

# INFLUENCING DURABLE SOLUTIONS

## An Advocacy Package

### The Practice of Housing, Land and Property Rights Somalia



NRC

NORWEGIAN  
REFUGEE COUNCIL



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**Editors:**

Wairimu Munyinyi-Wahome

*NRC Regional Protection and Advocacy Advisor,*

Evelyn Aero,

*NRC ICLA Programme Manager, Somalia*

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## TABLE OF CONTENTS

Overview.....	6
<b>1.0 FAQs.....</b>	<b>7</b>
1.1 <i>What are the housing, land and property (HLP) issues facing displacement affected populations in Somalia?.....</i>	<i>9</i>
1.2 <i>What issues affect women in Somalia, when faced with a violation of their HLP Rights?.....</i>	<i>9</i>
1.3 <i>How does HLP link to the work of humanitarian actors?.....</i>	<i>10</i>
1.4 <i>What is legal pluralism and how does it affect HLP rights?.....</i>	<i>11</i>
1.5 <i>What is security of tenure and why is it key to durable solutions? .....</i>	<i>11</i>
1.6 <i>What can be done to improve tenure security?.....</i>	<i>12</i>
1.7 <i>How can development actors address HLP issues?.....</i>	<i>13</i>
<b>2.0 POLICY BRIEF.....</b>	<b>15</b>
2.1 Executive Summary.....	17
2.2 Introduction .....	17
2.2.1 <i>Disputes in the place of displacement and places of origin.....</i>	<i>17</i>
2.2.2 <i>Approaches and Results.....</i>	<i>18</i>
2.2.3 <i>Legal pluralism: institutions and frameworks.....</i>	<i>18</i>
2.2.4 <i>Traditional land tenure arrangements and dispute resolution mechanisms.....</i>	<i>20</i>
2.3 Implication and Recommendations.....	20
2.4 Preventing and mitigating the impact of forced evictions.....	21

2.5 Improving access to justice.....	21
2.6 Improving tenure security.....	22
2.6.1 <i>The role of humanitarian, development and political actors....</i>	22
2.7 The role of political actors in promoting tenure security.....	23
2.8 Conclusion.....	24
<b>3.0 DISPLACEMENT AND GENDER DYNAMICS IN SOMALIA.....</b>	<b>25</b>
3.1 Urban displacement and evictions.....	27
3.2 Urban displacement and changing gender dynamics.....	28
3.3 Humanitarian assistance.....	29
3.4 The linkages between denial of HLP rights, poverty and gender-based violence.....	31
3.5 Thinking forward – Lessons learned and recommendations.....	32
3.6 Improve understanding of the gender-sensitivity of programming...	32
3.7 Improve women's access to justice.....	33
3.8 Linking with development actors.....	34
3.9 Conclusion.....	35
<b>4.0 VOICES OF THE DISPLACED ON HLP ISSUES IN SOMALIA.....</b>	<b>37</b>
4.1 Who do IDPs pay rent to? Why are threats of eviction frequent?.....	38
4.2 Access to justice: Perception and Reality for women.....	39
4.3 Discourse on the effectiveness of traditional dispute resolution bodies and elders ability to manage disputes.....	40

# Overview

This Advocacy Package provides an in-depth review into the practice of Housing, Land and Property Rights into Somalia with practical recommendations for changes or new practices that could ultimately reinforce the aim for durable solutions for displaced populations and especially women, in Somalia. It contains Frequently Asked Questions on HLP Rights, a Policy Brief on HLP Rights Administration and a Paper on Displacements and Gender Dynamics. Durable Solutions is achievable and NRC hopes that this package can provide useful insights into securing some gains for displaced populations in Somalia.

# 1.0 Frequently Asked Questions (FAQs)



FAQs

**A**s transit into the development phase in Somalia gains momentum, land as a resource remains highly contested; the practices governing ownership and access are blurred by multiple applications of various forms of laws, whose enforcement is weak and in many cases, subjective. The result is an increase in primary and secondary displacements, mostly affecting minority groups including IDPs. NRC runs an ICLA Programme in Somalia with HLP as a key focus. The FAQs addresses commonly asked questions as more actors focus their attention on the land question in Somalia, as a means to facilitating linkages between humanitarian and development processes and securing durable solutions.



## **1.1 What are the housing, land and property (HLP) issues facing displacement-affected populations in Somalia?**

According to UNHCR reports, an estimated 1.1 million IDPs live in Somalia, with 400,000 IDPs<sup>1</sup> living in Mogadishu alone (making up a third of the overall displaced populations).

As in many countries, land is key to Somalia, a primary asset for livelihoods and economic growth and a major cause for displacement. The process of urbanisation and the expansion of cities such as Mogadishu is rendering land disputes more acute, heightened by the state's failure and limited capacity to develop land management systems. In urban centres, the major issues facing IDPs are high rent prices and forced evictions.

According to the Somalia Protection Cluster, forced evictions were the main cause of new displacement in 2015 resulting in almost 130,000 of people being evicted; often leading to repeated displacement of people who were already IDPs.<sup>2</sup> The majority of IDPs live in settlements located on privately-owned land, squatting or renting from private landowners.<sup>3</sup>

IDPs are at the mercy of landlords and gatekeepers as they have no entitlement to their place of residence. Informal land tenure agreements are often breached by landlords while gatekeepers control access to settlements including aid. Given the lack of formal land tenure agreements between IDPs and landlords the length of the tenancy is often subject to a landlord finding a more profitable alternative business for his land.

Forced evictions are possible, in part, due to a lack of security of tenure. In areas of origin, disputes revolve mainly around land grabbing, and illegal occupation by clan leaders, warlords, businessmen, corporations, returnees and members of the diaspora given the lucrative nature of investment in property.<sup>4</sup>

## **1.2 What issues affect women in Somalia, when faced with a violation of their HLP Rights?**

During conflict and displacement, women face exacerbated discrimination: as women, as refugees, as poor people, and as members of ethnic or religious minorities.

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1 As of November 2013, according to the PMT (Population Movement Tracking UNHCR).

2 NRC Eviction Tracker Matrix 2015.

3 NRC, Legal Action Worldwide (2014), *Housing, land and property in Somalia: persons of concern in Somaliland and South-Central Somalia*, p.28-29.

4 *Ibid*, p.15.

This worsens their already limited access to justice.<sup>5</sup> Displaced women are at a greater risk of forced eviction in case of divorce, polygamous marriages and widowhood.<sup>6</sup> This exposes them to dangerous risks such as gender-based violence or fear of conflict that could trigger such abuse.<sup>7</sup>

Moreover, women have limited access to justice due to the high costs of pursuing the formal legal process while customary or religious dispute resolution mechanisms often discriminate against them, especially if the male elders did not support their case.

As women are excluded from both shaping the rules of the system as well as acting as decision-makers in the face of disputes, this leaves them with little recourse in face of HLP violations.

### **1.3 How does HLP link to the work of humanitarian actors?**

Access to housing, land and property is essential to the fulfilment of a range of human rights such as the right to an adequate standard of living and adequate housing, the right to food and the right to health. In countries like Somalia where most livelihoods are based on agriculture or pastoralism, access to land is key to subsistence.

IDPs, returnees or refugees are particularly vulnerable since displacement often results in the loss of land and often in occupation and destruction of property. The loss of their home leads IDPs to live in poorer living conditions with risks to their health, safety and exposure to gender-based violence or forced evictions.

HLP is a cross-cutting issue in many sectors of humanitarian action: shelter, water and sanitation, food security, livelihoods and protection. HLP is linked to peace-building processes including rule of law activities aiming at increasing access to justice and improving governance and respect of human rights. Violation of HLP rights compromises protection for vulnerable groups.

The lack of tenure security has the potential to endanger and limit the impact of humanitarian investment. In countries like Somalia, where very few people have registered ownership and most are either squatters or tenants, humanitarian actors may be reluctant to invest in infrastructure such as shelter, schools, hospitals, boreholes, latrines, and markets aimed at supporting IDPs for fear that beneficiaries might be evicted.

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5 <http://reliefweb.int/report/world/life-can-change-securing-housing-land-and-property-rights-displaced-women>

6 Forthcoming, NRC (2016), *New realities, new challenges and new opportunities: housing, land and property rights for Somalia's urban displaced women*, p.5-6.

7 Ibid, p.6.

There is a risk that the investment of humanitarian actors affects the “do no harm” principle by increasing the value of the land and inciting the landlord to increase rent or ultimately evict the beneficiary. Food security and resilience programming is highly compromised due lack of tenure and subsequent fear investment by target groups, due to the uncertainty of duration of occupancy.

#### **1.4 What is legal pluralism and how does it affect HLP rights?**

Legal pluralism refers to the co-existence of parallel rules to address legal issues, and to the involvement of different authorities considered legitimate to decide on legal matters. The same issues may be regulated under different rules and decided by different actors.

In Somalia, the management of land and the resolution of disputes is characterized by a situation of legal pluralism. Thus, HLP disputes can be addressed by statutory laws (acts and laws promulgated by the government), Sharia law and customary law (*Xeer*).

In a context where there are overlapping systems of law, where people buy and sell land without going through the formal system, and where there are multiple claims on one land based on clan affiliation, land disputes are rife.<sup>8</sup>

As the customary system focuses on mediation between different actors such as clan elders and chiefs rather than formal justice mechanisms, it may disadvantage weaker populations such as minority clans, displaced people and women who have limited clan or family connections to negotiate a fairer deal.

Formal mechanisms such as the courts are complex, time consuming, expensive and have very low capacity, especially in South-Central Somalia.<sup>9</sup>

#### **1.5 What is security of tenure and why is it key to durable solutions?**

Tenure security refers to the right to hold, use, and transfer land or housing without the fear of forced evictions, to be able to reap the benefits that accrue from investing time and labour.

Tenure security is a key element of the right to adequate housing. While recognizing that tenure can take a variety of forms (rental, lease, ownership, occupation in informal settlements), under formal or informal arrangements, human rights law requires that all people should have a degree of tenure security that protects them from forced evictions.

Global frameworks on durable solutions – such as the IASC framework on durable solutions for IDPs – emphasize the importance of HLP rights, restoration mechanisms, and adequate standard of living.

<sup>8</sup> Roundtable minutes, HLP issues in Somalia, 8 December 2014.

<sup>9</sup> Roundtable minutes, HLP issues in Somalia, 8 December 2014.

“There is no durable solution for IDPs without HLP”<sup>10</sup>.

In Somalia, tenure security is fragile as there are poor land registries documenting ownership of land and limited capacity from administrative and judicial institutions to protect the various agreements over land and housing through the Court system. IDPs and women are less likely to obtain justice from customary or religious dispute resolution bodies if they do not belong to a powerful clan. Tenure security is key to all three durable solutions – local integration, settlement elsewhere and return. When IDPs are evicted, they are thrown into a new spiral of vulnerability and poverty that disrupts their self-recovery. If they fear eviction, they will limit their investment into the land or house they live in to a minimum. Access to land is essential to ensure sustainable return and recovery in post conflict situations.

### **1.6    What can be done to improve tenure security?**

While improving and enforcing the right to security of land tenure is a responsibility of national authorities and requires structural reforms, humanitarian actors have developed innovative solutions adapted to the Somali context to improve the tenure security of IDPs, with the hope that these efforts will feed into longer-term development plans. In Somalia, the Norwegian Refugee Council (NRC) is one of the few actors along UN Habitat working on HLP rights for the displaced<sup>11</sup>. Some of the activities and best practices include:

- Preventing and mitigating the impact of forced evictions: NRC’s eviction monitoring through tracking mechanisms and pre-eviction assessments helps identify populations at risk, gaps, needs and responses. UN Habitat works on an advocacy level at promoting the government eviction guidelines.
- Improving tenure security through land tenure documentation and durable solutions: NRC facilitates the conclusion of collective or individual agreements with local authorities to the benefit of IDPs. NRC recognises the fact that land tenure is not often secured through land tenure documents and explores durable solutions as a strategy to securing land tenure among others.
- Improving access to justice through collaborative dispute resolution mechanisms addressing HLP through collaborative dispute resolution (CDR) mechanisms – specifically mediation and negotiation – with litigation as a last resort where CDR fails but for specific cases.

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10 Interview ECHO Somalia, March 2016.

11 As of March 2016, NRC remained the only actor on HLP in Somalia. Other actors - part of the HLP working group - respond to HLP violations.

The CDR approach focuses on using existing community-based structures to address HLP disputes, bringing together and building the capacity of both IDPs and host communities that comprises the dispute resolution committees.

Other best practices can be learnt from, with initiatives led by UNHABITAT in Somaliland and Puntland on harmonising legal dispute resolution mechanisms and by the Protection Cluster's on-going efforts in mainstreaming HLP in the development agenda in Somalia<sup>12</sup>.

### **1.7 How can development actors address HLP issues?**

Addressing housing, land and property issues is not merely a pre-requisite for the achievement of durable solutions, it is key for peace, security and stability. It is also a core state building function – fundamental not just for IDPs but for the population at large. ‘It is crucial now more than ever for Somalia to develop land occupancy evolution given the significance of land as a source of security and as an object of constant dispute. As it is now, the society is deeply at odds over the control and use of land.’<sup>13</sup>

One of the root causes of the conflict and displacement in Somalia stems from disputes over control of land and natural resources. It is also a key obstacle to durable solutions. Tensions over control of land are heightened by the lack of legal and institutional framework on land.

The establishment in 2012 of the Federal Government offers opportunities to work towards the development of such framework to improve land governance in both rural and urban areas. This would not only benefit displaced populations but also all Somalis. Restoring the confidence of investors in the rule of law and land governance has the potential to facilitate local and foreign investment and boost the economy of the country.

The challenges brought by urbanisation call for development solutions such as urban poverty reduction and urban upgrading plans in the settlements to complement the work done by humanitarian assistance actors. With one third of IDPs living in Mogadishu, Somalia’s displacement challenge is largely an urban phenomenon. Somalia’s rate of urbanisation averaged 4.5% in the period 2005-10; based on current projections, a country that was one-quarter urban in 1980 will be one-half urban by 2030.<sup>14</sup> At this rate of urbanisation, city expansion requires increased land and service provision.<sup>15</sup>

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12 For a full discussion of best practices on HLP in Somalia, refer to the attached policy brief.

13 First forum on HLP Mogadishu, 3 September 2015.

14 UN-Habitat, UN-Habitat Somalia expert March 2016 at launch of the report: Harmonization of Legal Systems Resolving Land Disputes in Somaliland and Puntland

15 Ibid.

HLP is a critical component of urban development and should be integrated in the capacity building efforts of the international community targeting municipal authorities. At the cross section of local governance, service delivery and urban planning are the twin issues of internal displacement/population growth, and securing HLP rights for all. Planning for a growing urbanised environment, will mean planning for the HLP rights of the displaced. This, in turn, requires profiling and an understanding, by development and governmental actors, of the needs of displaced populations.

Developing urban areas will require to plan for land tenure security, and to include the displaced in urban plans. Restoring HLP rights, resolving on-going HLP disputes and pursuing tenure security requires an efficient institutional, legal, policy and political framework, currently lacking in Somalia but to be targeted in capacity-building efforts, notably in the justice, law and order sector, land and urban governance.

Within the current context of the Somalia state building process, a shift towards development approaches to internal displacement must be pursued through strong partnership with development partners such as the World Bank, UNDP and FAO in order to achieve durable solutions for IDPs. These can be mainstreamed with the frameworks of the Somalia Compact and the Somaliland Special Arrangement as parts of larger efforts for peace, economic and political stability to Somalia<sup>16</sup>. Clear entry points include:

- PSG 5 / Revenue and services: integrating the HLP rights of the displaced as a target for the rehabilitation of basic infrastructure, going beyond assistance for shelter, to addressing tenure security
- Cross-cutting priority under the National Development Plan includes the capacity building of federal and local authorities: NRC and development actors can be natural partners in this process, under the Plan;
- Policy initiatives from the UN SG and RC/HC – the IDP Solutions Initiative – will need to prioritise HLP as forced evictions are rampant and increasing in Somalia: integrating HLP programming in the policy discourse is a priority.

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16 Somalia IDP solutions initiative (2016), *Mission to Nairobi and Somalia*, Walter Kaelin, p. 5.

## 2.0 Policy Brief Housing, Land and Property Rights: The Practice for Somalia



**A**dministration of housing, land and property in Somalia has remained a challenge for the country, due to the competing regimes of customary, religious and legal applications that often result in discriminatory decisions for marginalized groups like internally displaced persons and women in humanitarian settings. This policy brief looks at the practice of Housing, Land and Property Rights in Somalia with recommendations for how these can be improved, to contribute to durable solutions for Somalia's displaced populations, as the country gears up to scale-up its transition into development.



## **2.1 Executive Summary**

Housing Land and Property (HLP) disputes are both a cause and consequence of displacement in Somalia. Conflict over control of land and natural resources between clans and with State institutions has been one of the underlying reasons for the civil wars and continues to play a significant role in the current displacement situation. The failure of the State to regulate access to land and address related disputes limits access to justice. Such disputes create new risks of displacement and represent significant obstacles to durable solutions.

HLP rights and tenure security are essential for durable solutions to be achieved. Based on a review of good practices, this paper highlights 3 ways to address HLP rights in Somalia:

1. Improving access to justice through the support collaborative dispute resolution (CDR) mechanisms.
2. Improving tenure security by facilitating formal and informal land and housing agreements and linking it to political process aimed at improving the legal and policy framework of tenure security.
3. Preventing and mitigating the impact of forced evictions.

## **2.2 Introduction**

### **2.2.1 Disputes in the place of displacement and places of origin**

Displacement is largely an urban phenomenon in Somalia with Mogadishu alone hosting 400,000 IDPs (making up a third of the overall displaced populations).<sup>1</sup> The majority of IDPs live in very poor housing conditions, in settlements situated on private land, squatting or renting from private landowners,<sup>2</sup> while a minority lives on public land owned by the Government.<sup>3</sup> Despite the existence of eviction guidelines published by the authorities and supported by the international community, evictions peaked in 2014 and 2015 resulting in the activation of a sub-cluster on HLP to address this issue.<sup>4</sup>

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1 As of November 2013, according to the Population Movement Tracking (PMT), UNHCR.

2 NRC, Legal Action Worldwide (2014), *Housing, land and property in Somalia: persons of concern in Somaliland and South-Central Somalia*, p.28-29.

3 NRC (2016) *Assessment Report: Rental Subsidy Mogadishu*.

4 The HLP sub-cluster is led by UN Habitat and the Norwegian Refugee Council as co-chair. It operates with the support of and in close collaboration with the Protection Cluster and includes members of the international community and civil society, authorities and representatives of the Somali Police/AMISOM.

According to the Somalia Protection Cluster, forced evictions were the main cause of new displacement in 2015 resulting in almost 130,000 people being evicted that year; often leading to repeated displacement. Mogadishu and Kismayo account for the highest numbers of forced evictions linked to tenure insecurity resulting from competing land claims, land-grabbing and illegal occupation by clan leaders, business men, corporations, returnees and members of diaspora.

The increased value of urban land resulting from rapid urbanisation contributes to tenure insecurity by inciting landlords to increase rent. As a result IDPs are evicted and resettled further from the city centre, far from services and livelihood opportunities. When forced evictions affect female-headed households, they often result in gender-based violence. The Protection Cluster points to increased protection concerns with 75% of recorded GBV incidents in 2015 affecting IDP communities. By returning IDPs into a new cycle of displacement and disrupting their social network and livelihoods, forced evictions reinforce vulnerabilities and delay the attainment of a durable solution.

### **2.2.2 Approaches and Results**

The resolution of disputes is complicated by the fact that there are almost no land registries documenting ownership of land and little capacity from administrative and judicial institutions to protect the various agreements over land and housing through the Court system. The absence of a legal and institutional framework on land governance creates widespread confusion as to the validity of various land agreements and contributes to tenure insecurity by guaranteeing a relative impunity to landlords or gatekeepers.

### **2.2.3 Legal pluralism: institutions and frameworks**

In Somalia, the management of land and the resolution of disputes is characterised by a situation of legal pluralism. Legal pluralism refers to the co-existence of parallel rules to address similar issues, and to the involvement of different authorities considered legitimate to decide on such matters. Housing, land and property disputes can be addressed by statutory laws (acts and laws promulgated by the government), Sharia law (Islamic religious law) and customary law known as *Xeer*. This can present advantages and disadvantages in terms of access to land and justice. On the one hand, it represents a form of access to justice. In a context where state and regional administrative and judicial institutions are fragile and considered costly, lengthy and subject to corruption, the existence of Sharia Courts and customary dispute resolution

mechanisms provide an accessible, efficient, quick and affordable alternative, which contributes to their popular support and legitimacy.<sup>5</sup> On the other hand, by offering different options to address the same disputes, legal pluralism creates a risk of “forum shopping” whereby parties will approach the body more likely to support their claims. This can result in legal uncertainty and renewed tenure insecurity with the decision of one dispute resolution mechanism being overturned by another one.

The introduction of a land law in 1975, aiming at abolishing customary land rights in rural areas to transfer these rights to the State, resulted in heightened tensions between clans and central authorities over control of land<sup>6</sup>. According to the 1975 law, all land not held privately became property of the State. Registration of individual ownership over State land could then be granted in the form of 50 years leasehold<sup>7</sup>.

The law resulted in appropriation of land by a political, social and economic elite<sup>8</sup>. However, the percentage of registered land in Somalia is extremely low at 0.06 per cent in 1986<sup>9</sup>. No recent data is available as most land registries documenting private ownership have been destroyed or contain missing data, including those from Mogadishu. It is difficult for anyone to prove regular ownership of land as there is no official registry to check it against. This has encouraged illegitimate and competing claims over land.

Disputes are exacerbated by the limited capacity of courts to address such issues, and the confusion over the institutions in charge of land in the Somali government<sup>10</sup>. The establishment of a Federal Government in 2012 offers new perspectives to clarify the legal framework on land and strengthen institutional capacity.

In practice, since the 1975 land law is hardly implemented and enforced, the main forms of tenure in Somalia are leasehold ownership administered by statutory authorities and communal land agreements. The latter is used to secure land tenure, granted and managed by elders, customary and sharia authorities but witnessed by local authorities; often municipalities. In case of disputes, people overwhelmingly approach customary or sharia dispute resolution structures.

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5 UN HABITAT, NRC, UNHCR (2008), *Land, property and housing in Somalia*, p.13.

6 UN HABITAT, NRC, UNHCR (2008) *Land, property and housing in Somalia*, p.10.

7 NRC, Legal Action Worldwide (2014), *Housing, land and property in Somalia*, p.31.

8 UN HABITAT, NRC, UNHCR (2008), *Land, property and housing in Somalia*, p.12.

9 NRC, Legal Action Worldwide(2014), *Housing, land and property*, p.31.

10 Ibid, p.32.

## **2.2.4 Traditional land tenure arrangements and dispute resolution mechanisms**

The traditional ownership of land is highly insecure and often linked to ancestral linkages to the area and territory (*deegan*). Since control of land often changes hand and clan, the agreements granted by various clan members are highly insecure and can result in evictions or new displacement. In some cases, forged ownership documentation is used<sup>11</sup>. IDPs, refugees and returnees with no affiliation to the clan group in control of the land are disadvantaged. In such cases, Sharia courts and traditional courts are the most common dispute resolution mechanisms.

Although Sharia law contains provisions giving certain HLP rights to women, they are often not used due to the dominant conservative social norms, which are detrimental to women's access to land and inheritance.

Customary law or *Xeer* refers to the rules used by traditional elders to mediate conflicts between different clans.<sup>12</sup> Customary dispute resolution structures comprise male elders from respected clans. The distinction between Sharia (religious) dispute resolution mechanisms and customary ones is not very marked as traditional mechanisms have borrowed heavily from Sharia law, over the years. They both tend to disadvantage women and outsiders' right to land such as refugees or IDPs. Moreover, the outcome of the decision is often heavily influenced by the clan composition of customary dispute resolution mechanisms<sup>13</sup>. This means that those displaced in an area where their clan is not dominant have less chances of having their rights protected.

## **2.3 Implication and Recommendations**

Despite the huge challenges affecting IDPs and their ability to achieve tenure security, actors such as the Norwegian Refugee Council and UN-Habitat, as chair and co-chair of the HLP sub-cluster of the Protection Cluster, are one of the few actors addressing HLP issues in Somalia. UN-Habitat is involved in urban interventions such as the development of basic infrastructure, service provision as well as settlement upgrading for IDPs returnees and the urban poor, while NRC promotes tenure security and access to justice through capacity building and support to dispute resolution mechanisms. Lessons learned are highlighted based on the work of NRC, HLP sub-clusters, HLP working group and the Protection Cluster in 3 key areas:

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<sup>11</sup> NRC, Legal Action Worldwide, (2014), *Housing, land and property*, p.35

<sup>12</sup> UN HABITAT, NRC, UNHCR (2008) *Land, property and housing in Somalia*, p.157.

<sup>13</sup> NRC (2015), *Displacement and housing, land and property disputes in Puntland*, p.18.

- Improving access to justice through the support collaborative dispute resolution (CDR) mechanisms
- Promoting tenure security
- Preventing and mitigation the impact of forced evictions

## **2.4 Preventing and mitigating the impact of forced evictions**

The Somalia Protection Cluster was created in 2015 with 3 priorities: preventing forced evictions, improving access to justice, and mainstreaming HLP into development plans and urban planning. With the Protection Cluster, NRC has put in place an eviction tracking mechanism and pre-eviction assessments to identify the number of people at risk, their vulnerabilities and possible responses, whether preventive or remedial. The information collected is shared with authorities, humanitarian, development actors and donors to facilitate appropriate response. Response in case of relocation of IDPs can include unconditional cash distribution to those evicted.

UN-Habitat and NRC play key roles in mitigating the impact of forced evictions. UN Habitat is involved in advocacy against forced evictions and promoting the implementation of the government eviction guidelines. In case of collective eviction from public buildings, one positive practice has been to negotiate the provision of alternative land for the evictees to ensure they do not become homeless post-eviction. NRC negotiated alternative accommodation for 150 households of IDPs occupying a public building in the Ministry of Health and who were to be evicted. This negotiation allowed the collective eviction to be conducted in accordance with the Government eviction guidelines and international standards on evictions.

Raising awareness on rights and entitlements to HLP and consequences of evictions through the provision of information and capacity building has been done, targeting groups at risk at community level, potential “perpetrators”, authorities and humanitarian actors. The intention is for actors to identify forced evictions as a right’s violation. Collaborative dispute resolution (CDR) such as mediation, used to address disputes.

## **2.5 Improving access to justice**

The CDR approach is NRC’s preferred option and consists of non-confrontational methods to resolve disputes. CDR approaches use existing community-based structures composed of both IDPs and host communities. Capacity-building

on mediation techniques to address HLP disputes have often resulted in positive resolution of disputes at community level. Discussions are concluded by a mediation agreement, to prevent further disputes by documenting the terms of the agreement. Networks of paralegals have been trained to identify and refer cases to NRC for mediation or litigation.<sup>14</sup> Negotiation is often used in the identification of land for IDPs, for alternative accommodation and for the extension of notice periods. NRC have sought to address HLP disputes through collaborative dispute resolution (CDR) mechanisms using mediation, negotiation or arbitration.<sup>15</sup>

## 2.6 Improving tenure security:<sup>16</sup>

### 2.6.1 The role of humanitarian, development and political actors

Another key contribution to improve tenure security is the documentation of land and housing agreements. NRC has facilitated the conclusion of collective or individual written agreements with local authorities to the benefit of IDPs. In some cases the agreement allowed a group of farmers to use the land for free during a certain number of years, and to allow the construction of shelters by humanitarian actors. To limit the risks of the owner evicting the beneficiaries of the agreement to use the shelters for his personal use, the agreement provides that the beneficiaries can take the shelter structures with them upon termination of the agreement. Once shelters are constructed, a shelter and occupancy certificate referring to the land agreement is issued to each beneficiary. This written document shows that the shelter is built on a land with the consent of the owner. Land documentation not only improves tenure security for IDPs but also gives guarantees to humanitarian actors to invest in shelter and infrastructure: schools, boreholes, markets.

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14 Litigation in domestic courts is often a last resort following the exhaustion of all CDR approaches

15 Mediation is a way of resolving disputes between two or more parties with concrete effects and the involvement of a third party (a mediator) to assist the parties negotiate a settlement. Negotiation is informal means of resolving a dispute, whereby the people involved communicate directly with each other to try and reach an agreement. Negotiations can be conducted with or without the assistance of a third party. Arbitration is a technique for the resolution of disputes whereby the parties to a dispute refer it to arbitration by one or more persons (the “arbitrators”) and agree to be bound by the arbitration decision.

16 Tenure security refers to the right to hold, use, and possibly transfer of land or housing without the fear of forced evictions, to be able to reap the benefits that accrue from investing time and labour. Tenure security is a key element of the right to adequate housing enshrined in global frameworks.

Land agreements can also be transformed into individual land titles. In Baidoa, NRC worked in close cooperation with local administration and courts to issue land titles to over 500 families of IDPs, many of them headed by women since they face particular obstacles to securing land rights. While this experience has been successful due to the specific circumstances prevailing in Baidoa, such as the existence of a functioning land department and court at the local level, it could be replicated in other areas of the country as the land legal and institutional framework is progressively put in place.

## **2.7 The role of political actors in promoting tenure security:**

Improving and restoring the right to land tenure security is the primary responsibility of national authorities. There are two ways in which the international community can support national authorities.

**First, by ensuring that HLP is integrated in Durable Solutions Initiatives: the role to be played by the IDP Solutions Initiative and the Solutions Alliance.** Both initiatives recognise the responsibility of national authorities to finding solutions, in close cooperation with humanitarian and development actors, including in joint action planning. They can provide the platform and visibility on HLP rights needed at the policy level.

**Second, by linking HLP with Peacebuilding and State Building Goals (PSGs).** Under the New Deal, HLP was recognised as a key area of concern under PSG 3/Justice, PSG 4/Economic Foundations and PSG 5/Revenues and Services, with access to shelter being one of the priorities. HLP's link with governance needs to be expanded from shelter to a strategy to integrate land governance into National Development Plans.

**Third, by reviewing the legal and policy framework.** First, the eviction guidelines are a good start but they require the enactment legislation from which suits can be brought, or a task force to enforce them, with a policy detailing how and for whom legal aid is to be provided. Second, the IDP policy has to be enacted with an inter-ministerial task force inclusive of the Banaadir Regional Administration (BRA), Ministry of Interior and Ministry of Budget and Planning to provide the impetus to addressing HLP rights as a governance and service delivery priority. Third, a legal review of land laws and dispute resolution mechanisms is required; to clarify what laws are in effect, gaps and recommendations for legal reform and a hierarchy of judicial processes on HLP.

## 2.8 Conclusion

In Somalia, displacement continues and HLP disputes remain both a cause and consequence of it, with:

- **Renewed movements and displacement** as claims to land are a source of tension and conflict.
- **Worsening housing and tenure security** with poor shelter conditions, health threats and insecure environments continues most severely in urban areas where forced evictions are rampant.
- **Limited livelihood opportunities** with insecure land tenure, poor protections for HLP, displacement affected populations face a high risk of losing livelihood opportunities and engaging in dangerous coping mechanisms such as child labour, early marriages, forced recruitment into armed groups among others.

HLP issues are as much the humanitarian, development and political dimensions related to HLP Rights are inter-linked. Peace, stability and security are threatened when the basic human rights of housing and land tenure security of millions of Somalis are neglected. The realisation of durable solutions in Somalia requires due recognition of the need to enforce HLP rights as a pre-requisite to peace, stabilisation processes, economic development and most important the upholding of human rights for all groups in Somalia.

# **3.0 Displacement and Gender Dynamics in Somalia**



*The mainstream environment for claiming rights in Somalia is complex and challenging. It gets more complicated when displaced women try to secure their housing, land and property rights in Somalia. The gender dynamics bring out the forces of power and control that have subdued women over men and institutions that are male-dominated to deny them access to HLP rights. Access and control of land in Somalia as in most parts of Africa is a determinant of power and decision-making. This paper explores the dynamics of gender and displacement in Somalia with recommendations for how the current situation can be improved to enhance women's strategic participation in decision-making at household and public levels and is supported by the positions of IDPs, in areas where NRC works on HLP interventions in Somalia.*



Women find it difficult to claim their rights due to poverty, lack of access to rights, male dominated traditions as well as the ad hoc nature of Somali institutions. Women lack knowledge of their rights, and how can they be adjudicated. Key to any discussion on the challenges facing women's access to justice in Somalia is two key barriers: poverty and social norms. Poverty reinforces women's precarious existence - women stay in abusive relationships as they lack the finances to care for their household, while customary courts do not support women in cases of rape or domestic violence and formal courts are too expensive. Social norms and Somalia's male dominated culture limit the application of Sharia law and is one of the main barriers to women's access to HLP rights. Within a male dominated environment, women are excluded from decision-making processes, from having their voices heard and from asserting their will or fighting when their rights are denied. Behavioral changes must go hand in hand with other institutional and constitutional reforms in order to safeguard women's rights.

### **3.1 Urban displacement and evictions**

Internal displacement in Somalia is largely an urban and peri-urban phenomenon<sup>1</sup> contributing to the acceleration of urbanisation and compounding access to affordable housing and basic services. Given the relative stability of South-Central Somalia, numerous refugees and IDPs have settled in Mogadishu seeking stability and livelihood opportunities in urban centres. The numbers of IDPs in Mogadishu represent one third of the displaced (at least 400,000 IDPs).<sup>2</sup> This has led to the occupation of public buildings and the creation of informal settlements with housing characterised by high rent, poor living conditions and the constant fear of eviction. According to the Somalia protection cluster, forced evictions were the main cause of new displacement in 2015 resulting in almost 130,000 of people being evicted. Although forced evictions are not a new phenomenon, they have reached a new scale and a four-fold increase from 2014 leading to the re-activation of the HLP sub-cluster.<sup>3</sup>

Displaced women face multiple layers of vulnerabilities in the settlements facing abuse by gatekeepers, as well as evictions at household and settlement levels. Evictions at settlement level are often driven by the government, gatekeepers or private landlords.<sup>4</sup> Exploitation by gatekeepers, who present themselves as defending the interest of the landowner for whom he is collecting rent or aid taxation, is well documented.<sup>5</sup> The failure of IDPs to pay at least 15% of

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1 Somalia IDP Solutions initiative, mission to Nairobi and Somalia, 27 January to 11 February 2016.

2 As of November 2013, according to the Population Movement Tracking (PMT), UNHCR.

3 HLP meeting 29th October with focus on forced evictions

4 NRC (2016) *Assessment Report: Rental Subsidy Mogadishu*.

5 For more on gatekeepers, see Human Rights Watch (2013); Women NRC Report (2016), p.28-29; Drumtra (2014).

humanitarian aid received often results in forced evictions without sufficient notice or any other procedural guarantees.

IDPs interviewed for this study highlight the role played by the landlords (*goofle*) in the settlements in terms of access to aid and information:

“The *goofle* has informers around who tells them about any aid given to us and that way they will always not miss their share of the aid, even our talk with you now will be known to *goofle*” 35 year old female, Mogadishu.

“We normally pay to our camp leader who tells us he pays the representative but we don’t know what really happens, I believe there is always mutual interest between the gatekeeper and our camp leader.” FGD, Female, Kismayo.

Evictions can also occur if the settlement does not attract enough humanitarian assistance to create sufficient benefit for the landowner,<sup>6</sup> who might then turn to more lucrative business for his land. The increased value of urban land offers many alternative opportunities, which explains the number of evictions. The absence of written and detailed rental agreements between IDPs and landlords fixing the modalities of rent such as price and duration contribute to abuses by landowners who will randomly increase rent and evict tenants when they fail to honour their payment. At a household level, women face eviction as a result of disputes with their husbands, or due to the husband marrying a second or third wife (polygamy). Heirs are sometimes reported to evict widows and wives face evictions in the event of divorce especially if childless. By returning women into a new cycle of displacement and disrupting their social network and livelihoods, forced evictions increase women’s vulnerability and delays their attainment of a durable solution.

### 3.2 Urban displacement and changing gender dynamics

Uprooted from their rural environments, men lack the skills adapted to urban employment. As a result they often find themselves denigrated to menial work such as pushing wheelbarrows, digging holes, porters or building and driving. On the other hand, female IDPs find it easier to adapt and work as domestic workers, which they are familiar with.<sup>7</sup> As such, in urban displacement settings, more women end up working outside the home and more men result in situations of unemployment staying at home with children.<sup>8</sup>

Such reverse in gender roles challenges male claims to superiority with women becoming less dependent on men for access to economic resources. Moreover, in urban settings, where most IDPs live on land that do not belong to them,

6 NRC (2016) *Assessment Report: Rental Subsidy Mogadishu*.

7 Ibid, p.36.

8 Ibid, p.37.

men are deprived of land control, a traditional asset for livelihoods and one of the means in which men display wealth and status.

In this context, women's economic empowerment is difficult to accept by husbands who invoke religion and custom to assert control over the resources gained by women, to play their role of economic provider of the family.<sup>9</sup> Female empowerment can be a double edge sword for women. On the one hand, it is an opportunity for them to get out of poverty, control their lives, provide for their family and have activities outside home. On the other hand, working both within and outside the household with little male support in terms childbearing and rearing creates a double burden for women. Last but not least, disputes within the household over control of money has led to violence and divorce. In some cases, humanitarian assistance has had the unintended consequence of fueling disputes over housing, land and property. Examples include conflict in the household as a result of shelter or title cards registered under women's names given by NGOs. Humanitarian organizations may give ownership of shelter and title cards to wives instead of husbands partly because women are seen as better home takers and partly because women are often found at home during registration processes.<sup>10</sup> While giving ownership of the house or shelter to women provides women security and protection in case the husband divorces them, it can also create tensions and conflict within the household, as husbands feel marginalized. Thus, risks involved in determining assistance must be careful weighed from this perspective.

### 3.3 Humanitarian assistance

In order to limit the number of forced evictions in Somalia, NRC ICLA programme facilitates the conclusion of agreements between landlords and municipalities to allocate land to IDPs for a certain period of time ranging from a few years to perpetuity. When shelters are built on it, a card indicating the name of the owner of the shelter is given to the head of household. In several cases, by chance more than by design, the name indicated on the card was the one of the married woman and not the husband, who was not present at the time. In the Somali context, the possession by women of such a valuable asset, is hardly tolerable by men and led to violence, divorce or attempts to forge the name on the card.<sup>11</sup>

Similarly, livelihood interventions such as cash programming targeting women have led to disputes and violence within the household.<sup>12</sup> Women have

9 NRC (2016), *New realities, new challenges and new opportunities, housing, land and property rights for Somalia's urban displaced women*, p.35.

10 *Ibid*, p.73-74.

11 *Ibid*, p.73.

12 *Ibid*, p.76.

reported conflict in the family over control of money as men make demands of the money given to them. This creates risks of backlash for women.

So far, most agencies have implemented their programming without interference in household dynamics seeing it as outside their realm of responsibilities or ability to effect change. While agencies may believe that they are empowering women by directly handing them cash or giving them shelter in their name, this does not avoid the risk that husbands will interfere negatively, take the women's property or belongings. As the risk persists, this calls for better engagement by NGOs in possible mitigation strategies regarding their programming interventions.<sup>13</sup>

**Identify Risks:** NGOs must develop an assessment of risks, how they balance against potential advantages and any possible mitigation strategies of their interventions. This should involve an assessment of how men and women view and respond to any proposed action - whether livelihood programming or shelter interventions. Risks must be identified through dialogue and awareness campaign with men and women by providing them a safe space to express their grievances and feedback to program implementers.

**Mitigating Strategies:** Agencies must develop mitigating strategies based on dialogue with women, men and local authorities. Examples of mitigating strategies can include awareness raising of any intervention implemented by NGOs, the creation of a counseling mechanisms catering for women who feel threatened by violence or men and women at risk of eviction. Other mitigating strategies include the development of joint ownership of shelter leading to multiple rights holders instead of single ownership or a commitment to use dispute resolution forum deemed fair by both parties in case of dispute.

**Monitoring and Protection:** It is the responsibility of agencies to monitor and facilitate protection especially related to their own programming. Agencies must give women adequate options when they feel threatened as well as raise the awareness of humanitarian staff on how to respond to family problems instead of ignoring problematic family dynamics.

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13 Ibid, p.76-78.

### **3.4 The linkages between denial of HLP rights, poverty and gender-based violence**

Housing, land and property are key assets to alleviate poverty, foster resilience and achieve durable solutions. In Somalia, women are particularly vulnerable to violation of HLP rights, and are exposed to several risks whether they are single or married.

Women-headed households are particularly exposed to forced evictions and sexual and gender-based violence. Forced evictions from urban, informal settlements have widespread repercussions on female IDPs disrupting their livelihoods and limiting their ability to locally integrate. In addition, girls and female-headed households who cannot benefit from the protection of male relatives are easier to evict and face the greatest risk of gender-based violence according to an OCHA report.<sup>14</sup> The Somalia protection cluster points to an increased protection concern with 75% of recorded GBV incidents in 2015 affecting IDP communities.

The difficulties faced by Somali displaced women to access and control housing, land and property, and to obtain redress for the violation of their HLP rights creates a vicious circle: Women tend not to defend their HLP rights in case of dispossession, divorce or inheritance before statutory, religious or customary institutions as they are aware of their limited chances to win. As a result, they remain economically dependent on their husband or male relatives, which force them to remain in abusive relationships exposed to domestic violence, or to face severe poverty. When they do try to defend their rights, they expose themselves to divorce or social and economic marginalisation.

The rise of domestic violence and the incidence of divorce have been attributed to two main reasons: female economic empowerment, coupled with loss of male empowerment in contexts of displacement and women efforts to assert their HLP rights within the household with regards to both land and money.

According to both IDP committee leaders and IDP women ‘the problem [of domestic violence] is economic.’<sup>15</sup> Domestic violence is blamed on men’s inability to provide for the families. Feeling threatened and unable to fulfil their role as providers of the family, men resort to violence to re-assert dominance. Domestic violence and fear of violence are important deterrent to women’s ability to exercise their HLP rights. While domestic violence cases have been tackled through NGO mediation with the husband vowing not to harm the

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14 NRC (2016) *New realities, new challenges and new opportunities, housing, land and property rights for Somalia’s urban displaced women*, p.26.

15 Ibid, p.40.

wife, there is little ‘in the way of enforcement of guaranteed protection for the women.’<sup>16</sup>

While women’s ability to earn money or possess housing or land gives them a degree of independence from their husband and increases their bargaining power and ability to negotiate in the household, their attempts to control the use of the their resources or possession has also resulted in divorce or evictions. Disputes within the household over the control of humanitarian aid (cash assistance or shelter ownership) has also resulted in evictions of women by the husband.<sup>17</sup> It is therefore key to draw lessons from these challenges.

### **3.5 Thinking forward – Lessons learned and recommendations**

The challenges faced by Somali displaced women in urban settings highlight lessons learned in terms of humanitarian impact on gender roles and suggest various avenues to improve women’s access to HLP rights.

### **3.6 Improve understanding of the gender-sensitivity of programming**

Gender-sensitive programming looks at how interventions impact men and women. While distributing assistance to men reinforces their power within the household, it should not be assumed that distributing assistance to women will automatically improve their situation. For instance, in the case of cash assistance, the failure to reflect on who has a claim on a wife’s earning may lead to an overestimation of the impact this assistance for married women<sup>18</sup>. The perceptions of men and the feeling of disempowerment that result from humanitarian assistance should not be neglected, as it can have serious negative consequences on women such as domestic violence. The failure to take into consideration the impact on men of certain programming is actually undermining the protection it was intended to provide to women<sup>19</sup>. An analysis of risks associated to women empowerment should not lead to a neglect of these types of programmes but rather encourage a conscious engagement of such issues, weighing the advantages and mitigating risks.<sup>20</sup>

Improving gender-sensitive programming requires close consultation with both men and women. Protection analysis needs to be an integral and consistent part of humanitarian programming. In the present case the Somali women interviewed proposed their preferred solution. They are still eager to keep working and obtain skills and trainings to help them reach a greater degree of economic independence. Many IDP women expressed interest in running a

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16 Ibid, p.52.

17 Interview, NRC Staff, March 2016.

18 Ibid. p.70.

19 Ibid. p.74.

20 Ibid, p.77.

small business close to home thus requiring flexibility to fulfil other tasks while being closer to home.<sup>21</sup>

Other possibilities to appease tensions and limit violation of women's HLP rights linked to humanitarian assistance (shelter ownership or cash assistance) to married women include:

- Delivery of card with joint shelter ownership for both husband and wife.
- Closer cooperation between humanitarian actors and local authorities to protect the rights of women who received shelter through delivery of ownership cards with photos of family members as it has been done in Puntland. This confirms the existence of several right holders over the shelter and reassures illiterate women.
- Increased role of local government actors in addressing shelter disputes as part of the land agreements they have with humanitarian organisations to allow settlements of IDPs and construction of shelter. Local governments can provide enforcement powers that NGO lack.
- Raising awareness of women's HLP Rights to men and women notably in relation to *Shari'a* law to improve acceptance of women's economic empowerment.

### **3.7 Improve women's access to justice**

Improving women's access to justice, requires a combination of short-term and long-term interventions targeting men and women and decision-makers at customary, religious and statutory levels. The changes brought by urban displacement in Somalia can provide a window of opportunity to progressively influence behavioural changes in a way that is more equitable to women if they are adequately supported. Improving women's access to justice can be supported in the following ways:

- Engaging with religious and traditional leaders through forums of committee where women can present their HLP claims to elders directly as well lobby such male spaces to hear HLP issues presented by women.
- Develop mediation committees where women can present their HLP claims before NGOs, local, customary and religious authorities. While the impact of mediation is often limited when it goes against dominant social norms, it can contribute to behavioural changes by increasing awareness of women's plight by men and allowing women to defend their case directly, without a male representative acting on their behalf.

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<sup>21</sup> Ibid, p.39.

- Explore ways to ensure that mediation cases addressed to NRC are not exclusively referred by elders, to limit the risks of elders acting as gateways to mediation services. This can be done by directly engaging with community members.
- Facilitate the development of legal assistance through lawyers or paralegals in both statutory, religious and customary dispute resolution mechanisms to encourage women to present their HLP related claims and limit interference of elders into statutory courts.
- Encourage the training of women as paralegals, and the development of women networks where they can exchange on their experience and seek solutions together.
- Where a risk of violence exist as a result of a women trying to claim her HLP rights, ensure linkages with national or international actors specialized in gender-based violence to prevent or address those risks.
- Explore possibilities to use Islamic tenure systems such as the waqf (Islamic endowment) to facilitate access of the most vulnerable to land. Appealing to the principle of charity, which is very strong in Islam and Somali culture could have positive impact in that regard<sup>22</sup>.
- Encourage the development of rental agreements between landlords and tenants providing basic information on duration of contract and level of rent as well as conditions for termination, to develop a culture of accountability between the parties<sup>23</sup>.

### **3.8 Linking with development actors**

Humanitarian actors provide essential protection and assistance, notably in support of housing, land and property rights. However, their interventions are mostly short-term and cannot influence the social, structural and institutional issues that are at the root of women's HLP rights violations. This is why it is essential for humanitarian actors to share their knowledge and experience of the challenges faced by displaced women with development actors such as UNDP or UN HABITAT and the World Bank, so that corrective action can be integrated into their institutional capacity-building on the rule of law or land governance. UN HABITAT for instance has been mainstreaming a gender component into their land management trainings targeting government, customary and religious leaders as well as women activists. Such activities are key to ensure inclusive development. The inclusion of a reference to improve

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22 ibid. p.72

23 IDMC, Home sweet home : housing programmes and policies in support of durable solutions for urban IDPs, March 2015, p.42 on UN HABITAT rental agreements campaign in Bosaso, Somalia

land tenure security as a key objective of the resilience pillar in the National Development Plan, goes in the right direction by linking HLP rights with durable solutions and resilience as national development objectives.

Strengthening the capacity of institutions to regulate the use and control of land for all of Somalia is a first step towards the improvement of tenure security which is key to self-reliance and economic development. For those displaced, it will contribute to recovery, to the reduction of HLP disputes and the achievement of durable solutions to displacement.

In parallel, improved urban planning and governance will not only improve living conditions through better access to housing and services, but it will also offer more livelihood opportunities not directly linked to the possession of land, which presents a chance for women whether displaced or not.

### 3.9 Conclusion

2016 marks a turning point in Somalia: as the government develops its National Development Plan, the need to strengthen security of tenure and HLP rights has been highlighted as a key national development objective. Humanitarian and development programmes should build on some of the positive changes brought by urban displacement such as women's economic empowerment to stimulate change in the perception of gender roles in a way that is acceptable to men and does not result in violence against women.

More work needs to be done to secure, beyond land tenure security, women's HLP rights and adequate access to justice to fulfil these rights. Decisions issued by dispute resolution mechanisms tend to favour men and use interpretations of Somali customs to support their HLP claims even if they contradict *Shari'a* provisions on women inheritance and divorce rights. As a result of the current gender roles, women are excluded from shaping the rules of the system, from speaking for themselves to defend their case and acting as decision-makers in the case of disputes.<sup>24</sup> Although many women are aware of their HLP rights under *Shari'a* law, they also know the cost of reclaiming their rights, which often results in divorce, eviction or social exclusion from the group. They are therefore reluctant to reclaim their rights, which keep them in a situation of dependency, poverty and sometimes abusive relationship.

In order to address their pressing needs, humanitarian actors should facilitate women's access to justice by engaging with customary and religious dispute resolution mechanisms, which are the ones most often accessible to women. Considering the strong legitimacy and support of *Shari'a* law by

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<sup>24</sup> Ibid, p. 6.

Somali population, the most efficient way to influence positive change for women is to use the provisions of *Shari'a* to defend their HLP rights including before customary elders. In parallel, the development of mediation and dispute resolution mechanisms composed of women and men representing local government, customary and religious leaders, should be encouraged to empower women to defend themselves and accustom men to women's participation on HLP issues. Such initiatives should not however prevent longer-term efforts to seek truly equal access to HLP rights in line with international standards through advocacy with national actors and capacity building.

## 4.0 Voices of the Displaced on HLP Issues in Somalia<sup>1</sup>



What HLP challenges do women face in their areas of origin and areas of displacement? What constitutes tenure security in their eyes?

What is the impact of urbanisation on their lives?

What is their perception of justice and dispute resolution mechanisms?

*This section draws on interviews with displaced men and women interviewed in Somalia in 2016.*

Movement from rural to urban centres: Displacement and the quest for livelihood opportunities

Many IDPs have moved from rural to urban areas due conflict, famine or droughts seeking better livelihood opportunities. Some of the motivations for moving into IDP settlements include being closer to urban hubs, and having better access to services and aid, as well as better livelihood. The reality of living in IDP settlements is often characterised by high rent prices, fear of evictions by the state or landowners and general uncertainty of the timing of aid, evictions or of the ability to secure livelihoods.

“ Are we getting any aid? Are we going to pay *goofle* (owner) any money? if we do not have either of the two then we risk forceful eviction any time.

*38 year old female, Mogadishu, Sankus settlement.*

“ Our housing situation is really bad as you can see around; we are always at risk of being evicted everywhere we go because the land we have settled belongs to other people.

*40 year old female FGD, Mogadishu, Sankus settlement.*

#### **4.1 Who do IDPs pay rent to? Why are threats of eviction frequent?**

For the most part, IDPs do not know the landowner. They pay rent to the gatekeeper who is believed to pay the landowner. IDPs recognise that gatekeepers do not own the land and may or may not know the original landowner thus highlighting the vulnerability of their situation. Evictions are carried out by state actors or by landowners and gatekeepers if IDPs fail to share their aid with them. IDPs highlight the challenges they face: from overlapping land ownership, lack of formal agreements between landowners and IDPs as well as land grabbing.

- Lack of clarity on who owns the land:

**“** We don't know the real owners; we only deal with the gatekeeper who is the one who paid the *goofle* before we settled here. The gatekeeper himself doesn't know the real owner of the land he has rented, that is why evictions are so quick some times.

*40-year-old female FGD, Mogadishu, Sankus settlement.*



- Evictions by gatekeeper or landowner due to IDP's inability to attract aid:

**“** We were also evicted four times; 3 by the *goofle* and once by the Government and right now maybe within this month we might be evicted from our current camp because we are not able to pay the *goofle* because we have not been given any aid and he suspect we are playing games with him.



- Lack of binding agreement between tenant and landowner resulting in eviction:

**“** We didn't just move in and there is no formal agreement but there is verbal agreement between the *goofle* and our gatekeeper, which the *goofle* can break anytime, within a time of his/her choosing as short as three days or up to a month or two maximum.

*32-year-old Female, Mogadishu, Sankus settlement.*



“Within the displaced persons we are all vulnerable when it comes to *goofle* because we don’t have binding agreement with them, because we know he and us both don’t own the land and anytime the real owner comes we will be kicked out that makes us vulnerable to evictions any time.”

*22-year-old female, Mogadishu, Sankus settlement.*

#### 4.2 Access to justice: Perception and Reality for women

When asked about access to justice, most women expressed their support and trust in elder’s ability to solve dispute and their belief in traditional dispute mechanisms over formal courts which they dislike and see as ‘corrupt’ and untrustworthy. However, there is a clear disconnect between the realities on the ground and the discourse. Women favour elders’ mediation of conflict, but this does not translate into better rights for them.

“We choose clan elders or committee because there is no effective justice in court system. People have confidence and trust on elders more than courts or local authorities.”

*Female, Kismayo.*

Whenever there is a land dispute people know only elders and turn to them.

*44-year-old Female, Baidoa.*



Yes, we can get access to justice from community and religious leaders and in case we are denied our rights to property we can always approach community elders and or they themselves may intervene on their own to resolve the problem disputes within the community.



*50-year-old female, Mogadishu.*

#### **4.3 Discourse on the effectiveness of traditional dispute resolution bodies and elders ability to manage disputes:**

While the majority of women favoured going to the elders when faced with a land dispute, the reality on the ground shows that going through clan elders will not always provide women with adequate solutions let alone access to justice. The outcome of the decision can be heavily influenced by the clan composition of customary dispute resolution mechanisms:



I have lost dowry with my former husband. Elders tried to take care of me by talking to him [former husband] but they could not succeed



*Female, Kismayo.*



Under *Xeer* I was once told to forego my rights to inheritance after my husband died and his family denied me the right to inherit his property. My relatives and elders advised me to forget about it and I did



*50-year-old female, Mogadishu.*





NORWEGIAN  
REFUGEE COUNCIL

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Lavington Green, ElMolo Drive,  
Off James Gichuru Road  
P.O. Box 21211-00100  
Tel: + 254 20 434 8246  
Mobile: +254 716 430 333/735 501 450  
Email:[info@nrc.no](mailto:info@nrc.no)  
Website:[www.nrc.no](http://www.nrc.no)