>

And, additionally, Fact sheet 25: Forced Evictions and Human Rights. <http://www.ohchr.org/Documents/Publications/FactSheet25en.pdf>

IDMC NRC, Internal Displacement: Global Overview of Trends and Developments in 2009. [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/8980F134C9CF4373C1257725006167DA/\\$file/Global\\_Overview\\_2009.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/8980F134C9CF4373C1257725006167DA/$file/Global_Overview_2009.pdf)

For more information on refugees in urban areas, see <http://www.unhcr.org/pages/4b0e4cba6.html>

For a UNHCR list of publications on refugees/IDPs in urban areas, see <http://www.unhcr.org/4b0ba1209.html>

UNHCR Policy on Refugee Protection and Solutions in Urban Areas. <http://www.unhcr.org/4ab356ab6.html>

UN-HABITAT Urban Land for All. <http://ww2.unhabitat.org/campaigns/tenure/documents/UrbanLand4AllSmallpdf.pdf>

UN World Urbanization Prospects, 2009 Revisions. [http://esa.un.org/unpd/wup/Documents/WUP2009\\_Highlights\\_Final.pdf](http://esa.un.org/unpd/wup/Documents/WUP2009_Highlights_Final.pdf)



SESSION SIX

HLP IN URBAN CONTEXTS



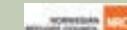
60



61

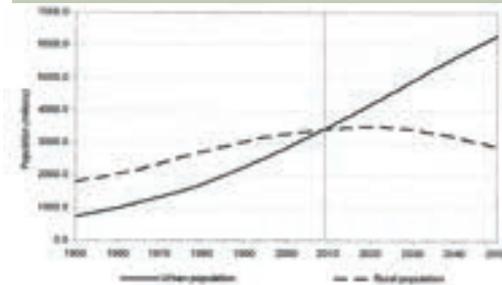
GLOBAL POPULATION

- The global population may increase from about 6.8 billion in 2009 to about 9.1 billion by 2050 - most growth will take place in urban areas.



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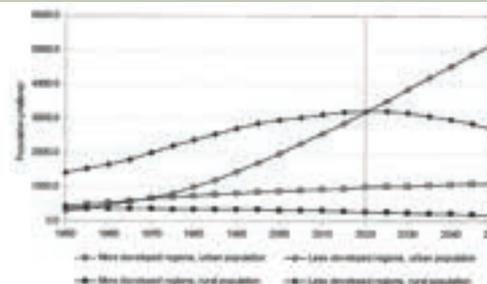
URBAN AND RURAL POPULATIONS OF THE WORLD 1950-2050



UN World Urbanization Prospects, 2009 Revisions, Page 2.

63

URBAN AND RURAL POPULATIONS BY DEVELOPMENT GROUP 1950-2050



UN World Urbanization Prospects, 2009 Revisions, Page 3.

64

GLOBAL POPULATION

- In 2001 31% of the world's urban population, lived in informal settlements. Slum dwellers account for 43% of the urban population in developing countries.
- In 2001, Asia, Africa and Latin America accounted for 94% of the world's slum dwellers.
- MDG Target 7d requires States to "achieve significant improvement in lives of at least 100 million slum dwellers, by 2020".
  - 100 million = 10% of the world's current slum population



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**REFUGEES AND IDPS IN URBAN AREAS**

- UNHCR estimates that almost half of the world's 10.5 million refugees live in urban areas, compared to one-third who live in camps.
- Internal Displacement Monitoring Centre (IDMC) estimates that there are at least 48 countries with IDPs residing in urban environment
- Refugees and IDPs face the same challenges as urban poor and are often discriminated against

IDMC NORWEGIAN REFUGEE COUNCIL NRC

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Short documentary on eviction

IDMC

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**REFUGEES AND IDPS IN URBAN AREAS**

- Slum/informal settlement:** residential formation characterised to some extent by:
  - Lack of basic infrastructure
  - Inadequate access to water and sanitation
  - Poor structural quality of housing
  - Overcrowding
  - Insecure residential status

→ Slums are not homogeneous

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Questions:

- 1 What are the rights of the slum dwellers?
- 2 What procedures should be put in place to protect the slum dwellers?
- 3 What are the responsibilities of your group?

Groups:

- The dam builders
- The humanitarian actors (e.g. NRC)
- Civil society organisations
- The government

IDMC

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**GROUP EXERCISE**

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**REFUGEES AND IDPS IN URBAN AREAS**

- Squatter/illegal occupant:** usually someone who occupies a vacant (private/public) land or an unoccupied premises (private/public) without a legal right to the land/premises.
  - Protection from forced eviction only
  - Can obtain land rights only through government's land proclamation, land reforms, resettlements and adverse possession (depending on national laws)

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**REFUGEES AND IDPS IN URBAN AREAS**

- IDPs/refugees in urban areas are entitled to the same HLP rights that IDPs/refugees enjoy in organised camps:
  - The right to adequate housing
  - The ability to gain residency rights and obtain documentation
  - Protection from *refoulement*, eviction and harassment
  - The right to freedom of movement and protection of family unity
  - Access to livelihoods and labour markets
  - Protection from exploitative treatment by landlords
  - The right to enjoy harmonious relationships with host populations
- Humanitarian organisations can intervene at different levels depending on their mandate

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**REFUGEES AND IDPS IN URBAN AREAS**

- Forced eviction:** temporary or permanent removal against their will of persons from the homes or lands they occupy without the provision of / access to legal protection
- Violation of human rights
- International human rights law requirements for evictions
  - Substantive justification
  - Consultation on alternatives
  - Due process
  - Right to alternative accommodation
  - Non-discrimination.
- Evictions are often carried out by the State as a result of development projects, transport schemes, slum upgrading, beautification, prestigious events like Olympics.

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**QUESTIONS?**

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Iquitos, Peru

# 6 module

## Addressing Housing, Land and Property Disputes

### SESSION OBJECTIVES

At the end of the session participants will be able to:

- describe the nature, causes and characteristics of housing, land and property disputes
- describe why it is important to resolve HLP disputes and the impact of unresolved conflicts on peoples' livelihoods
- understand various approaches and mechanisms for resolving HLP disputes including judicial procedures (adjudication), alternative dispute resolution (ADR), (such as negotiation, mediation and arbitration), customary dispute resolution and faith-based processes.

### KEY MESSAGES

- HLP disputes are one of the main and direct causes of conflict.
- HLP disputes can also be a consequence of conflict and exacerbated by population displacement.
- HLP disputes are complex and come in many forms (including boundary disputes, ownership disputes, occupant disputes, access and use disputes and inheritance disputes)
- The resolution of HLP disputes is crucial to ensure durable solutions for IDPs and returnee refugees, to contribute to peace processes and national security and to provide means for sustainable livelihoods.
- Formal resolution of HLP disputes can be addressed by courts, administrative bodies or ad hoc compensation and restitution mechanisms.
- Alternative Dispute Resolution (ADR) approaches are voluntary and generally non-adversarial mechanisms and procedures. They are alternatives to using government courts of justice. As mechanisms to develop consensual agreements, they promote social reconciliation. Negotiation, mediation and arbitration are the main types of ADR.
- Customary dispute resolution and some religious mechanisms strive to reach agreements that are mutually acceptable to all parties and also promote reconciliation between them. Customary approaches have characteristics that are often quite similar to those of ADR.
- Ultimately it is the responsibility of the State to provide effective and efficient mechanisms for the resolution of HLP disputes.

| Time  | Activity   | Comments  |
|-------|--|---|
| 14:00 | <p>Maintain the previous four small groups (or conduct a whole-group discussion in plenary).</p> <p>Ask each of the groups (or participants in the plenary session) to answer the following questions:</p> <ol style="list-style-type: none"> <li>1) What are the main causes of HLP disputes?</li> <li>2) Who might be involved in specific kinds of disputes?</li> </ol> <p>Allow 10 minutes for discussion of the question in small groups (or in plenary). Ask the groups to record their ideas on a flip chart.</p> <p>If small groups have been used, get feedback from each of them in plenary. Ask each group in turn to share one cause they have identified. Repeat going around to all groups until all of the causes have been identified and recorded. Ask the groups not to repeat a cause if another group has already mentioned it.</p> <p>Repeat the process to identify participants in HLP disputes, and again record the answers on a flip chart. The trainer can also suggest some causes or parties if some have not been identified</p> <p>Put up the PowerPoint on different type of HLP disputes.</p> <p>In plenary ask:</p> <ul style="list-style-type: none"> <li>▪ What are some of the impacts of HLP disputes?</li> <li>▪ How could some of these causes be addressed or resolved?</li> </ul> <p>Put up the PowerPoint on different ways to address some of the disputes that have been identified by the group. Briefly describe each of the approaches and procedures.</p> | <p><i>If the trainer wants the groups to be more specific about causes, ask them to identify disputes between individuals as well as between groups.</i></p> <p><i>If the trainer wants the groups to be more specific about parties, they should mention some of the following: specific kinds of individuals, women, children, families, members of vulnerable populations, clans, tribes, ethnic groups, followers of different religions, the military, armed militias and any others they may suggest.</i></p> <p><i>Record responses on a flip chart.</i></p> |



Iquitos, Peru

| 15:00 | Break   | Session 8   |
|-------|---|---|
| 15:30 | <p>Split the larger group into two smaller groups, the members of which are based on participants' specific backgrounds, roles and responsibilities.</p> <p>Group 1 should have representatives from camp management, food security and ICLA.</p> <p>Group 2 should have representatives from shelter, education and ICLA.</p> <p>Distribute the two general roles (1 and 2) for the scenario to the relevant groups. Also, hand out the specific roles to pre-determined people.</p> <p>Distribute the observer sheets and explain the role of the observer.</p> <p>Explain that the simulated meetings will last for 30 minutes.</p> <p>Allow groups 15 minutes to read through the scenario, and prepare to play their role in the meeting.</p> <p>Instruct the two groups to start their meetings simultaneously.</p> <p>Begin timing the meetings and allow the groups 30 minutes to complete the exercise.</p> <p>The trainer and resource person should circulate and observe both meetings.</p> | <p><i>Pre-determine the two groups the previous evening</i></p> |
| 16:30 | <p>Debrief the simulation in plenary. Begin by providing a short overview of each scenario.</p> <p>Start the debrief by asking the groups how the process went. Then ask what worked well and why. Follow up by identifying difficulties in the meetings and what might be done to address them.</p> <p>Integrate comments from observers on each of the questions above. Do not wait for observer comments until the end of the exercise.</p> <p>Ask for additional comments from role players.</p> <p>Wrap up by asking the groups whether they can identify any additional options for raising, addressing and resolving the problems or disputes that were identified in the exercise.</p> <p>Distribute handout: Selecting the best alternative</p>  |   |
| 17:00 | <p>Conduct a quick evaluation to check how people are feeling and close.</p>  |   |
|       | <p>Go to Module 7 for session details.</p>  |   |

## BACKGROUND: Housing, Land and Property Disputes

### HLP Disputes and their Causes

HLP disputes are disagreements over access, use, possession or ownership of land, resources found on or under it, or other forms of property such as houses, crops or livestock. They commonly develop when individual or collective interests related to HLP are in conflict.

There are many complex reasons why differences over HLP emerge and become serious disputes. Some of them include:

1. **Scarcity of land:** This may result from demographic pressures (due to either population growth or migration); decline in food production; environmental degradation or resource scarcity and heightened contestation over remaining natural resources (typically water, land, fodder and firewood).
2. **Unequal distribution of land and weak governance structures:** This can occur where ownership of land is concentrated in the hands of a minority, sparking demands for change from the land-poor. Contestation is more likely when there are overlying ethnic or religious tensions between involved parties. This can lead to violent struggle for control of resources and distribution of benefits. Good governance can be endangered by nepotism, corruption and/or disregard for regulations.
3. **Insecurity of tenure** may arise when holders of statutory or customary rights to land or illegal occupants, fear or experience arbitrary eviction and become displaced resulting in increased vulnerability to conflict and insecurity.<sup>156</sup>
4. **Unresolved festering grievances over land and property** fuelled by ongoing resentment at past acts of dispossession and inter-community tensions may ignite conflict.
5. **Land grabbing** is found when powerful political, economic or armed parties use force to either seize or maintain possession of land against the will of its customary or statutory occupiers or owners, or utilise discriminatory laws to arbitrarily acquire it as abandoned property.
6. **Land reforms and privatisation:** Unfair, inequitable or incomplete land distribution schemes or land titling procedures privileging private ownership can alienate land occupants or owners from their own or community or private property.
7. **Social tensions over land ownership and use** are commonplace when tenure is affected by claimants' political, economic, class- or ethnic-based power and influence. Lack of recognition of, or respect for, women's land rights and inter-generational tensions can be frequent occurrences and exacerbated by conflict.
8. **Natural resources:** Many conflicts are sparked by, or exacerbate, contestation over when access, control, use or benefits from natural resources on or under land.
9. **Population displacement:** Conflict, natural disasters or environmental degradation can cause individuals, families or whole communities to voluntarily or involuntarily leave home. Tensions arise as they are then forced to compete with host communities or others over access or use of land and property in areas of resettlement.

In some instances, HLP issues are the direct cause for eruption of violence. Such is often the case when warring factions fight over possession of territory, property is seized by a government or armed militia without due process or squatters are forcibly evicted from land where they have settled.

In other situations, HLP issues may be one of many contributing factors to potential or actual violence. This is especially true when land is linked to economic and political discrimination against specific groups in a society. For example, when there is ethnic cleansing land and political factors are inextricably linked.

In cases of serious conflicts, especially those that are protracted and in which territory changes hands repeatedly, HLP disputes may become extremely complicated. One population group may be simultaneously leaving while another is arriving, or both may simultaneously return to the same location.

<sup>156</sup> Usually a squatter is someone who occupies vacant land or unoccupied premises (either private or public) without a statutory legal or customary right to do so. For more information on squatters and their HLP rights, see the HLP in urban context module.

As noted above, weak and poor governance can be another major factor in HLP disputes. At the macro level, such conflicts can be the result of serious challenges to the legitimacy of a weak or corrupt state by groups seeking independence/ autonomy or wishing to overturn the government. Poorly defined, unfair or unenforced laws, corrupt or ineffective law enforcement, judicial systems and land administration and lack of political will to develop good governance may lead to a rise in unresolved disputes. Overly bureaucratic, complex, time consuming and expensive processes for obtaining land rights can lead to insecure tenure, frustrations and a rise in HLP-fuelled conflicts.

### Types of HLP disputes

Every housing, land and property dispute is complex and unique. Each has its own history, path of development, potential means of resolution and possible outcomes.

HLP disputes are dynamic. They are usually:

- multifaceted and multidimensional
- linked to their historical, social, environmental, economic and political contexts
- nested within larger conflicts
- temporal, changing over time.<sup>157</sup>

**Land disputes** come in many forms. They can be categorised by factors such as:

1. the **type of land in question:** private, public, community or held by a religious body
2. The **parties who are involved:** they may include families, communities, clans, ethnic groups, religious communities, State agencies and politicians and businessmen with vested interests. Disputes may involve individuals; individuals in dispute with a group, local disputes between families and neighbours or wider conflicts between clans, tribes, regions or other nations.
3. The **scale of the dispute** may range from small-scale, localised disagreements to those that affect wider demographic and geographic groups and areas.
4. The **issues in dispute.** Some of the most common HLP topics about which parties engage in disputes include:
  - a. Boundary disputes are disagreements

<sup>157</sup> Food and Agriculture Organization, 2006, Land tenure alternative conflict management, p.17.

<http://www.fao.org/docrep/009/a0557e/a0557e00.htm>

on the demarcation or partition of land (i.e. where the property of one individual or community ends and another's begins). They are especially common where physical boundary markers (such as trees, ridges, stones or posts) have been altered or destroyed during conflict and displacement.

- b. Ownership disputes involve competing claims between individuals and/or communities over ownership of HLP assets, especially land or property that has been demarcated and to which one or more parties claim possession or valid title.
- c. Occupant disputes may revolve around competing claims between customary claimants of land concerning what land and how much was allocated, to whom, by whom and when.
- d. Access and use disputes involve disagreements between parties regarding overlapping rights to use land, water, minerals, timber or animal fodder.
- e. Inheritance disputes are disagreements over the allocation of rights to land after the death of its recognised owner or use-right holder. Very often women have difficulty achieving inheritance entitlements.<sup>158</sup> These disputes are highly complex in settings where polygamy is common, or rules regarding inheritance derive from overlapping customary, religious and/or statutory laws.<sup>159</sup>

Examples of land and property disputes specifically related to displacement include:

- claims by IDPs, refugees or returnees against people who have occupied, sold or bought (often from a third party who made a purchase in good faith) their land without authorisation, or encroached on claimed land
- claims by IDPs, refugees or returnees to land currently occupied by people who either voluntarily settled or were forcibly relocated on contested land by a previous government
- conflicting legitimate claims due to sequential long-term occupations by different parties, for instance when an individual has bought the

<sup>158</sup> For more information, see the Women's HLP rights module.

<sup>159</sup> UN-HABITAT, 2009, Land and Conflict: A Handbook for Humanitarians. p.9. [http://oneresponse.info/.../LAND\\_AND\\_CONFLICT - A Handbook for Humanitarians.doc](http://oneresponse.info/.../LAND_AND_CONFLICT_-_A_Handbook_for_Humanitarians.doc)

property of an IDP/refugee in good faith, but not from the real owner, and has lived on the property for many years

- inheritance disputes
- claims by governments against people who have illegally occupied public land and buildings
- claims by squatters who have been arbitrarily evicted
- claims by two or more communities regarding the boundary of their communities
- communities in competition with commercial interests (such as those granted mining or oil and gas concessions) for land or benefits from natural resources on or under it.<sup>160</sup>

HLP disputes are often aggravated by legal pluralism, the situation in which multiple legal systems are simultaneously in place. When this occurs, contradictory or unclear customary and statutory legal frameworks that allow for different land rights, and do not provide clear or definitive ways to resolve disputes in an equitable manner, can be highly problematic.

Moreover, many institutions in conflict or post-conflict situations do not function well and/or are highly corrupt. When these conditions are present, the State may be unable, even if it has political will, to prevent or resolve conflict and monitor and enforce laws. Often there is rampant illegal seizure or occupation of land, multiple sales of the same parcel, denial of women's right to inheritance and large scale dispossession of vulnerable populations by the agents of entrenched economic/political interests.

### HLP disputes and their impacts

Refugees or IDPs, uprooted by conflict and violence often become both homeless and landless as a result of their displacement. Among this landless and homeless population, vulnerable groups almost invariably include women, children and members of ethnic and political minorities.

Both during and after violent conflict or serious political instability those who have been displaced require access to HLP assets and often may have no choice except to engage in disputes to do so. Housing, land and property disputes between returnees, locally integrated or settled IDP/refugees and permanent resident populations are

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<sup>160</sup> Food and Agriculture Organization, 2008, Access to rural land and land administration after violent conflicts, p.44. <http://www.fao.org/docrep/008/y9354e/y9354e00.htm>

prevalent in most post-conflict settings.

Land conflicts may involve both specific individual and wider collective interests. Disputes can range from the interpersonal to the international. The issues, characteristics and intensity of these disputes may also vary at various phases of a wider conflict: emergency, early recovery and development. In many situations, contests over multiple layers of property or land access, occupation, use or ownership may exist, making the resolution of issues particularly complex.

### The importance of resolving HLP disputes

The resolution of HLP disputes is an important step to meet emergency humanitarian needs as well as contributing to longer-term social, economic and political stability. Resolution of HLP disputes can provide a range of benefits. Agreements or settlement between parties can:

- contribute to durable solutions for those who have just returned from exile, or were displaced
- provide income through rent or sale of repossessed land or property for those not willing to return, thus facilitating durable solutions such as settlement elsewhere or local integration
- supply as an emergency measure, food shelter and access to humanitarian aid to former IDPs and returning refugees. Access to land also provides a base for people to live, grow food and work.
- significantly promote peace-building, regional security and prevent land disputes from becoming politically, socially or economically destabilising
- assure access to land and security of tenure, enabling people to have their rights enforced and reduce fears of arbitrary eviction
- provide for restitution, a remedy to address past violations and a significant step toward the establishment of rule of law
- provide a foundation for economic and social stability by facilitating reconstruction, re-establishment of industry and agriculture and domestic and international investment.

Land and property systems are multifunctional and have important political, religious and social functions. Secure access to the same land where an IDP/refugee population used to live before the conflict, can significantly contribute to recovery of

their sense of identity.<sup>161</sup>

## Dispute Resolution Approaches

There are three main approaches and related forums for the resolution of disputes:

- 1. Adversarial:** This involves one or more parties initiating resolution and another is compelled to submit their dispute to an authoritative third-party decision-maker who makes a binding decision. An example is a judicial or administrative hearing in which parties present their cases and a judge or government administrator makes a binding decision.
- 2. Collaborative:** In this mode, parties voluntarily negotiate on their own or with the assistance of a mutually acceptable third party and reach a consensus on an acceptable agreement. Examples of collaborative approaches are procedures commonly called Alternative Dispute Resolution (ADR). These are generally informal and voluntary alternatives to a court or administrative processes. Many utilise a third party, a facilitator or mediator to help parties negotiate their own agreements. Arbitration, another ADR process, involves voluntary submission of a dispute to a mutually acceptable third party, who, depending on the will of the parties, gives non-binding advice or makes a binding decision.
- 3. a mix of the above** may involve a third party providing either mediation or decision-making assistance. Examples are customary or some religious dispute resolution approaches in which customary or religious leaders help parties reach agreements or obtain decisions. Customary dispute resolution often has many similarities to ADR procedures.

### Adversarial, formal and non-consensual processes

These approaches are typical of formal justice systems or administrative hearings. They are based on the assumption that disputing parties are unable to resolve their differences on their own and need assistance from an authoritative third party (a judge or other State representative) to break a deadlock and make a binding decision. Decision-makers are generally trained professionals. Concepts of plaintiffs versus defendants, application of statutory legal principles, formal rules of the court or hearing process, adversarial argumentation and specific requirements for admissibility of evidence are

all characteristics of adversarial approaches. In general, parties have much less control over outcomes than they do with more collaborative procedures.

The main strengths of adversarial and formal dispute resolution institutions and procedures are that the rules are generally designed to ensure fair trials, protect parties' legal rights and promote just rulings based on the evidence that is presented. In addition, involved parties are judged by rules and principles defined by law which are applied to all disputants.

The main disadvantage of adversarial methods, formal institutions and elaborate rules of procedure are that parties have much less control over outcomes. Additionally, they require an elaborate set of laws and significant infrastructure and are often very complex, rigid, lengthy and costly. This can be a significant problem in countries with limited trained personnel, under-funded courts, inadequate legal representation for parties or significant corruption. A trial or adversarial hearing process can potentially damage the relationship between the parties. This is especially problematic if they must continue to live in close proximity after a third-party decision. It may be inconsistent with reconciliation and peace-building objectives.

### Adjudication

Adjudication is one of the most formal and adversarial dispute resolution processes. It involves litigation in a court of law with a judge, who weighs the merits of each party's case against statutory legal standards and provides a judgment. Parties provide evidence to support their claim, but they do not participate in making the final decision. The ruling handed down may give one party everything and the other nothing (i.e. one party "wins all" and the other "loses all"). The judge's decision is immediately enforceable, but may also be appealable to a higher court.

In a country ruled by fair laws and with an impartial judiciary the victims of forced eviction, allegedly carried out by the State or a private person, are fortunate to be able to realise their right to a fair hearing in a competent and independent court of law. If the judge finds that the forced eviction was unlawful, he or she will rule against the perpetrator and may also order remedies such as compensation or relocation for those who were homeless.

<sup>161</sup> *ibid.*, p.33.

### BOX NO. 3

### Case Studies from ICL Afghanistan Litigation to assert land rights

In May 2007, a client registered a land dispute with NRC. He represented 450 families claiming ownership of around 3000 *jirib* of land (equivalent to 6,000,000m square metres) in Dahni Goori District, Baghlan Province. The property was purchased by the families' forebears in 1937. Access to and use of the land had not been problematic until the Taliban took control of Afghanistan and members of the Hazara ethnic group occupied the client's land.

The client decided to sue the land occupiers

and sought NRC's assistance. The case was heard at the Primary Court of Baghlan Province. The ICLA project provided legal advice and assistance and closely monitored the case. After a series of hearings, NRC's client won a favourable decision as documents registered in court proved the 450 families were the legitimate owners of inherited property. The defendant did not successfully appeal and the decision of the Primary Court became final. The case was closed in June 2010 and the client and the 450 families currently live on their land.

### BOX NO. 4

### Case Studies from ICL Afghanistan Court order to return land not enforced

A Hazara IDP settled in Herat in 1975 and together with 103 (mostly fellow Hazara) families purchased 30,000 square metres of irrigated and 1,000,000 square metres of non-irrigated agricultural land in Daulatyar District (Ghor Province). In 2001, the Taliban, together with members of the Baybogha tribe, attacked the client's village. The Hazara families were forced to flee and more than 515 people were displaced. In 2002, acting on behalf of the 103 displaced families, the client filed a lawsuit against the

occupiers at the City Primary Court of Ghor Province. NRC ICLA staff provided legal advice and representation. The court issued a decision in favour of the client that was affirmed by the Appeals Court of Ghor Province. In 2005, the Supreme Court affirmed the lower courts' decisions in favour of the client and sent the case to Ghor Province for enforcement. However, as of March 2011, due to chronic insecurity in the area where the land is located and the defendants' influence in the region, the court's decision is yet to be implemented.

### Dealing with a high number of HLP-related claims

In most situations of mass displacement, the high number of HLP-related claims can impose significant burdens on a country's judicial system, which may already be weak and over-burdened. A key problem encountered in addressing HLP issues, is how to respond to a mass of claims.

One solution is to utilise administrative/ or quasi judicial systems that use facilitated claims procedures for HLP remedies. Such processes may be applied by existing judicial, administrative or traditional mechanisms, or when these are non-existent or non-functioning, by ad hoc institutions (for example, a land/ property claims commission).<sup>162</sup> Facilitated claims procedures should be independent, impartial, non-discriminatory and compatible

with existing laws. They should also allow "fast-tracking" of mass claims where similar patterns of dispossession affect multiple litigants. Examples of special procedures are: temporary suspension of limitations related to abandonment and non-use of property; reduced evidentiary burdens on claimants, and standardisation of compensation.<sup>163</sup> It is important that efforts to address these mass claims should always be accompanied with mediation and reconciliation efforts in order to reduce the risk of renewed conflict and displacement.

When adjudicating mass claims, an important first step is to check whether the claim is admissible (i.e., whether the claim falls within the mandate of the dispute resolution entity to hear and address). This poses a series of questions regarding the

<sup>162</sup> For example, the Housing Property Directorate (HPD) and the Kosovo Property Agency (KPA) ([www.kpaonline.org](http://www.kpaonline.org)).

<sup>163</sup> Brookings Institution - University of Bern: Project on Internal Displacement, 2008, Protecting Internally Displaced Persons: A Manual for Law and Policymakers, pp 176-179. [http://www.brookings.edu/papers/2008/1016\\_internal\\_displacement.aspx](http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx)

admissibility of the claim: who is eligible for redress; whether the claim was filed within the prescribed deadline, and what types of rights can be included. It is also necessary to consider issues of merit (what types of evidence establish the merit of a claim, and what substantive remedies are appropriate and available to balance the rights of the claimant against others who may also have asserted an interest in contested properties). Judgments are more likely to be enforced if they are carried out in accordance with existing law and the support of regular law enforcement officials.<sup>164</sup>

## **2. Collaborative and informal Alternative Dispute Resolution (ADR) procedures**

As noted above, Alternative Dispute Resolution typically refers to non-adversarial procedures for resolving disputes. The processes usually, but not always, fall outside judicial or formal administrative procedures. (However, exceptions are found in those countries that have court-annexed mediation services, or mediation programmes connected to justice systems.)

ADR procedures are used as alternatives to litigation in court or adversarial hearings, and include a range of voluntary consensus-building processes. They create fora and opportunities for exchange of information and views, open discussion, increased understanding and analysis of the root causes of disputes, identification of parties' interests and needs and can draw out solutions to meet them. If a third party is involved in the process, s/he does not impose nor enforce solutions but assists parties to reach a mutually acceptable outcome. The use of ADR can result in a more efficient, accessible, cost-effective resolution of disputes, with greater satisfaction on the part of all parties. Additionally, by developing a "win-win solution" ADR helps promote peace and social reconciliation. Because of their flexible nature, ADR mechanisms allow reduced evidentiary burdens on claimants, which is extremely useful when dealing with land disputes in a post-conflict setting. ADR procedures allow both formal proof of ownership as well as less formal forms of evidence, such as sworn witness testimony and utility bills.

ADR has origins in traditional societies lacking formal and adversarial justice systems in which consensus-building was a valued part of all dispute resolution processes. Maintenance of community cohesion and harmony was a priority. In these societies, collaborative procedures promoted building long-term relationships, which

were the foundation for community cohesion and cooperation. ADR is gaining popularity as an alternative to overly complex, adversarial, time-consuming and costly judicial processes and because of a spreading conviction that people should have control of, and make decisions, about their lives. Because voluntary ADR procedures give parties more control of dispute outcomes, they are often procedures of first choice.

However, there are risks and potential downsides of using ADR. Because of the emphasis on finding solutions that satisfy all parties' interests and reaching consensus that promotes social cohesion and harmony, ADR may result in fewer consequences or punishments for anti-social or illegal behaviour. For example, those who have taken advantage of a broader conflict to seize, encroach on or sell another's property may not be punished. Instead, they may negotiate compensation with an aggrieved party. The potential combination of lack of punishment for perpetrators and "win-win" solutions can, at least in theory, reduce the disincentives or deter others from engaging in unlawful behaviour. Finally, "settlement" may not necessarily be the same as court-imposed "justice" based on a widely applied legal standard. If a dispute is settled through ADR, justice may not necessarily be achieved, as justice may require the consideration of rights and remedies of all concerned parties. However, involved parties views may vary on what constitutes a just settlement.

Another frequent concern about outcomes reached through ADR is whether or not they are binding and enforceable. Global experience indicates there is generally a high level of compliance and follow-through with agreements that parties reach voluntarily. If parties like the outcome of procedures that they freely have chosen there is a high probability that they will endorse its results. Additionally, in some countries, agreements reached voluntarily, can become contracts, which if violated can be enforced by a court of law.

ADR covers a variety of procedures with numerous variations based on the needs of the people who use them, the disputes they want to resolve and the countries and cultures in which they are practiced. In any situation, one or more, or a combination of procedures, may be appropriate. The choice is up to the involved parties.

The most common types of ADR are: negotiation (or some kind of collaborative problem-solving); mediation (or facilitated-negotiations) and arbitration.

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<sup>164</sup> *ibid.*, pp.180-184 and Williams, Rhodri forthcoming, *IDMC Module on Housing, Land and Property Issues in Durable Solutions: Basic Concepts and Principles*, pp.15-19.

## Negotiation

In its simplest form, negotiation is any form of communication and problem solving between two or more people initiated to develop a mutually acceptable agreement. In negotiations, disputants may directly advocate for their interests, or may be represented by an agent, lawyer, family member or other acceptable advocate.

Negotiations are typically private, and parties control the issues to be addressed and resolved as well as timing, process and outcome. Final decision-making authority lies directly with the parties and not with an outsider, such as a judge or customary leader.

## Mediation

Mediation is one of the most common and popular types of ADR.<sup>165</sup> Mediation is a voluntary process in which a **mutually acceptable and impartial third party (a mediator)**, somebody perceived by

disputants to be unbiased and fair, is asked to help them reach a mutually acceptable agreement. Mediators do this by facilitating parties' negotiations. The parties and not the mediator have authority to determine the final outcome of the dispute.

Mediators make procedural suggestions on how the parties can more effectively solve their joint problems. They elicit and clarify disputants' interests, frame desired solutions which might meet them and propose option-generating processes so parties have a range of potential outcomes to choose from. In some mediation processes, mediators may also suggest potential options for settlement as a way of encouraging parties to expand their thinking about the range of possible resolutions. A mediator may work with disputants together, or on occasion, separately to explore acceptable options or to develop proposals that parties can share. Once an agreement is reached, the mediator may, if needed or desired by

### BOX NO. 5

### ICLA enables Southern Sudanese returnee to reclaim land from soldier

After approximately 15 years of displacement in the Sudanese capital, Khartoum, a woman household head and mother of seven returned to her village of origin, Mahad, on the outskirts of the city of Yei. She found her land occupied by a soldier from the Sudan People's Liberation Army, the leading southern Sudanese militia. Many SPLA personnel have settled in the city and county of Yei since 1997. Most are from other areas of Southern Sudan. The SPLA soldier reacted violently when told he was occupying her land, refusing to leave and threatening the woman. Neighbours advised her to approach the ICLA. A counsellor promptly referred the case to the ICLA land and property unit which met the woman for an initial evaluation. Their investigations confirmed her claim to be the property holder. However, like most people subject to the local customary authorities, she had no formal documents. The key evidence to support her claim was her husband's grave located on the disputed property.

ICLA staff explained available options: start a case at the local customary court or ask the local chiefs to facilitate mediation. They advised her the latter would probably be more effective and quicker. After briefing the woman on her rights

and procedures, ICLA officers met the SPLA soldier to explain his rights to settle in the area and the procedure for the acquisition of land, but also his duties and responsibilities with respect to the land that he was occupying illegally. After these preliminary meetings, the soldier demanded 1,000 Sudanese pounds (approximately US\$380) to leave the occupied land but the woman was neither willing nor able to pay. However, both the parties agreed to solve the dispute through mediation facilitated by local chiefs. Prior to mediation, the ICLA officers met Mahad's traditional leaders to provide technical advice on their role and functions as mediators, to discuss how mediation might be an alternative dispute resolution and to outline applicable national legislation with respect to land rights. Under customary law, property is predominately acquired agnatically (via male relatives). Women without supportive male kin face serious impediments to obtaining or inheriting land. It was clearly important to inform mediators of relevant national and international law around women's land rights. The traditional leaders facilitated the mediation and the disputing parties reached agreement: the soldier accepted the advice received by mediators and returned the disputed plot to its rightful owner.

<sup>165</sup> Moore, Christopher, 2003. *The Mediation Process: Practical Strategies for Resolving Conflict*. San Francisco: Jossey-Bass, 3rd edition. <http://www.josseybass.com/WileyCDA/WileyTitle/productCd-0787964468.html>

## BOX NO. 6

### ICLA mediates land disputes between widow and in-laws in Uganda

A fifty year-old childless widow was forced off land she had jointly held with her deceased husband by in-laws who alleged it belonged to her former husband's brother. Widowed and homeless, she returned to her parental home to seek protection only to find her brother refused to house her and ordered her to return to her hostile in-laws. The widow then sought ICLA assistance. ICLA staff investigated and then advised the woman how she might seek to resolve the dispute. With her permission, ICLA intervened to mediate the dispute. Staff contacted the widow's parents and brother who agreed to participate in a meeting to find an amicable solution. Many community leaders and members attended. All parties were given the chance to speak, make statements and ask questions. After many hours of discussion it was agreed that a portion of the parental land was to be allocated to the widow so that she could build a small house. An agreement spelling out the rights and responsibilities of each party was immediately drafted and signed by all parties. Since this successful resolution of her case in March 2010, the widow has been living peacefully on her land.

the parties, subsequently serve as a conciliator or monitor to assist them to repair damaged relationships and/or assure implementation of the settlement.

Mediation is useful in highly polarised disputes where parties have either been unable to initiate a productive dialogue or need help getting talks started. One important feature of mediation is that it is flexible and easily adaptable to all types of disputes, especially those in which the parties may be interested in maintaining a relationship with one another. In many countries, mediation is not formalised, and mediators provide services without laws that regulate their conduct. Informal mediation also takes place in many societies, where other collaborative procedures may also be used.

#### Arbitration

Arbitration is a private and voluntary dispute resolution process, in which one party files a case and the other is compelled to respond. In arbitration, disputing parties jointly submit their differences to a mutually acceptable and impartial third party. S/he listens to the presentations and views of the parties, and makes a decision

on how to settle the dispute. The decision is generally based on the arbitrator's assessment of the merits of each of the parties' cases and/or application of some widely accepted standard, such as customary or statutory law or any contractual terms. In some cases, arbitrators make integrative decisions and find compromises that take the diverse interests of involved parties into consideration, and provide each party with some degree of satisfaction.

Parties to arbitration generally have some control over the arbitration process, such as selection of the arbitrator or arbitration panel, procedures and time allowed to present their case, kinds or amount of evidence or witness that will be presented and whether the third party's decision will be advisory and legally binding. However, they do not have as much control of the outcome as they would in negotiation or mediation.

In many countries, a decision or an award by an arbitrator has the same standing as a judicial decision. Generally, a decision by an arbitrator is not appealable to a court, unless a serious violation of due process has occurred or bias on the part of the third party can be proven.

Arbitration, especially when binding, is a method between formal and other alternative dispute resolution procedures. It is voluntary and usually conducted out of court but involves a third-party decision maker rather than leaving the parties in control of the outcome. NRC considers arbitration as a form of ADR.

#### Other Types of ADR

Facilitation and conciliation are two other types of ADR that share a number of characteristics with mediation.

**Facilitation** is the intervention of a third party to conduct a meeting. Facilitators provide procedures for participants to discuss issues of mutual concern which may or may not be in dispute. The goal of some facilitated meetings is to reach an agreement. In others the outcome may be information exchange and greater understanding by participants of issues under discussion. Facilitation is generally used when issues to be discussed are less contentious and parties are not as polarised as is commonly the case for mediation.

**Conciliation** is another ADR procedure. There are a number of definitions of conciliation. One describes the involvement of a third party who conducts separate meetings with disputants, and shuttles between them to open and improve communications, increase mutual understanding and create a positive psychological climate

conductive to productive talks or negotiations. Another definition stresses conciliatory activities, conducted by a third party, both during and at the conclusion of disputes. This helps parties increase their respect and trust of each other, release anger, and, if desired, amicably preserve or end their relationship. A final definition of conciliation stresses involvement by an intermediary who develops proposals for potential solutions that reconcile parties' differences.

**Figure no.5 Options for Dispute Resolution<sup>166</sup>**



### 3. Customary or Traditional Dispute Resolution

Customary dispute resolution can take a variety of forms, and may have a number of names such as “chief’s court” or “chief’s council.” Most procedures are led by men – chiefs, elders or headmen – but there are exceptions where women are significantly involved. Customary practices are generally more common and popular in rural than urban areas. They often contain elements of arbitration, mediation and conciliation. Some customary approaches involve extensive consultation and discussion while others move fairly rapidly to a third-party decision.

Customary procedures generally fall along a continuum of increasing direction by the third party. On one end, the intermediary may bring the parties together, but provide relatively little procedural or substantive direction. If the parties are unable to make progress, the third party may become more directive, facilitate discussions, ask questions and propose procedures to develop possible solutions. Failing to get an agreement, the third party may move to give advice on potential settlements, make an advisory and non-binding recommendation and try and persuade parties to accept it. If parties are still unable to reach a voluntary settlement, the intermediary may make a decision based on the merits of each party’s

<sup>166</sup> Food and Agriculture Organization, 2006, p. 72 Land tenure alternative conflict management. <ftp://ftp.fao.org/docrep/fao/009/a0557e/a0557e00.pdf>

case, impose a fine or mandate a punishment. They may then shift back to mediation to work out an agreement on compensation (the payment of which may reduce the fine or punishment). If the parties do not accept the decision of the customary authority, they often have the option to appeal it to the next higher customary court or chief or to take their case to a formal government court.

In many traditional or customary societies, a dispute is not considered to be a problem between two individuals or families, but an affair of the entire community. Many people know the disputants and about their disagreement. Its escalation and an unsatisfactory resolution may adversely impact broader community interests, stability or harmony. Therefore a range of members of the community may engage in efforts to secure a resolution. Some customary dispute resolution procedures use the local wisdom of respected group members, such as elders, to ask questions of disputants, generate potential settlement options, give advice, assure the fairness of the process, witness the outcome and monitor its implementation. A dispute is considered to be resolved when conflicting parties are reconciled and once again reintegrated into the community.

Advantages of customary dispute resolution include parties’ familiarity with their procedures and the fact that they are easily understood and utilise local standards of justice that many judge as legitimate. Additionally, they render timely and relatively inexpensive outcomes. These methods are often seen as better alternatives to distant, incomprehensible, slow, bureaucratic, costly and relatively weak formal justice systems.

Another reason that many parties prefer customary dispute resolution is that it is process-oriented, which guarantees more sustainable results than pure product-oriented methods of conflict settlement. Their inclusiveness, participatory approaches and embeddedness in communities and local cultures make it more likely they will be sustainable.

There are risks entailed with some customary dispute resolution initiatives. One of the main ones is the potential for non-compliance with international, and sometimes national, standards of equity, democracy and human rights. Very often women, young people, foreigners or outsiders to the community and any other vulnerable members are disproportionately discriminated against when it comes to HLP rights. For this reason, organisations working with customary authorities and providing legal assistance should ensure that customary leaders are informed about international standards. They should further

ensure that parties have access to statutory justice if customary approaches threaten to grossly violate human rights standards.

Another problem is that resolution mechanisms may be limited to only those communities that subscribe to the relevant customary and traditional practices. Thus they may have limited geographic jurisdiction and may be of limited utility when disputes occur between two or more customary groups.<sup>167</sup> This can have negative implications for a displaced population that is typically confronted by multiple customary systems.

Another limitation is the potential lack of transparency, predictability and consistency of decisions in customary proceedings. In conflict contexts, customary rules and institutions often change and evolve. Beyond general principles known by all members of a community, a significant number of customary decisions are the result of interpretations by local leaders, resulting in significant variations from one village to another. While this may result in more tailored solutions that meet the needs of specific parties, it does not promote a common standard of justice. Additionally, the designation of customary leaders is rarely democratic. Recognition or appointment is often hereditary or based on social or natal status, lineage or ethnicity. Often customary leaders are not elected and once appointed may not be removed from office. Thus, there may be little accountability or incentives to modify traditions that establish hierarchies and patterns of discrimination between different groups or categories.

### Faith-based Dispute Resolution

Many societies are guided by religious principles or ethics to resolve disputes. In some, these standards have entered directly into customary or statutory law (e.g., family law). Additionally, in a significant number of countries, religious law is State law. For example, in some Muslim-majority countries, dispute resolution especially at the local level, may be based on *shari'a*' law rather than a civil code, civil procedure code or common law. There are many different interpretations of this form of religious law.

Faith-based dispute resolution is generally similar to other customary and some statutory procedures for third-party decision making. A third party, usually a religious or community group, applies religious precepts, legal principles and guidance and makes a binding decision which is generally

<sup>167</sup> Wehrman, Babette, 2008, *Land conflicts: A practical guide to dealing with land disputes*, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), pp 68- 69. [http://www.landcoalition.org/pdf/08\\_GTZ\\_land\\_conflicts.pdf](http://www.landcoalition.org/pdf/08_GTZ_land_conflicts.pdf)

immediately enforceable.

As with some practices of customary dispute resolution, faith-based land dispute resolution can contradict fundamental human rights norms (e.g., impartiality, fairness and inclusiveness)<sup>168</sup> or national law, in particular in relation to women's inheritance rights.

### Land dispute resolution bodies and forum shopping

In many post-conflict countries there may be a proliferation of land dispute resolution mechanisms (including non-consensual, consensual, customary and religious approaches) that disputants can use to pursue satisfaction of their interests. Some of these include:

- formal government courts and judicial decisions
- administrative bodies, special land courts or tribunals with decision-making authority
- special government-appointed committees that investigate and recommend how to resolve disputes
- political bodies and politicians that act as brokers, mediators or arbitrators
- customary institutions that use a variety of procedures
- religious institutions and leaders who apply religious laws to guide decision-making
- civil society and NGOs that often provide consensual procedures such as mediation
- trader-based institutions
- military courts
- independent private mediators or arbitrators who provide a variety of types of third-party services.

In post-conflict settings there are often a number of dispute resolution mechanisms functioning in parallel and available to disputing parties. This situation often results in forum shopping, the phenomenon when individuals and/or communities in a dispute choose one or more resolution mechanisms (perhaps involving courts, ADR mechanisms, traditional leaders, religious leaders, NGOs and humanitarian organisations). They may use them either sequentially or in parallel, depending on their assessment of which is likely to result in the most favourable outcome. Forum shopping is often the result of perceived corruption, past unfair decisions on the part of

<sup>168</sup> *ibid.*, pp.71-72.

one or more dispute settlement providers or the absence of a clearly defined hierarchy of institutions and procedures.

The availability of a variety of resolution mechanisms has both pros and cons. On the plus side, having choices allows disputants to explore and choose procedures that they believe will be the most effective and likely to result in desirable outcomes. Additionally, having a range of procedures to choose from also provides checks and balances and some accountability within, and between, dispute settlement fora. For, if they do not work, are corrupt or do not result in fair, timely and cost-effective outcomes, disputants will not use them. A negative aspect of forum shopping is that having a large choice of mechanisms may be confusing to parties as they try to navigate unfamiliar procedures. Furthermore, some parties with the resources to take disputes to many fora may sequentially use various mechanisms until they get the result they want. This can be costly and waste the time of officials and the resources of institutions when an earlier outcome would have been entirely reasonable. Powerful and well-heeled parties can shift from one mechanism to another, grinding down opponents, delaying potentially unfavourable outcomes and ultimately forcing their opponents to abandon claims.

Without some common understanding of sequencing, hierarchy of approaches and clear steps to appeal unacceptable outcomes, forum shopping can thus be detrimental to HLP justice. Delay can also bring parties into further conflict with each other because of lack of settlement and closure.

### Selecting the best alternative

Conflict sensitivity and Do No Harm approaches are critical for helping parties address and resolve land disputes, especially in a post-conflict context. The selection of the most appropriate mechanism and procedures to resolve HPL disputes is often highly dependent on the capacity of the judiciary or administrative bodies, the effectiveness of national and customary land administration systems, the quality of land records and the kind of outcomes desired by the parties. Making a wise and informed choice requires in-depth understanding by parties and their advisors of a number of factors. To encourage wise decision-making, parties those working on land issues need a thorough understanding of:

The **context, institutional and legal framework** in which the dispute is occurring and may be resolved. Parties and advisors should identify and assess:

**a. State laws on HLP:** These include

the national constitution, laws around property, land, forestry, agriculture, mining, marriage, marital property, inheritance; civil and family codes and any local application of international laws or conventions.

**b. Customary or religious laws on HLP:** These include guidelines and procedures for land allocation to local community members, returnees and “outsiders” seeking customary land; practices for allocation or inheritance of land by women or children and measures to care for vulnerable parties.

**c. State institutions that administer HLP assets/offer land dispute resolution:** These may include ministries / authorities whose mandates include land, planning, agriculture, the environment local government, rural development and justice. In post-conflict settings other actors may be restitution/resettlement agencies and ad-hoc land disputes resolution commissions.

**d. Customary institutions that administer HLP assets/dispute resolution:** Typically, these are traditional and/or religious authorities with customary land allocation and/or land dispute resolution responsibilities.

**e. Civil society:** Non-governmental or community-based organisations working on land issues can provide legal aid, promote rural development and encourage women’s empowerment. Other non-state actors may include landowners, tenants associations, chambers of commerce, cooperatives and farmers organisations.

**f. Vested interests:** Powerful political, economic and/or military actors may seek to maintain or acquire tracts of land for agricultural use, to mine resources, to provide benefits for their troops or political clients and to settle different ethnic groups or supporters.

**Parties and advisors should identify and assess:**

**a. All parties to the dispute.** These include disputants (differentiated by ethnicity, gender, age, religion and other factors) and other key actors. These could be neighbours who can provide information on the history of the assets in dispute and influential traditional or religious leaders.

- b. The issues in dispute and parties' claims:** Explore all the issues in contestation and what parties want from each other and are prepared to compromise over.
- c. The parties' legal rights to the HLP asset:** Where possible seek to examine ownership/user rights and any attested forms of evidence that could substantiate a claim: these may include deeds, receipts for utility payments, testimonies of neighbours or property boundary markers.
- d. Links to wider conflicts:** It is important to see how a particular dispute relates to conflict, displacement, dislocation resulting from return processes, ethnic tensions and animosity towards "strangers" or "outsiders". Risks of recurrence of conflict should be explored.
- e. Steps taken to promote resolution:** It is important to understand the nature of previous or ongoing attempts to resolve differences, whether third parties have been involved, whether they have been successful, whether any previous offers of settlement and compensation have been made and, if so, whether they have brought the disputing parties any closer to resolution.
- f. Cost-benefit analysis of dispute settlement:** It is important to consider the time, money, energy, emotional impacts and risks associated with seeking solutions.

Understanding the likely outcome of the resolution process in light of such contextual factors is important, both to the parties and those who advise them.<sup>169</sup> Remember that a central objective is always to ensure that humanitarian activities avoid aggravating tensions or undermining the HLP rights of members of vulnerable groups.



<sup>169</sup> UN HABITAT, 2009. Land and conflicts: A Handbook for Humanitarians, p.10. <http://oneresponse.info/.../LAND AND CONFLICT - A Handbook for Humanitarians.doc>

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### ADDRESSING HLP DISPUTES



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#### SESSION SEVEN

### TYPES OF HLP DISPUTES

- HLP disputes can be organised by:
  - The **type of land involved**: private or public
  - The **parties involved**: individuals, families, communities, and their ethnicity or religion
  - The **scale of the dispute**
  - The **issues in the dispute**
    - Boundary disputes
    - Ownership disputes
    - Occupancy disputes
    - Access and use disputes
    - Inheritance disputes



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- What are the main causes of HLP disputes in (name of the country)?
- Who might be involved?
- What are some of the impacts of HLP disputes?



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#### GROUP EXERCISE

- What are some of the impacts of HLP disputes?
- How can HLP disputes be resolved?



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#### GROUP EXERCISE

### HLP DISPUTES

- HLP disputes usually are:
  - Multifaceted and multidimensional
  - Linked to historical, social, environmental, economic and political contexts
  - Frequently nested within larger conflicts
  - Changing over time



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### DISPUTE RESOLUTION APPROACHES

- There are 3 main types of dispute resolution:
- **Adversarial** (non- consensual)
  - **Collaborative** (consensual): Alternative Dispute Resolution (ADR)
  - **A mix of the above**: Customary or traditional dispute resolution, which includes also faith-based dispute resolution



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## ADVERSARIAL, FORMAL PROCESSES

- Typical of formal justice systems
- **Adjudication:** parties receive a binding decision by judge (“win-lose decision”)
- Advantages: procedural rules are usually designed to ensure a fair trial
- Disadvantages: complex, rigid, lengthy and costly
- **Administrative system:** e.g. Land/Property Commission (“quasi judicial systems”)

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## ARBITRATION

- Private and voluntary dispute resolution process
- A neutral and impartial third party renders a decision (“award”) based on the merits of the case
- Parties have some control over the process
- Binding arbitration (very close to adjudication)
- Non-binding arbitration

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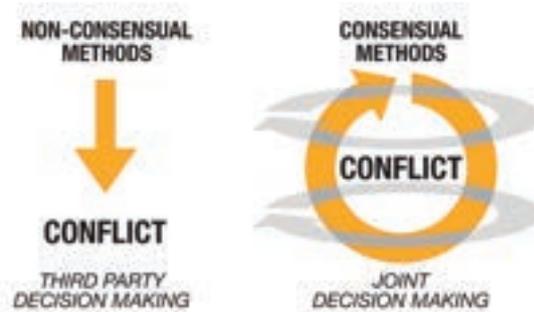
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## COLLABORATIVE, ADR PROCEDURES

- Non-adversarial procedures
- Include consensus-building processes
- Advantages: “win-win solution”, promotes peace and social-reconciliation, flexible
- Disadvantages: no deterrent to others from engaging in unlawful behaviour; “settlement” does not necessarily mean “justice”
- The three most common types: mediation, negotiation and arbitration

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## MEDIATION

- **Impartial and neutral third party** (“mediator”) facilitates a negotiation between the disputants
- The mediator has no decision-making authority (but can suggest substantive options)
- Flexible and easily adaptable to all types of cases

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- Variety of forms; more common in rural areas
- Process is embedded in community’s culture
- Decision-making process varies: elements of litigation and ADR
- Advantages: credited with legitimacy by community, accessible, cost-effective, inclusive, process-oriented
- Disadvantages: non-compliance with international standards (excluding women and outsiders), limited geographic coverage, lack of transparency and corruption

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CUSTOMARY OR TRADITIONAL RESOLUTION

1

## NEGOTIATION

- Any form of communication between two or more people for the purpose of arriving at a mutually agreeable solution
- Disputants may represent themselves or use agent, lawyer or family member
- Decision-making authority lies directly with the parties

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- Faith-based dispute resolution
  - Some societies make reference to religious principles (e.g. reconciliation and forgiveness)
  - In some societies religiously-based values are directly included in customary/statutory law (e.g. family law)
  - Religious law may take place of civil law: (e.g. in some Muslim-majority countries, dispute resolution significantly based on *shari’a* law)

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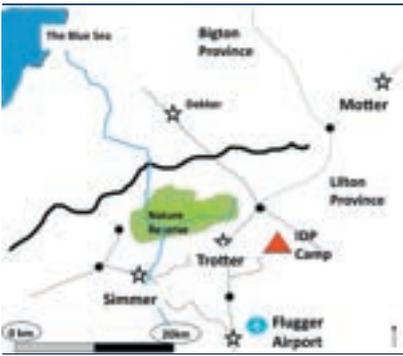
CUSTOMARY OR TRADITIONAL RESOLUTION

2

QUESTIONS?



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CASE STUDY MAP



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QUESTIONS?

EVALUATION OF DAY 2



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6



A Displaced woman with a Letter of Allotment for her land, Kenya



# Housing, Land and Property and Durable Solutions

## SESSION OBJECTIVES

At the end of the session participants will be able to:

- list and define the three options for durable solutions (return, resettlement and local integration) and their legal sources, and appreciate when durable solutions have been reached
- provide an overview of the rights to restitution and compensation of HLP assets and describe how these can be implemented
- discuss how to address HLP issues during return, local integration and resettlement of IDPs and refugees in a specific context.

## KEY MESSAGES

- Enjoyment of HLP rights is key to the achievement of durable solutions.
- Durable solutions are achieved when IDPs no longer have protection needs linked to their displacement and can enjoy their human rights without discrimination on account of their displacement. There are three potential durable solutions:
  1. return to the place of former residence
  2. local integration at the site of displacement
  3. resettlement to a third location within the country.
- IDPs and refugees have the right to return to their place of former residence (Guiding Principles) and the right to have restored to them any HLP assets of which they were arbitrarily deprived during the displacement (Pinheiro Principles). Where recovery of these properties is impossible or impracticable, local authorities should compensate the loss or provide another form of reparation (Pinheiro Principles).
- Restitution is the preferred legal remedy for displacement.
- There are several options of remedies for HLP violations that can be used based on the nature of the claim and taking into consideration the rights of occupants of the property.

## PREPARATION FOR THE SESSION

- Prepare the projector and laptop to show the presentation
- Photocopy for each participant either:
  - Task sheet 3: Durable Solutions Case Study: Local Integration
  - Task sheet 3: Durable Solutions Case Study: Return
  - Task sheet 3: Durable Solutions Case Study: Resettlement
  - Handout 9: Glossary

| DAY THREE: HLP and Durable Solutions |  | Session 9  |
|--------------------------------------|--|--|
| Time                                 | Activity   | Comments   |
| 08:30                                | Briefly give a potted version of the evaluation feedback from day two.<br>Recap on all the four sessions from the previous day.<br>Learning review of previous day.  |  |
| 09:00                                | Show slides x 2: What are durable solutions?<br>Show slide: Guiding Principle 28.<br>Show slide: Guiding Principle 29.<br>Show slide: Pinheiro Principles, Principle 2.  |  |
| 09:30                                | Revisit the flip chart from session 4 and recap some of the challenges of location of origin (e.g. secondary occupation, land conflict, land grabbing, lack of HLP documentation, compensation and restitution, official confiscation and reallocation)<br>Split into three groups (count off).<br>Distribute one of either of the following case studies (Task Sheet 3) to each group:<br>Local Integration<br>Return<br>Resettlement<br>Allow 30 minutes for the groups to discuss<br>What are Family Alpha/Beta/Gamma's entitlements?<br>What are the legal and practical issues within the durable solution?<br>How might NRC assist the family? |  |
| 10:30                                | Break  | <b>Session 10</b>  |
| 11:00                                | Take feedback in plenary.<br>Ask each group to give a brief synopsis of their family's history and then present their discussion of the questions.<br>Wrap up by showing slides: HLP after displacement (1 and 2)<br>Distribute: Handout 9: Glossary<br>Explain that this is the end of the training (apart from the closing session).   |  |
| 11:45                                | Revisit the Parking Lot and AOB.<br>Review the expectations from Session 1.  |  |
| 12:00                                | Distribute the post-test and ask participants to complete.   | <i>Explain again that this is anonymous but may be interesting for them to compare with their pre-test</i> |
| 12:20                                | Distribute evaluation form and ask individuals to complete.  |  |
| 12:40                                | Distribute certificates. Give each participant a certificate selected at random and ask them to find the colleague whose name is on it and congratulate them on completing the course.<br>Ask everyone to stand in the circle and say one word about how they are feeling.<br>Thank the participants for their participation (and NRC for hosting) and say goodbye.  |  |
| 13:00                                | <b>CLOSE</b>   |  |

## BACKGROUND: Addressing HLP issues in order to achieve durable solutions

States have the responsibility to ensure that IDPs/refugees are able to make a voluntary and informed choice about the resolution of their displacement and that this choice will be durable and sustainable.

A **durable solution for IDPs** is achieved when “IDPs no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their human rights without discrimination resulting from their displacement”.<sup>170</sup> There are three potential durable solutions:

1. return to the place of former residence
2. local integration at the site of displacement
3. resettlement to a third location within the country.

Key elements for sustainable durable solutions that allow former IDPs to fully integrate at the location of their choice include the re-establishment of physical security, property restitution, and access to livelihoods and basic services. In particular, the availability of remedies to address HLP issues, whether restoration or compensation for the assets they left behind, becomes crucial for the achievement of durable solutions.<sup>171</sup>

Section IV of the *IASC Framework on Durable Solutions for IDPs*, lists the criteria for determining whether a durable solution has been achieved. HLP rights are listed as one of four core criteria that must be addressed in every displacement situation, namely:

1. long-term safety and security
2. enjoyment of an adequate standard of living without discrimination
3. access to livelihoods and employment
4. effective and accessible mechanisms to

restore housing, land and property.<sup>172</sup>

In addition, it is important to note that the restoration of HLP is linked to safety and security, the enjoyment of adequate standard of living and access to livelihoods.

Secure access to HLP assets helps former IDPs to have a place to live, engage in agriculture and earn an income. Security of tenure, without fear of eviction, allows people to rebuild economic, political, cultural and social relationships. More broadly, security of tenure allows localities and the country to re-establish their economies and supports peace efforts.

**Durable solutions for refugees** are “lasting solutions through local integration in the country of asylum, voluntary repatriation to the country of origin or resettlement in a third country.”<sup>173</sup>

There are three forms of durable solutions for refugees:

1. voluntary repatriation to the country of origin
2. local integration in the country of asylum
3. resettlement to a third country in situations where it is impossible for a person to go back home or remain in the host country.<sup>174</sup>

These solutions involve complex and challenging processes requiring integrated and sustained action by governments and international partners like UNHCR. In particular, countries of origin should assume lead responsibility by signing instruments (such as tripartite and other agreements) that cover all aspects of durable solutions for the refugees. Governments should assume leadership to build a strong basis for recovery and development through appropriate policies, institutions, incentive structures and programmes.

<sup>170</sup> The Brookings Institution, 2010, *IASC Framework for Durable Solutions for internally displaced persons*, p.5.

<sup>171</sup> Brookings Institution—University of Bern: Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, p.36. [http://www.brookings.edu/papers/2008/1016\\_internal\\_displacement.aspx](http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx)

<sup>172</sup> The other four criteria listed in the IASC Framework on Durable Solutions for IDPs are: access to documentation, family reunification, participation in public affairs and access to effective remedies and justice.

<sup>173</sup> UNHCR Agenda for Protection, <http://www.unhcr.org/refworld/pdfid/4714a1bf2.pdf>

<sup>174</sup> UNHCR, 2003, UNHCR Framework for Durable Solutions for Refugees and Persons of Concern, p.3. <http://www.unhcr.org/partners/PARTNERS/3f1408764.pdf>

## International Legal Framework

### 1. Guiding Principles on Internal Displacement

**Guiding Principle 29** is the property-related standard that most directly deals with durable solutions for IDPs. It should be read in conjunction with **Principle 28** which guarantees a voluntary choice between the durable solutions of return, resettlement and local integration.

Guiding Principle 29 states:

1. “Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation”.

The right to restitution stated in Guiding Principles 29 (2) is based on the human rights standard that specifies the right of victims of violations to a legal remedy<sup>175</sup> which is generally comprised of:

1. access to justice or the right to a procedural remedy
2. reparation or the right to a substantive remedy.<sup>176</sup>

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<sup>175</sup> The right to a legal remedy is a well-established human right that is triggered when individuals claim that any of their other human rights (e.g. to freedom from arbitrary detention or an adequate standard of living) has been violated. It can be found in numerous international instruments, among others Article 8 of the Universal Declaration of Human Rights, Article 2 of the International Covenant on Civil and Political Rights and article 39 of the Convention on the Rights of the Child.

<sup>176</sup> Willians Rhodri, forthcoming, *IDMC Module on HLP and Restitution*. pp.2 -3.

### 2. Basic Principles

The Basic Principles<sup>177</sup> are not only relevant to displacement but for human rights violations in general. Since forced displacement is a human rights violation by definition, the Basic Principles are of specific importance for persons affected by forced displacement.

According to the Basic Principles, reparation can take a number of different forms:

1. restitution or actual restoration of possession over something that was wrongfully taken away from the victim (such as return to one’s place of residence and return of property)
2. compensation through the award of equivalent value to the harm caused by the violation, either in the form of money or “in kind” which means through an alternative good to the one that was lost (e.g. a piece of land with the same characteristics)
3. rehabilitation that addresses the physical or psycho-social effects of the violations
4. satisfaction usually in the form of symbolic redress such as public apologies or memorials
5. guarantees of non-repetition.

Generally speaking, the preferred legal remedy for displacement is **restitution**, or the return of the specific property to its rightful owner. Alternative remedies such as cash compensation or provision of equivalent property elsewhere are a substitute for restitution only when restitution is not possible. States are expected to demonstrably prioritise restitution rights. The same preference is expressed in the *Principles on Housing and Property Restitution for Displaced Persons and Refugees* (Pinheiro Principles).<sup>178</sup>

### 3. Pinheiro Principles: broadening the scope of restitution rights

Principle 2. The right to housing and property restitution states:

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<sup>177</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles) UN General Assembly, A/RES/60/147, 21 March 2006.

<sup>178</sup> The Principles on Housing and Property Restitution for Displaced Persons and Refugees were adopted by the UN Sub-Commission on Protection and Promotion of Human Rights on 11 August 2005, resolution 2005/21. The Principles are not a treaty or a formal law and thus are not legally binding. However they have persuasive authority and are explicitly based on existing international, regional and national laws. Paulo Sergio Pinheiro, the Special Rapporteur on Housing and Property Restitution for Refugees and Internally Displaced Persons, drafted the principles or guidelines on housing and property restitution.

“2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2. States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution”.

The Pinheiro Principles broadened the scope of restitution as defined in the Guiding Principles from “property and possession” to “housing, land and property”, a term meant to protect tenancy rights and encompass interests in land and housing not based on formal title and agreement. Therefore the terminology “**housing, land and property restitution**” has become a term for a broad, corrective approach to violations of property and possessory rights. In addition, it is important to note that the Pinheiro Principles covers both IDPs and refugees.

The IASC Framework raises the importance of not confusing humanitarian and development assistance (and durable solutions) with compensation. In principle, IDPs and refugees should remain entitled to both: the former based on the need to redress and the latter based on past violation of their human rights.<sup>179</sup>

In addition, the Pinheiro Principles include related affirmations of:

- the right to privacy and respect for the home (Principle 6)
- the right to peaceful enjoyment of possessions (Principle 7)
- the right to adequate housing (Principle 8)
- the rights of tenants and other non-owners (Principle 16) to be included in the restitution programme.<sup>180</sup>

### Right to return

The right of IDPs and refugees to return to their homes and places of habitual residence has been

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179 IASC Framework on Durable Solutions for IDPs, para 99: “Humanitarian and development assistance received during or after displacement does not amount to compensation, although its fair and equitable allocation can contribute to community reconciliation and conflict prevention.”

180 See HLP International Legal Framework and Principles module.

affirmed in resolutions of the UN Sub-Commission on Human Rights (2002/30) and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (1998/26).

IDPs and refugees’ right to return to their homes has also been endorsed by the international community through successive UN Security Council and General Assembly resolutions.<sup>181</sup> As a key element of post-conflict settlements, it has also been incorporated into at least one multilateral agreement, the General Framework Agreement for Peace in Bosnia and Herzegovina.<sup>182</sup>

## Regional Legal Frameworks

### The Great Lakes Protocol on the Property Rights of Returning Populations<sup>183</sup>

This recognises and protects informal HLP rights and establishes that HLP assets should be protected from destruction during conflicts. It also establishes that member States should assist IDPs and refugees in recovering their property upon their return and, where not possible, should pay compensation.<sup>184</sup> Restitution should be achieved jointly by traditional and administrative authorities. Member States should establish property registration schemes under which title to property, held under both customary and statutory land tenure systems, will be recognised.<sup>185</sup> Finally, the Great Lakes Protocol requires State members to deal with special claims of protection made by women, children and communities with respect to disputes on the ownership of property.<sup>186</sup>

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181 UN SC Res. 1287 (2000), Para. (8), <http://daccessdds.un.org/doc/UNDOC/GEN/N00/270/43/PDF/N0027043.pdf?OpenElement>; UN SC Res. 1244 (1999), Para. 11 lit. (k) and Annex 2, Para. 4, <http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>.

UN GA Res. 51/126, <http://daccessdds.un.org/doc/UNDOC/GEN/N97/764/35/PDF/N9776435.pdf?OpenElement>.

182 General Framework Agreement for Peace in Bosnia and Herzegovina, 14 December 1995 (Dayton, Ohio), Annex 7: Refugees & Displaced Persons, Chapter 1, Article 1, [http://www.ohr.int/dpa/default.asp?content\\_id=375](http://www.ohr.int/dpa/default.asp?content_id=375).

183 In response to some of the specific challenges faced by the countries of Africa’s Great Lakes region, the African Union and the UN initiated the International Conference on the Great Lakes Region (ICGLR). This process, which recognised the interconnectedness of the region’s populations, its security and economies, and the imperative of seeking regional solutions, culminated in the signing by 11 states of the Pact on Security, Stability and Development in the Great Lakes Region (the Great Lakes Pact).

184 Great Lakes Protocol, Article 4 and 8.

185 *ibid.*, Article 4.

186 *ibid.*, Articles 5, 6 and 7.

## 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa<sup>187</sup>

Article 5 (Voluntary Repatriation) of the OAU Convention states that “the country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.”<sup>188</sup>

## The Cartagena Declaration on Refugees<sup>189</sup>

The Declaration reiterates the importance of the “voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin.”<sup>190</sup> It also refers to the need to ensure that the countries of the region establish a minimum standard of treatment for refugees, on the basis of the provisions of the 1951 Refugee Convention.<sup>191</sup>

## The current restitution debate

Efforts to address HLP disputes in post-conflict situations have recently come under critical scrutiny. While restitution might still be a remedy for dispossession, it may be impracticable or may not address the root causes of conflict, in particular if land disputes were one of the causes of the conflict and not simply a consequence.

Restitution may not be the most appropriate remedy<sup>192</sup> if:

- Land and property tenure and use patterns prior to displacement may have been unfair or contested.
- Land and property tenure and use patterns may have been unsustainable prior to displacement.

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187 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, was adopted in 1969 in a context of decolonisation. (The OAU is now known as the African Union). The 1969 OAU Refugee Convention is considered the most generous and flexible international agreement on refugee protection. <http://www.unhcr.org/45dc1a682.html>

188 Article 5 (Voluntary repatriation) no. 4.

189 *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, : <http://www.unhcr.org/refworld/docid/3ae6b36ec.html> [accessed 17 March 2011]

190 Paragraph no. 12 of the *Cartagena Declaration on Refugees*

191 For more information, see the Module on the International Legal Framework and Principles.

192 Williams, Rhodri, forthcoming, *IDMC Module on Restitution*. pp. 6 -7.

- Displacement has accelerated existing demographic trends (for example, urbanisation).
- Land and property is held collectively and individualised restitution approaches may not work.
- IDPs/refugees were homeless or landless prior to displacement and thus find themselves ineligible for a restitution programme.
- In protracted displacement situations, competing claims of subsequent occupants, landlords, and third party purchases may render restitution impractical if not impossible.

According to the *IASC Framework on Durable Solutions for IDPs*: “Addressing housing, land and property rights issues requires a comprehensive perspective. In principle, restitution is the preferred remedy. But in some cases it may be more equitable, after weighing different interests, to compensate the displaced owner instead of restoring his or her property. Appropriate solutions should be found for persons whose tenancy rights have been compromised in the course of displacement. [...]”

For those who are landless or homeless the IASC Framework includes a series of recommendations on the importance of ensuring that IDPs who did not have access to HLP assets before displacement are given particular attention in durable solutions settings. “It must be ensured that returnees without property rights as well as IDPs who locally integrate or resettle to areas where they do not own property still have access to basic shelter and housing.”

The IASC Framework also recognises the need to address challenges that women and children may face in asserting their HLP rights<sup>193</sup> as well as groups that held property in informal and customary tenure forms prior to displacement.<sup>194</sup>

## Restitution of HLP assets

According to the Principles mentioned above, the return of lost property (housing, land and property) to its rightful owner is generally the preferred remedy. This both redresses the wrong done (by recreating the original pre-conflict situation) and facilitates return and reintegration in the area of origin.<sup>195</sup> Unlike other remedies, restitution has the

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193 For more information, see the Women’s HLP rights module.

194 *IASC Framework on Durable Solutions for IDPs*. Paragraph no. 76.

195 Restitution is different from repossession, which is the mere restoration of possession.

Land disputes have been both a cause and a consequence of conflict in Côte d'Ivoire, particularly in forested western areas to which authorities encouraged massive immigration from neighbouring countries and other regions of the nation in the 1960s and '70s. Exploitation of the regions's fertile land contributed to increased exports of agricultural products that benefited the whole country. However, resentment against migrants was exacerbated by economic crisis beginning in the 1980s, triggering calls by 'indigenous' Ivorians to revoke land and voting rights previously granted to migrant workers. Since only two per cent of Ivorian land is registered most sales were done customarily and without official state recognition. This fact encouraged many to challenge the legality of these transactions. Armed conflict from 2002 to 2007, displaced hundreds of thousands, creating new opportunities for illegal land sales and occupation.

Despite the centrality of land to the conflict and peace-building, Cote d'Ivoire has not developed a specific system of restitution or compensation for properties abandoned due to the conflict. Displaced persons and refugees whose property had been occupied or sold can therefore only rely on pre-existing land legislation, clearly not designed and adapted to post-conflict land disputes and IDPs' specific circumstances. The government's intention is to settle both pre-war and post-war land disputes through its 1998

Rural Land Law, which aims at recognising and formalising customary land rights by setting out procedures and conditions for their transformation into title deeds. However, despite financial support from the international community, the implementation has hardly started as it requires considerable administrative, financial and human capacity\in 2009 Côte d'Ivoire only had 23 surveyors to demarcate the over twenty million hectares of rural land covered by the Land Law.

The law discriminates against IDPs as it includes procedures requiring several years of continuous and peaceful occupation in order to obtain recognition of land rights and by a requirement that applications to claim one's land must be lodged in the place of origin which might not be feasible for security or material reasons for IDPs and refugees.

As a result, very few displaced persons have been able to repossess their land through the 1998 Land Law. In such situations, where no other dispute resolution mechanism exists at national level, it is crucial for humanitarian actors involved in protecting IDPs and refugees rights to advise populations on their rights, monitor the negative effects that implementation of land titling legislation can have and highlight the need to adapt procedures and provisions to specific circumstances of displaced persons, refugees and returnees.<sup>197</sup>

advantage of allowing voluntary and free choices between all three durable solutions: return, local integration and resettlement. In other words, IDPs and refugees can either return to live in restituted property, or choose to sell, exchange or lease their property in order to get an income that will contribute to sustainable local integration or resettlement. Today restitution rights have become a key element of many constructive peace-building strategies.<sup>196</sup>

Restitution requires the adjudication of competing claims to determine who has a more legitimate claim to assets. Some HLP claims may be relatively simple. For example someone whose land has been taken by forced or fraud will try to recover it from those who seized it. Other cases may be more complicated and involve several competing legitimate claims. For example, land may have been unfairly expropriated by government actors during conflict and transferred

to a beneficiary who may then have legally sold it land to the current owner who has no knowledge of the fact that the land actually belonged to someone else. In such a case, restituting the land to the original owner actually creates an injustice against the bona fide buyer. Depending on the circumstances and the will of the parties one could get restitution while the other one would be entitled to compensation.

The right to restitution is not restricted to those holding legal title or claim to property, but also extends to other forms of ownership or title, such as tenancy, occupancy or user rights in collective or communal property, customary tenure forms. It should be noted that in many cultures widows or divorced women are not entitled to land and therefore face major difficulties to assert their restitution rights.

<sup>196</sup> Williams, Rhodri, forthcoming, *IDMC Module on HLP and Restitution*. p.6.

<sup>197</sup> For more information see IDMC, 2009, *Whose land is this? Land disputes and forced displacement in the western forest area of Côte d'Ivoire*. [http://www.internal-displacement.org/countries/cotedivoire/reports/CDI\\_SCR\\_Nov09.pdf](http://www.internal-displacement.org/countries/cotedivoire/reports/CDI_SCR_Nov09.pdf)

In recent times, numerous peace agreements, such as the Dayton Peace Agreement for Bosnia and Herzegovina<sup>198</sup>, included provisions that deal with property restitution.

### Compensation for the loss of HLP assets

Compensation in cash or in kind, can be given in lieu of restitution in cases where physical recovery is either impossible or impracticable. Compensation is acceptable when the following conditions are met:

1. when the restoration of housing, land or property is impossible (for example, for security reasons or when the properties are destroyed)
2. when those possessing restitution rights voluntarily prefer compensation-based solutions
3. when there has been independent determination by trusted third parties without vested interests in compensation outcomes.

In addition, where IDPs and refugees voluntarily choose or express a clear preference for compensation (on the understanding that this may conclude the restitution process), the State should do so accordingly (this is the case for example of a long displacement, where the displaced have rebuilt their lives elsewhere in such a way that they would not want to relocate elsewhere).<sup>199</sup>

Compensation would normally be calculated on the value of the property at the time the restitution process is initiated as the value may have changed considerably since the time of displacement. However, in some cases compensation may consist of a lump sum when it is considered that an individual determination of compensation amount would take too long and delay the process. Efforts must, nevertheless, be made to ensure that any compensation is adequate and fair. As for the right to restitution, the right to compensation is recognised for women and groups that held property in customary tenure forms.

In some contexts, land reform is necessary to address issues that restitution and compensation cannot solve such as the root causes of some land tensions (land reform or distribution) or housing shortage and conditions (including improving

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198 <http://www.state.gov/www/regions/eur/bosnia/bosagree.html>

199 Handbook on housing and Property restitution for Refugees and Displaced Persons: Implementing the Pinheiro Principles. FAO, NRC, IDMC, OCHA, UN-HABITAT, UNHCR. 2007. P.25.

housing land tenure, upgrading of slums and privatisation of collective centres).<sup>200</sup>

### Guidance to achieve durable solutions with regard to HLP rights:

**Provision of HLP information:** IDPs, refugees and the affected community should be provided with updated information regarding the conditions for resettling or integrating locally and conditions at their places of origin. These include the security situation, presence of mines, condition of their homes, lands, local roads, infrastructure, schools and health facilities. It is important to provide for occupants or users of claimed properties who do not have other accommodation or land with information on their rights, including alternative accommodation. It is important also to clarify rights to the harvest of any crops that they may have planted and, if the crops are uprooted, the nature of any compensation process.

**Provision of remedial options for HLP rights violations:** humanitarian actors should assist governments in addressing HLP issues during return. Remedial options include:

- full restitution of rights over homes, lands, and property
- restitution of some categories of property and compensation for others
- partial restitution, or property sharing arrangement between claimants and occupants (e.g. dividing a parcel of land into two separate properties)
- compensation in the form of equivalent alternative HLP assets (e.g. the same quantity of land in another part of town)
- compensation in the form of a non-equivalent alternative HLP assets (e.g. tenure security in an urban dwelling for IDPs and refugees who do not wish to resume agrarian livelihoods)
- compensation in cash for the value of the HLP assets
- combinations of one or more of the above and compensation for the value of lost income from the asset during the period of displacement.

Where the rights of claimants must be balanced against the rights of persons occupying them, it is important to guarantee some measures to the

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200 For more information, see *the Basic principles and guidelines on development-based evictions and displacement* contained in Annex I of the report of the Special Rapporteur, A/HRC/4/18, <http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx>

occupants in order to ensure respect for their rights.

Some options are:

- alternative accommodation for occupants with no access to other housing at the time they are required to vacate the claimed property
- freedom from forced evictions
- due process, including notice and an opportunity to participate in claims proceedings affecting them
- compensation for necessary improvements to occupied properties
- the ability to harvest crops they planted themselves
- assistance, where relevant, in claiming their own property
- information at all stages of the procedure.

Key questions in judging whether any given approach is compatible with human right standards include:

- the extent to which other types of remedies may not be possible under the circumstances (for example, due to the destruction of property)
- whether IDPs and refugees have been consulted and actively participated in the identification, development and implementation of remedies
- whether the selected remedy provides redress that is proportionate to the property violations suffered by the displaced persons
- whether the remedy is integrated into a broader response to displacement that includes reparations for non property-related harms as well as assistance for integration
- whether the substantive remedy is delivered through procedures that are rapid, fair, inexpensive and accessible to all potential claimants.<sup>201</sup>

### Durable solutions

**Return to the place of former residence:** the right to voluntary, safe and dignified return is now understood to encompass not merely returning to one's country of origin, but to one's original home as well.

### Local integration in the area where displaced

<sup>201</sup> Williams, Rhodri, forthcoming, *IDMC Module on HLP Issues in Durable Solutions: Basic Concepts and Principles*, pp.13- 14.

**persons have taken refuge:** there are a wide range of reasons why the displaced might choose local integration as their preferred durable solution. In cases of protracted displacement, where IDPs and refugees have rebuilt their lives away from their place of origin, the trauma of war and ongoing local tensions, may make it impossible to envisage return. One of the main elements in judging whether IDPs and refugees have locally integrated is the extent to which they have found adequate housing solutions, either in the accommodation they settled in during displacement (such as a camp, collective centre, slum or rented property) or in a secondary location which they identified during their displacement. The quality of the tenure security they enjoy in terms of housing rights and access to land is an essential component of adequate housing and an indicator that they have found durable solutions. Restitution or the compensation received for the loss of HLP rights can generate income to facilitate the integration in the community.

**Resettlement to a third location within the country:** resettlement is necessary when people do not wish or are unable to return to their original land/home and must be accommodated elsewhere.

The identification of land available for resettlement can be very challenging, especially in urban areas. Public land, whether abandoned or unused, is likely to be part of longer-term zoning and urban expansion plans and may be administered by a number of different agencies. The use of abandoned private land may be simple in some cases, such as when large land holdings allocated before the conflict have been abandoned and are unlikely to be reclaimed but may be exceedingly complex in others (e.g. land under customary tenure). The State might have to use its power and acquire private rights in land without the willing consent of its owner or occupant (compulsory acquisition/expropriation). In general, allocation of land should be permanent and the new owners/users provided with necessary documentation to prove ownership or tenancy/user rights in order to avoid evictions and renewed displacement.<sup>202</sup>

Access to land by women (widows in particular), and other vulnerable groups should be addressed directly and explicitly.<sup>203</sup> It is essential to identify the rights of the host communities as well as the rights and needs of the people to be settled. Taking both into account is necessary in order to avoid tensions between the two groups (for

<sup>202</sup> FAO, Access to rural land and land administration after violent conflicts. P.63 – 65.

<sup>203</sup> For more information, see the Module on Women's HLP rights.

Some 17 years after conflict broke out, Burundi still has approximately 100,000 IDPs mostly accommodated in villages in northern and central Burundi. Many IDPs and refugees have returned to places of origin but it is thought a significant number of the remainder would prefer to locally integrate. The government's 2010 National Strategy for Social and Economic Reintegration of War-affected Population envisages a survey of IDP villages in order to assess their needs to design adequate programme in support of durable solutions.

IDMC and NRC Burundi worked with the authorities to design a survey to be carried out in all IDP sites in line with the revised Framework for Durable Solutions. The survey aims to assess the sites' viability in terms of economic activities, existing infrastructure, relations with host communities and the status of land disputes. The survey will also collect information on IDPs' preferred durable solution. Survey findings have been endorsed by the group in charge of durable solutions for IDPs which includes Burundian authorities, UN agencies and NRC. In order to support authorities in carrying out the survey, the Geneva-based Joint Inter-Agency Profiling Service (JIPS) is to assist with tools, methodology and training for staff in charge of carrying out the survey. The Burundian authorities officially

requested JIPS support in March 2011. JIPS will help ensure survey objectives and follow up activities are clearly spelled out so that concrete results are achieved.

Land issues feature prominently in the survey as one of the main obstacles to local integration is frequent partial establishment of IDP villages on private land claimed by its owners. The government has already expressed its intention not to claim back the public land on which IDP villages are settled, unless it is required for major development projects. The survey will record the extent to which each village is established on public or private land and list the existing disputes between IDPs and local residents. This will assist authorities in identifying which villages can easily be transformed into permanent villages and steps required to do so, should this be the desire of IDPs. Linkages will then be made with ongoing land legislation and programmes listing the location of public land and defining conditions under which public land can be allocated to IDPs.

It is hoped that identification of disputed land plots will allow for compensation for the owner or the IDP depending on the case. Addressing such disputes will then lead to the possibility of transforming IDP sites into villages which allow IDPs to locally integrate.

instance if the host community receives assistance in terms of services that neighbouring villages do not). In cases of resettlement, restitution and compensation for the losses of HLP rights can generate income to support the IDPs and RR relocation elsewhere.

### Resolution of HLP disputes

Land disputes can be politically, socially and economically destabilising. The adjudication of HLP disputes is essential in order to achieve both security and development goals and humanitarian actors should assist competent national authorities to set up dispute resolution mechanisms as soon as possible after displacement has occurred.<sup>204</sup>

### Shelter

The right to shelter should be understood as the right to live somewhere in security, peace and dignity. Within humanitarian response, the term

<sup>204</sup> For more information on land dispute resolution, see the Addressing HLP Disputes module.

“shelter” falls within the scope of the right to housing, which is enshrined in human rights law. Everyone has the right to adequate housing. The criteria for adequacy are:

1. accessibility
2. affordability
3. habitability
4. security of tenure
5. cultural adequacy
6. suitability of location access to essential services such as health-care, education and livelihood opportunities.

Respect for safety standards is also a criterion for adequacy.<sup>205</sup>

Security of tenure is the right to protection from displacement (including arbitrary and forced

<sup>205</sup> For more information on the right to adequate housing, see the HLP International Legal Framework and Principles module.

eviction), harassment and other threats from one's home or land. Inadequate or insecure HLP tenure can significantly worsen the prospects of the displaced populations, as well as creating considerable challenges for shelter providers.

During **recovery**, finding permanent housing for those displaced by conflict is a priority. Shelter assistance should focus on supporting durable solutions (return, resettlement and local integration) in a manner that provides sustainable and adequate housing solutions and prevents forced evictions.<sup>206</sup>

In the context of **return**, shelter-related assistance may include the reconstruction of damaged or destroyed houses and local infrastructure such as schools, roads and hospitals. Ideally land and property ownership should be established before starting shelter construction. However, this can be very difficult to establish in post-conflict situations where there is an urgent need to provide shelter and in customary land tenure systems where the land may be used or managed collectively and there are no documents to prove ownership. Customary systems are guided by the traditions of the group(s) they are meant to serve. Therefore involvement of local leaders and communities in the identification of the site, the owner and the land's rights, is extremely important and can contribute to avoiding disputes and community frictions.

Shelter assistance should also be provided to those IDPs and RRs who were landless or illegal occupants, or did not have pre-conflict formal title to the land and housing they occupied. In such situations of insecurity of tenure, competent authorities should, whenever possible, provide legal recognition to occupation and use of housing by non-owners.<sup>207</sup>

### Emergency Food Security

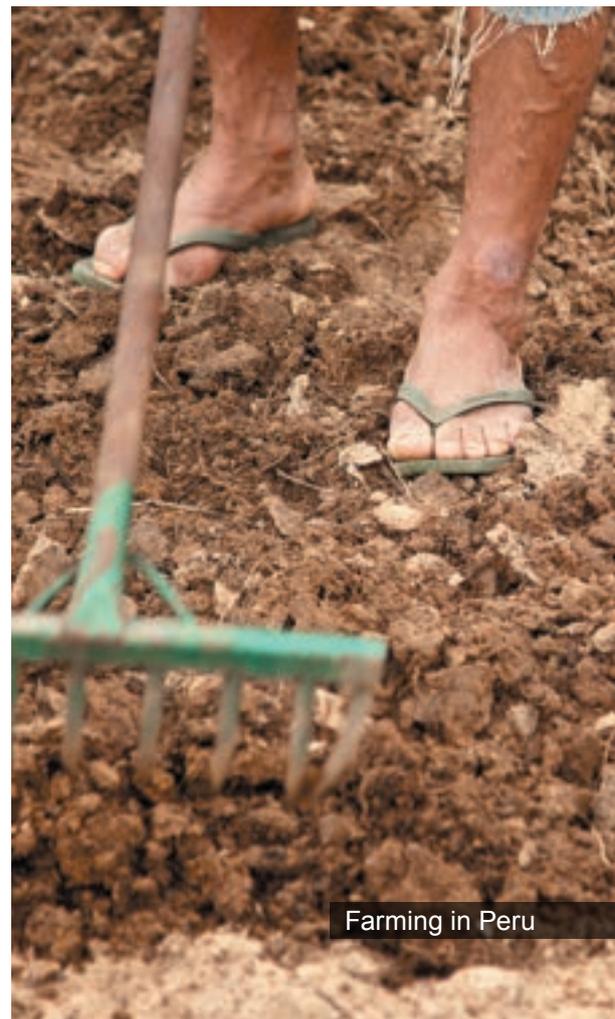
Hunger is very often associated with poor access to land, either in the form of landlessness or because of insecurity of tenure and the presence of land disputes.

There is a direct correlation between secure property rights and food security. In rural areas for example, land is necessary to cultivate crops and ultimately to realise the right to food. In countries where agriculture is dominant, secure property rights can ensure household food supplies, and

in countries where agriculture is more market-oriented, farming can become the principal source of employment and provide income to buy food.

Projects that promote agriculture, animal husbandry or pisciculture require access to sufficient natural resources (and security of property) in order to be successful. Once beneficiaries choose potential sites for these activities it is important to conduct a background investigation to identify the landowner(s) and the land rights attached to the property (ownership or use). In case of customary land tenure, local communities should be involved in the selection of the site in order to avoid future land disputes, ensure that the process is transparent and even-handed, and encourage the use of culturally relevant processes.

Food security assistance should also be provided to those who had non-owner HLP rights (e.g. tenants) and to those who did not have any pre-conflict HLP rights at all (squatters and the homeless and landless). In these situations, competent authorities should, when possible, recognise these rights.



Farming in Peru

206 For more information on return, local integration and resettlement, see the HLP and Durable Solutions module.

207 Brookings Institution, 2008, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*. p.143. [http://www.brookings.edu/papers/2008/1016\\_internal\\_displacement.aspx](http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx)

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UNHCR, 2003, Agenda for Protection. <http://www.unhcr.org/refworld/pdfid/4714a1bf2.pdf>

UNHCR, 2003, Framework for Durable Solutions for Refugees and Persons of Concern. <http://www.unhcr.org/partners/PARTNERS/3f1408764.pdf>

For more information on shelter, please check <http://www.sheltercentre.org/>

### Legal Framework

Cartagena Declaration on Refugees. <http://www.asylumlaw.org/docs/international/CentralAmerica.PDF>

Framework on Durable Solutions for Internally Displaced Persons. [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.21.Add.4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.21.Add.4_en.pdf)

Guiding Principles on Internal Displacement. <http://www.idpguidingprinciples.org/>

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. <http://www2.ohchr.org/english/law/remedy.htm>

African Union, International Conference on the Great Lakes Region, 2006, Protocol on the Property Rights of Returning Persons, (Great Lakes Protocol. [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/84E06BF26DBB560BC12572FB002C02D6/\\$file/Final\\_protocol\\_PropertyRights -En r.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/84E06BF26DBB560BC12572FB002C02D6/$file/Final_protocol_PropertyRights -En r.pdf)

OAU Convention Governing the Specific Aspects of Refugee Rights in Africa. <http://www.unhcr.org/45dc1a682.html>

Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons. <http://www.reliefweb.int/rw/lib.nsf/db900SID/ASAZ-7F4JCM?OpenDocument>  
[www.unhcr.org/ua/img/uploads/docs/PinheiroPrinciples.pdf](http://www.unhcr.org/ua/img/uploads/docs/PinheiroPrinciples.pdf)



DAY  
THREE

HOUSING, LAND AND  
PROPERTY (HLP)  
TRAINING



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Evaluation feedback from  
Day Two

Learning review of Day  
Two



92



SESSION  
NINE

HLP AND DURABLE  
SOLUTIONS



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### GUIDING PRINCIPLE 28

- Guarantees a voluntary choice between the durable solutions of:
  - Return** to the place of former residence
  - Local **integration** at the site of displacement
  - Resettlement** to a third location within the country



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### WHAT ARE DURABLE SOLUTIONS? 1

- A durable solution for **IDPs** is achieved when IDPs no longer have assistance/protection needs that are linked to their displacement and can enjoy their human rights without discrimination resulting from their displacement
- Enjoyment of HLP rights** is key to the achievement of durable solutions.



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### WHAT ARE DURABLE SOLUTIONS? 2

- Durable solutions for **refugees** are lasting solutions through:
  - Local integration in the country of asylum
  - Voluntary repatriation to the country of origin
  - Resettlement in a third country.
- Enjoyment of HLP rights** is key to the achievement of durable solutions.



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## GUIDING PRINCIPLE 29

- No discrimination against IDPs who return home or resettle
- Authorities have the responsibility to assist returned/resettled IDPs to recover the property/possessions they left behind. If not possible, authorities shall provide compensation or another form of reparation
- The preferred legal remedy for displacement is **restitution**

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## HLP AFTER DISPLACEMENT (2)

- **Pinheiro Principle no. 2** broadened the scope of restitution as defined in the Guiding Principles from “property and possession” to “housing, land and property”
  - encompasses interests in land and housing not based on formal title
  - applies to IDPs and refugees

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## PINHEIRO PRINCIPLES, PRINCIPLE 2

- Broadened the scope of restitution as defined in the Guiding Principles from “property and possession” to “housing, land and property”
  - protects tenancy rights
  - encompasses interests in land and housing not based on formal title
  - applies to IDPs and refugees

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## QUESTIONS?

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## RESTITUTION/COMPENSATION

- **Restitution:** preferred remedy
  - Redresses the wrong done (by recreating the original pre-conflict situation)
  - Facilitates return and reintegration in the area of origin
- However sometimes it is impracticable and **compensation** is more appropriate.
- Compensation is appropriate when:
  - Restoration of housing, land or property is impossible
  - Those possessing restitution rights prefer compensation

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## GROUP EXERCISE

Recap challenges of location of origin and other challenges that have to be addressed in order to achieve durable solutions

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## HLP AFTER DISPLACEMENT (1)

- **Guiding Principle no. 29**
  - No discrimination against IDPs who return home or resettle
  - Authorities have the responsibility to assist returned/resettled IDPs to recover the property/possessions they left behind. If not possible, authorities shall provide compensation or another form of reparation
  - The preferred legal remedy for displacement is **restitution**

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## CASE STUDY MAP

# Glossary

**Access to land** generally refers to the ability to use land and other natural resources, to control the resources and to transfer the rights to the land.

**Adjudication** is the most formal and contentious litigation process. It is the process of providing a judgment in a dispute. Parties in the dispute provide evidence to support their claim, but they do not participate in making the final decision. The ruling is given by the judge in the form of a “win-lose decision”.

**Adverse possession** (usucapion) is a method of gaining legal title to real property by the actual, open, hostile, and continuous possession of it to the exclusion of its true owner for the period prescribed by state law. Adverse possession depends upon the intent of the occupant to claim and hold real property in opposition to the world and the demonstration of this intention by visible and hostile possession of the land so that the owner is, or should be, aware that adverse claims are being made. The legal theory underlying the vesting of title by adverse possession is that title to land must be certain. Since the owner has, by his/her own fault and neglect, failed to protect the land against the hostile actions of the adverse possessor, an adverse possessor who has treated the land as his or her own for a significant period of time is recognised as its owner. In some countries, government-owned land (public land) is exempt from adverse possession. In civil law systems, usucapion implies continued, public and pacific possession, rather than hostile.

**Alternative Dispute Resolution (ADR)** typically refers to non-adversarial procedures for resolving disputes (i.e. procedures that fall outside of the judicial process). These procedures are used as an alternative to litigation in court and include consensus-building processes such as mediation, negotiation and arbitration.

**Cadastre / cadastral record** is a register of property showing the extent, value, and ownership of land.

**Customary land tenure systems** regulate people’s right to enjoy the use of land arising from customary practice, rather than through written or codified law.

**Durable solutions for IDPs** are achieved when internally displaced persons no longer have protection needs linked to their displacement and can enjoy their human rights without discrimination on account of their displacement. There are three potential durable solutions: 1) return to the place of former residence; 2) local integration at the site of displacement or 3) resettlement to a third location within the country.

**Durable solutions for refugees** are lasting solutions through: 1) local integration in the country of asylum; 2) voluntary repatriation to the country of origin or 3) resettlement in a third country.

**Eminent domain** is a legal expression identifying the State’s ultimate, sovereign power over land. In some countries, the term is used to describe the power held by the State to acquire land by expropriation.

**Encroachment** is the illegal occupation or use of a portion of land owned by someone else.

**Forced Eviction** is “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.<sup>208</sup>

**Homelessness** has been described as “perhaps the most visible and most severe symptom of the lack of respect for the right to adequate housing”.<sup>209</sup> Somebody without a home is homeless. This definition includes people living in parks, on the streets and under bridges and also people moving between various forms of temporary shelter such as refuges, boarding houses, hostels or friends. Victims of forced and arbitrary eviction become homeless and displaced.

**Human rights** are a core set of rights that human beings possess by simple virtue of their humanity.

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208 Committee on Economic, Social and Cultural Rights, *General Comment No. 7 (1997) on the Right to Adequate Housing* (Art. 11 (1) of the Covenant): Forced Evictions.

209 Kothari, Miloon, 2005, Study by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, UN Economic and Social Council 41, U.N. Doc. E/CN.4/2005/48. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/117/55/PDF/G0511755.pdf?OpenElement>, p. 13.



These rights are spelled out in a number of international human rights instruments which determine their validity as well as the extent to which they bind States.

**Illegal occupants or squatters:** The definition of squatter (a word which carries a negative connotation) varies from country to country. Usually it is taken to mean someone who occupies a vacant piece of land (either private or public) or takes possession of an unoccupied premises (either private or public) without a legal right to do so.

**Internal displacement** describes situations in which individuals and groups have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid, the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.<sup>210</sup>

**Land administration** “is the way in which the rules of land tenure are applied and made operational.”<sup>211</sup> It usually includes the administration of land rights, land use regulations, and land valuation and taxation.

**Land grabbing** occurs when someone uses force to seize land or uses discriminatory laws to arbitrarily acquire land as abandoned property.

**Land management** refers to allocation, use and development of land and land resources (e.g. how to use land efficiently for producing food, providing shelter or preserving valuable resources for environmental or cultural reasons).

**Land policy** is the set of intentions embodied in various policy instruments that are adopted by the State to organise land tenure and land use.

**Land reform** refers to modifications in the legal and institutional framework governing land policy. It is intended to implement changes in the political, economic and social environment.

**Land registration** is the process of recording rights and other interests in land in some form of public register. The procedures used and legal effects can differ greatly from country to country. Registration can be parcel-oriented (sometimes referred to as title registration) or based on the holder’s or transferor’s documents (sometime referred to as deed registration).

**Land tenure** is the way in which individuals and groups relate to land and its resources. Land tenure refers to the rights, rules, authorities and institutions that govern access to and control over land and related resources. In other words, land tenure determines who can use what resource of the land, for how long, and under what conditions.

**Land title** is the right of ownership of real property.

**Landlessness.** There are many definitions of landlessness. The main kind is physical and refers to a situation in which a person does not have access to any land as a result for example of a natural disaster or conflict. The second is structural and refers to a situation in which someone does not have legally recognised rights to land. This second is linked to political and social contexts.

**Legal Pluralism** is the co-existence of parallel source of authorities (e.g. statutory and customary) considered as legitimate by those who use them and rendering justice in similar matters.

**Non-refoulement** is the principle (enshrined in the 1951 Refugee Convention) that “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers or territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.”<sup>212</sup>

**Secondary occupation** refers to those who take up residence in a home or on land after the legitimate owners or users have fled. Secondary occupants may also be victims of the conflict. Secondary occupation is common to all post-conflict situations and care must be taken not only to protect the rights of the original inhabitants but also to protect secondary occupants against homelessness, unreasonable

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210 Guiding Principles on Internal Displacement, Introduction, paragraph 2.

211 Food and Agriculture Organization, 2005, *Access to rural land and land administration after violent conflicts*. P.23. <http://www.fao.org/docrep/008/y9354e/y9354e00.htm>

212 Article 33(1) of the 1951 Refugee Convention. <http://www.unhcr.org/pages/49da0e466.html>

eviction or any other human rights violation.

**Security of tenure** refers to the certainty that a person's rights to HLP will be protected. According to ICESCR General comment 4, security of tenure "guarantees legal protection against forced eviction, harassment and other threats."<sup>213</sup>

**Slums and informal settlements** usually are urban areas lacking one or more of the following: 1) secure residential status; 2) adequate access to safe water and sanitation; 3) adequate infrastructure; 4) structurally sound housing and; 5) sufficient space. Not all slums are homogeneous and not all slum dwellers suffer from the same degree of deprivation.

**Squatter settlements** usually are residential areas that have developed without legal claims to the land or permission from the concerned authorities to build/occupy.

**Statutory land tenure system** describes a regime where State legislation and institutions govern land and natural resource rights within the State's boundaries.

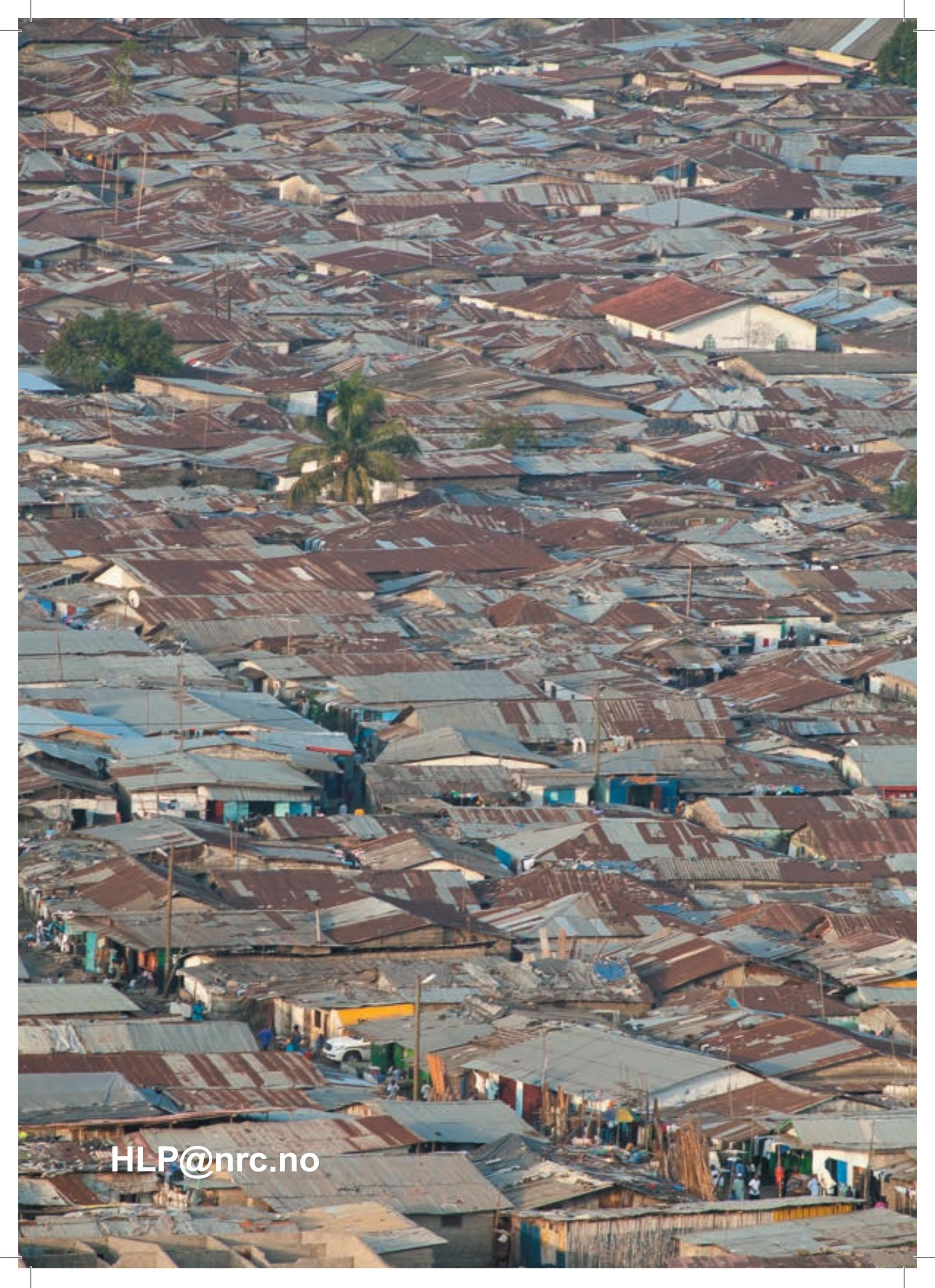
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213 ICESCR *General comment 4* Paragraph 8.







An aerial photograph of a densely packed informal settlement, likely a slum. The majority of the buildings have roofs made of corrugated metal, which appear in various shades of brown, grey, and blue. The structures are tightly packed together, with narrow, winding paths visible between them. A few taller buildings with white walls and gabled roofs stand out among the smaller structures. In the lower-left quadrant, a white car is parked on a narrow street. A single palm tree is visible in the middle-left area. The overall scene depicts a high-density, low-income residential area.

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