



DISPLACED  
**WOMEN'S RIGHTS**  
TO HOUSING, LAND AND PROPERTY



**HOUSING, LAND AND  
PROPERTY RIGHTS  
FOR SOMALIA'S URBAN  
DISPLACED WOMEN**

**NRC**

NORWEGIAN  
REFUGEE COUNCIL



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About this project, visit [www.nrc.no/womenhlp](http://www.nrc.no/womenhlp).



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## **Housing, Land and Property rights for Somalia's urban displaced women**

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# EXECUTIVE SUMMARY

As of January 2015, UNHCR reports indicate an estimated 1.1 million internally displaced persons (IDPs) in Somalia, a country that has endured over 20 years of armed conflict and devastating drought conditions, and that has been labeled as one of the world's worst humanitarian crises. Similar to many other countries, land is important as both a resource for livelihood and a symbol of status; and strong arguments have been made that competition for land and other natural resources were an underlying cause of the civil wars. The various systems and rules that are used to manage and control access to land are a complex mosaic, bearing markers from the various pieces of Somalia's history: "Xeer," the customary rules and traditions used by Somalia's clan-based society; "Western" style laws from the periods of colonialization by the Italian and British, as well as the predatory rule of the Barre regime; and the steady influence of Islam throughout the country's tumultuous history.

Despite decades of international assistance and intervention, Somalia still struggles to support improved livelihoods for the majority of its citizens, particularly those who are both female and displaced. The country ranks amongst the 5 least developed nations according to the 2012 Human Development Index, and is at the 4<sup>th</sup> lowest position globally on the Gender Inequality Index. The difficulties of managing and responding to displacement are exacerbating conflict and fragility, overwhelming institutional and host community capacity, and impeding inclusive growth and development. An important component of addressing these challenges remains the many facets of the treatment of land – who has access to it, who controls it, how, and the narrative of why – and the present research seeks to ensure that the needs and voices of displaced women are included in this important conversation.

This study seeks to identify challenges faced by IDP women living in urban settlements to exercising their HLP rights, and offers realistic and practical recommendations for agencies to better understand and support displaced women's HLP rights, and enable them to find durable solutions. Part II will look at women's HLP rights in the various systems used for land management in Somalia, with emphasis on how marital property and inheritance feature under customary and religious regimes. Part III will more closely examine whether and how women are actually able to access and use these rights, and attempt to identify factors that affect their ability to do so. Finally, Part IV will offer observations and recommendations as to how those wishing to intervene can empower women to access and exercise their HLP rights, and support the inclusive and gender-sensitive development of the HLP rights discourse in the context of Somalia.

## METHODOLOGY

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

Information for this report was gathered through a combination of desk study of existing literature, fieldwork conducted between 27 August and 24 September, 2015, and a review of the organization's programmatic files and documents. While access to people and areas was unfortunately limited due to time and security concerns, in efforts to capture the many different contexts and realities of displacement in Somalia, the study sites included Dollow and Mogadishu in South Central, Hargeisa in Somaliland, and Garowe and Galkayo in Puntland. Fieldwork included approximately 27 focus group discussions with participants as men, women, youth, host, and displaced community members, and was complemented by 28 more in-depth individual interviews with government, civil society, program staff and partners, and other key stakeholders.

## FINDINGS

The study found that displaced Somali women do have a range of HLP rights under the mix of statutory, customary, and Islamic regimes used in Somalia, and while there are several initiatives attempting to support their endeavors to exercise those rights, there also exist many challenging barriers, especially those that relate to gendered norms regarding the balance of power between men and women.

These obstacles prevent women first from trying to claim their rights, and then again if they seek adjudication about the denial of those rights. Many stem from chronic poverty, and the male dominated traditions and cultures that underpin Somali society. By controlling the story of why certain practices become customs, men can justify the decisions they take to maintain dominant positions in society. Discriminatory customs are used to justify denying women inheritance and divorce rights available to them under Sharia law, often casting aspersions on her character if she sought to claim them. Women feel like they have little voice or protection in the customary justice processes, as they are excluded from shaping the rules of the system, from acting as decision-makers in the case of the disputes, and often from speaking for themselves if they have grievances.

Those who seek to vindicate their rights outside the customary system are stymied by the somewhat ad-hoc nature of Somalia's legal institutions, in that there is still general uncertainty as to what legal rights and rules exist, which ones govern, and where they can be adjudicated. Additionally, women reported that access to non-customary justice mechanisms could also be blocked if traditional [male] elders did not support the case. Even if women are able to get to the court, they continue to face obstacles related to the discriminatory nature of

Somali culture, as the women report feeling that the value of men and women's words in court are not yet seen as equal.

One of the most significant obstacles to women's ability to exercise their HLP rights, particularly within the marital household, is domestic violence, or the fear of conflict that could trigger such abuse. Violence perpetrated by husbands who are angry when their wives exercise their HLP rights is a pervasive threat. Stories from the women, members of IDP committees, and mediation service providers all confirm that the typical outcome of a domestic violence case in the traditional system is some attempt at agreeing upon compensation for the pain and injury that was inflicted upon the wife, and a promise by the man not to harm the woman again, but there is little in the way of enforcement or guaranteed protection for the women.

However, the research indicates that the phenomenon of urban displacement and humanitarian interventions are disrupting the gendered norms of the access and use of HLP rights under these systems. In particular, the study looked at what HLP rights different household members are able to exercise, and how the powers of men and women are affected by factors such as: men who cannot fulfill the role of economic provider; women becoming primary breadwinners of the family; and the introduction of "titled" shelter assets or legal assistance provided by the humanitarian community. Coping strategies adopted by the women to handle these changes had positive effects on the survival of the family, but often resulted in negative repercussions from their husbands.

One of the core beliefs highlighted by men and women alike is the idea that men/husbands are "responsible" for their family, and so have greater decision-making power. The women interviewed for this study explained that their husbands had more authority in the household because they were the primary, if not sole, economic providers, ensuring that the family had the money needed for food, shelter, and clothing. They did not take issue with accepting that men were responsible; rather, they were unhappy with their husbands' interpretation of what being responsible meant. However, the role of the men as breadwinners has changed dramatically during displacement, and the general trend observed amongst the IDP populations now is more women working outside the home, and more unemployed men.

The reversal in the gendered role of economic providers has significant consequences. When men were the primary breadwinners, they had a stronger claim to decision-making power and authority in the household. Now, the role of women as primary breadwinners is challenging the construct used by men to justify their superiority. While women remain socially subordinate to men, displacement is making them less dependent on men for access to economic resources and other means of production. A significant number of men in nearly all study sites believed that women working was a positive development, as they held the general belief that women would use any extra resources to care for the family. At the same time, many men are blaming women's growing economic strength for their own feelings of



failure, and recasting the situation as undermining their authority and causing conflict in the family.

In contrast, while some women said that working was good insofar as it allowed them to care for their children, the majority did not view having to work under current conditions as a positive development. This is unsurprising, as working outside the home is simply an additional burden to the existing workload; the paid work they do is often menial, and detracts from the time they need for their household and family duties. There is no general trend of men assisting with domestic work or childcare, even if they are unemployed. When asked about what would help them the most, the women overwhelmingly requested skills training and other things that would enable them to improve their economic independence. Women are not averse to working, but they need work that allows them some flexibility in time to do their other tasks, and keep them closer to home.

**What do women want?** This report shares the perceptions, sufferings, and hopes of women as they related their experiences, giving primacy to understanding the voice and desires of women themselves. Male authority figures and service providers consistently told the study team that “women were shy,” and while there is some truth in that sentiment, it is more important to look at the institutional factors that influence women’s decisions not to speak. The research suggests that women do not have a problem with speaking; they have a problem with finding spaces where they can speak, and decision-makers they can speak to. When given the opportunity, the women expressed simple desires: to be heard and fairly treated; to claim their HLP rights and still have marriages with respect; to be economically empowered, and to seek justice when they have been wronged

Nearly all women indicated some awareness of their HLP rights under Shari’a, and while some may argue that Islamic law discriminates against women (at least as compared to more “Western” individualistic discourse), Islamic teachings remain one of the most respected and widely understood sources of rights and truth amongst all Somalis interviewed for this research. Whatever one may perceive as the shortcomings, women view the fulfillment of their HLP rights under Islam as a worthy achievement, as it provides more protections and rights than they are currently able to access.

The men interviewed during this study seemed afraid that if women had greater control of land and property, it would undermine their authority and diminish their importance as men. Yet, women did not want to be the “man” of the household, as the men seemed to fear. On the contrary, unless they had specific, bad experiences with their husbands, they still believed that it was better to be married than single – that it was better to have someone to “help support you, to watch the children, and to talk and cry with.” Women want “good husbands” who try to help provide for the family, and who will not threaten them or treat them badly for attempting to seek some autonomy and respect. But, they also want more and better opportunities to gain economic independence so that they can have an exit strategy if they need one.

## SUMMARY OF RECOMMENDATIONS

### 1. Help women be heard: Raising women's voices.

- Spaces to speak: Create spaces where women can come together and talk about problems, and discuss possible ways to improve their lives. Being forced to face overwhelming challenges alone can have longer-term, negative impacts on the women's outlook on life and hopes for improvement. Additionally, IDP women would benefit from greater exposure to women in positions of strength or authority, and there should be a space where strong women can share their message and experiences to encourage the displaced women and give them hope. Seeing other women speak freely and hold positions of authority can encourage displaced women to speak themselves, and serve as proof that women can succeed and have better lives.
- Access to decision-makers: Help women gain access and audience with the decision-makers, who are still primarily male, in both statutory and customary systems. Establishing a link between women and male authority figures is crucial to ensuring that the leaders of Somali society understand that the mistreatment of women and denial of their rights is more widespread and damaging than they wish to believe. The women are capable of explaining what they need, and should be given the opportunity to make their case to the ones who are well positioned to do something about it.

### 2. Empower women to claim their rights.

- Increase knowledge of women's rights: Ensure both men and women are better trained on women's rights, particularly those relating to mahr, divorce, inheritance, and emphasise the underlying right of all women to directly own land and property that is protected by the Qur'an. In addition to better understanding women's rights, more open discussion among men and women together is needed to understand why women are unable to access these rights.
- Increase opportunities to access rights: Create more opportunities for women to access and claim HLP rights. Examine interventions carefully to see if they are distributing opportunities to men and women equitably, and ensure they are not inadvertently favouring men due to customs and traditional practice. Where possible, interventions should be structured to ensure that women have, at a minimum, a choice to exercise their HLP rights.
- Economic Empowerment: Confidence to make choices: Empower women economically; this is one of the primary ways to increase women's feelings of confidence and strength, and women interviewed during this study indicated that knowing they can earn and control money helps them be better women and mothers. This strength frees them to make the choices that are best for the children, themselves, the family without fear or abandonment, eviction, or divorce. In a virtuous cycle, economic strength provides the sense of power and self that increases a woman's resolve to claim her HLP rights, and the ownership and control of property itself reinforces economic power.

### 3. Increase Access to Justice

- Linking women, religious leaders, & traditional leaders: Explore innovative linkages and mechanisms to bring together women, religious leaders and traditional leaders to create forums where women can claim the rights and protections offered under Islam.
- Facilitate access to legal assistance in both statutory and customary forums: Facilitate legal assistance through either lawyers or paralegals in contexts where courts are available and deemed the appropriate forum, using joint teams of men and women where possible to utilise the advantages of both genders. Develop networks within settlements where women are trained on their rights and able to provide support for each other, building on existing outreach and awareness initiatives, and where possible, seek the inclusion of men who understand the importance and benefits of supporting Somali women.
- Increase impact of mediation: Use mediation as a safe space to advance the conversation about women's HLP rights in a way that engages both men and women. Work with other actors to whom women turn to for assistance with HLP problems, such as local government authorities and legal aid clinics, to incorporate an element of discussion where women and men must talk, and listen, to each other about women's HLP rights.
- Protect women who claim their rights: Organisations that do not work with GBV, but whose staff are likely to be made aware of situations occurring, should advocate for organisations that do address GBV to provide trainings or other activities to raise awareness of the problem and encourage women to seek help. Coordinate to ensure that those who can respond are made aware of the problem, and to facilitate a faster and more holistic response to displaced women's needs. For example, this might take the form of a team consisting of both GBV and HLP specialists in recognition of the interlinked nature of these issues for many women.

### 4. Work with Government to Support Women

- Build links where NGOs provide material support, knowledge, and capacity building; governments enforce laws that guarantee rights and punish violations; and the IDP women bring the determination to drive the processes that can bring the changes they seek. Strengthen existing collaborations, like those where governments and NGOs work together to facilitate access to land, shelter, and tenure security for IDP women. Support women in office to strengthen women's political voice and representation, to help ensure that displaced women's rights and needs stay on the political agenda.

### 5. Implement Gender-Sensitive Programming

- Recognise gender bias: Hear and understand the viewpoints of women, from women themselves. There are marked differences between how men and women view women's HLP issues, ranging from the importance of inheritance rights to the prevalence of violence. Where





possible, include more female staff, but at a minimum, ensure that women's perspectives are captured at all stages of programme design.

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

## 6. Be Creative: Test New Ideas

- Do not be afraid to try something new; new challenges may require new approaches. Instead of starting with known and tested responses, and then searching for problems to which they can be applied, look at the problem first. Try to understand the people and the interests involved; then create responses that can speak to the needs in a way that accounts for the varying interests. The fact that something has not been done before does not mean it cannot succeed if done the right way, and trying new strategies can result in better interventions, if not perfect ones.

## CONCLUSION

To empower women displaced women to claim and exercise their HLP rights, the importance of Islamic and customary systems cannot be overlooked or legislated away. The majority of Somali men and women expressed the notion of identity within the framework of Islam and being a “good” Muslim, and, it is important to take this opportunity to ensure that women are included in the discourse of what Islam in Somalia means, and to ensure that they are not excluded in the way that they have been from the discourse defining Somalia's traditional culture. It is also important to remember that supporting women to access their HLP rights under Islam at this stage does not close the door to future efforts to seek greater empowerment or access to other rights, as new circumstances present themselves.

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

Displaced women will have a much better chance of maintaining the advances they make in claiming their HLP rights if all Somalis – men, women, displaced, and not – can see and benefit from inclusive development. The belief that some groups are being prioritised at the expense of others will foster mistrust, and the group that is feeling slighted will await the opportunity to claim back what it feels it has lost. Host community members who feel they are being ignored when international actors focus on the displaced will continue to search out opportunities to get a cut of that assistance stream. Men who believe women are advancing at their expense are more likely to take drastic measures to maintain their superiority.

Struggling with the hardships of displacement, Somali women are nonetheless learning to navigate the opportunities and pitfalls of this upheaval in ways that will have a lasting impact on their conceptions of and access to HLP rights. Ultimately, Somalia remains a rich, complex, and complicated setting, and outside actors wishing to intervene must understand these dynamics to facilitate long-term and positive change, and to guard against creating further harm in this fragile context.



# INTRODUCTION



## BACKGROUND

As of June 2015, UNHCR reports indicate an estimated 1,133,000 million internally displaced persons (IDPs) in Somalia<sup>1</sup>, a country that has endured over 20 years of armed conflict and devastating drought conditions, and that has been labelled as one of the world's worst humanitarian crises. Similar to many other countries, land is important as both a resource for livelihood and a symbol of status, and strong arguments have been made that competition for land and other natural resources were an underlying cause of the civil wars. The various systems and rules that are used to manage and control access to land are a complex mosaic, bearing markers from the various pieces of Somalia's history: "Xeer," the customary rules and traditions used by Somalia's clan-based society; "Western" style laws from the periods of colonialisation by the Italian and British, as well as the predatory rule of the Barre regime; and the steady influence of Islam throughout the country's tumultuous history.

Despite decades of international assistance and intervention, Somalia still struggles to support improved livelihoods for the majority of its citizens, particularly those who are both female and displaced. The country ranks amongst the 5 least developed nations according to the 2012 Human Development Index, and is at the 4<sup>th</sup> lowest position globally on the Gender Inequality Index. The difficulties of managing and responding to displacement are exacerbating conflict and fragility, overwhelming institutional and host community capacity, and impeding inclusive development. An important component of addressing these challenges remains the many facets of the treatment of housing, land, and property (HLP) – who has access to it, who controls it, how, and the narrative of why – and the present research seeks to ensure that the needs and voices of displaced women are included in this important conversation.

This study seeks to identify challenges faced by IDP women living in urban settlements to exercising their HLP rights, and offers realistic and practical recommendations for agencies to better understand and support displaced women's HLP rights, and enable them to find durable solutions. Part II will look at women's HLP rights in the various systems used for land management in Somalia, with emphasis on how marital property and inheritance feature under customary and religious regimes. Part III will more closely examine whether and how women are actually able to access and use these rights, and attempt to identify factors that affect their ability to do so. Finally, Part IV will offer observations and recommendations as to how those wishing to intervene can empower women to access and exercise their HLP rights, and support the inclusive and gender-sensitive development of the HLP rights discourse in the context of Somalia.

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1 <http://www.unhcr.org/pages/49e483ad6.html>

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**1.1**

## OVERVIEW OF NRC ICLA SOMALIA

The NRC ICLA programme was established in Somalia in 2013, and provides information, counselling, legal assistance, collaborative dispute resolution, and capacity building services to enable persons affected by displacement to claim and exercise their housing, land and property (HLP) rights. ICLA currently operates in Somaliland, Puntland, and South Central, where it engages with a wide variety of stakeholders, such as IDP communities, local government actors, customary authorities, legal institutions, humanitarian agencies, development agencies and civil society organisations, to promote and protect the HLP rights of displaced persons. Based inside Somalia, and working inside IDP settlements, the ICLA programme aims to clearly understand the fluid and complex nature of HLP issues faced by the displaced, to ensure that its response is both relevant and effective.

Activities include the provision of counselling, mediation and negotiation services to resolve HLP-related conflicts, such as evictions and lease extensions, as well as trainings for IDPs, local actors, and other stakeholders to build knowledge and capacity regarding HLP rights. In both South Central and Puntland, the programme engages closely with timely social issues like mass forced evictions, and conducts eviction monitoring. In all areas of operation, ICLA works with the other NRC core competencies and government partners to facilitate access to land and shelter. To strengthen tenure security and protect the rights of IDPs to use their houses, fields, boreholes, and other communal infrastructure, ICLA also facilitates access to HLP documentation to protect their claims.

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**1.2**

## OVERVIEW OF DWHLP RESEARCH INITIATIVE

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

The project's evidence base is drawn from NRC's extensive operational experience of more than 15 years as a provider of information, counselling and legal assistance ("ICLA") activities related to HLP rights in 20 countries, afflicted by or recovering from conflict. The project's analysis and recommendations are based both on assessments of NRC's legal cases and commissioned country research.



## METHODOLOGY

1.3

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

Information for this report was gathered through a combination of desk study of existing literature, ICLA programme documents, and fieldwork conducted between 27 August and 24 September, 2015. While access to people and areas was limited due to time and security concerns, the study was still able to capture many different contexts and realities of displacement in Somalia, and includes findings based on discussions with IDPs and other stakeholders in Dollow and Mogadishu in South Central, Hargeisa in Somaliland, and Garowe and Galkayo in Puntland. Fieldwork included approximately 27 focus group discussions with IDPs and host community members, separated by age and gender. These discussions were complemented by 28 more in-depth individual interviews with government, civil society, programme staff and partners, and other key stakeholders. All names of people whose stories are included in this report have been changed to protect their privacy.

A few limitations of this research should also be noted: Where this study references information reported by other people, it is important to understand that this is how the speaker perceived the situation; and it is unsurprising that there were sometimes conflicting accounts from different people. This is due in part to the wide variety of contexts that exist in Somalia, but is also to be expected in a discussion where gendered perceptions of norms and rights have begun to evolve during the highly disruptive periods of displacement to urban areas. Finally, questions and answers were translated between Somali dialects and English, and there are always potential issues of accuracy where multiple languages are used.

2



# LEGAL BASIS FOR WOMEN'S HLP RIGHTS

The primary basis of HLP rights and security of tenure for women in Somalia can be found in several sources, including statutory, customary, and religious regimes. Security of tenure guarantees that people can access and enjoy their home and their rights to land without fear of forced eviction, and enables them to improve their housing and living conditions. Contrary to dominant belief, freehold title (full, statutory legal title) is not the only instrument of tenure security; other forms include lease rights, possession rights, and customary use/occupancy rights.<sup>2</sup> All forms of tenure warrant baseline protection to guard against forced eviction, and a key advantage of a security of tenure analysis is the ability to understand and respond to the housing situations of the displaced as they are, rather than how they should be.

Tenure security is typically analysed at the household level, where the family is treated as a single, cohesive unit; using this level of analysis assumes that all members have the same priorities, interests, and equal levels of security. Whether intentional or not, humanitarian interventions have implicitly accepted this premise, assuming that by providing assistance to the “household,” they are helping all of its members equally. In reality, the study team found significant differences, with women feeling far less secure than men, primarily because of cultural and social practices, fear of negative repercussions if women tried to exercise their rights, and the inability of the state to enforce and protect women’s rights. It is important to note here that, despite the different treatment of women and men under Shari’a,<sup>3</sup> the vast majority of women interviewed did not attribute their insecurity to Shari’a; on the contrary, they viewed the men’s refusal to follow Shari’a as a primary obstacle.

Looking more closely at relations within the household, there is evidence indicating that both urban displacement and humanitarian interventions are disrupting the gendered norms regarding HLP rights in Somalia. Given this window of possibility for change, the study seeks to understand what, if any, HLP rights different household members are able to exercise, and examines how the powers of men and women are affected by factors such as: men who cannot fulfill the role of economic provider; women who become the primary breadwinners of the family; and the introduction of valuable assets and legal assistance by the humanitarian community.

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2 Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, Raquel Rolnik, 30 Dec 2013, UN Human Rights Council

3 For the purposes of this report, the terms Shari’a, Shari’a law, and Islamic Shari’a all describe the religious legal regime that follows the teachings of Islam. The author primarily uses the term Shari’a, but various iterations also appear when quoting from legal and analytical texts.

## 2.1

## INTERNATIONAL & REGIONAL LAW

### 2.1.1

### ICCPR, ICESCR, & CERD

Somalia is party to several international instruments that require the State to protect and promote women's HLP rights, and to penalise persons who use violence against them: these include the International Covenant on Economic, Social & Cultural Rights (ICESCR, accession 24 Jan 1990) and the International Covenant on Civil and Political Rights (ICCPR). As detailed discussion on the import of these instruments to women's rights is readily available elsewhere<sup>4</sup>, this section only briefly highlights some of the most salient points.

The right to adequate housing (which includes the component of security of tenure) is protected by Article 11(1) of the ICESCR, and includes an obligation on the part of states to, at a minimum, refrain from violating such rights through their actions, and to take reasonable measures to prevent foreseeable violations by non-state actors. In General Comment No. 4, the Committee on Economic, Social and Cultural Rights, specifies that the right to adequate housing consists of the following elements: 1) legal security of tenure (which guarantees legal protection against forced eviction, harassment and other threats); 2) the availability of adequate services, especially water and sanitation; 3) affordability;

4) habitability; 5) accessibility; 6) a location that provides access to employment opportunities, education and health services and social facilities; and 7) cultural adequacy.

Additionally, the right to tenure security cannot be subject to any form of discrimination, further underscored by the Convention on the Elimination of Racial Discrimination (CERD, signed 26 Jan

1967, ratified 26 Aug 1975). This protection applies to a broad spectrum of tenure forms, including ownership, rental, informal settlements, and customary usage.<sup>5</sup> The Convention Against Elimination of Discrimination Against Women (CEDAW) is another influential instrument protecting women's rights, and although Somalia is not a signatory, it is considering ratification of this important instrument, and UNFPA is providing training and capacity building on CEDAW in preparation.<sup>6</sup>

The Universal Declaration of Human Rights also has many relevant provisions, which are the basis of the ICCPR, ICESCR and CERD, but as a Declaration, is not subject to ratification. Of particular relevance to a discussion on Somalia are the Universal Islamic Declaration of Human Rights<sup>7</sup> (1981) and the Cairo Declaration on Human Rights in

<sup>4</sup> See, e.g., United Nations Human Rights Office of the High Commissioner (2013); United Nations Human Settlements Programme (2006).

<sup>5</sup> ICESCR; UN CESCR General Comment 3 and 4

<sup>6</sup> [http://countryoffice.unfpa.org/somalia/2015/08/22/12684/somalia\\_moving\\_towards\\_ratifying\\_cedaw/](http://countryoffice.unfpa.org/somalia/2015/08/22/12684/somalia_moving_towards_ratifying_cedaw/)

<sup>7</sup> Adopted by the Islamic Council, 19 September 1981



Islam<sup>8</sup> (“Cairo Declaration”) (1990), widely recognised as the Islamic response to a “Western” notion of human rights.

### Universal Islamic Declaration on Human Rights (1981)<sup>9</sup>

2.1.2

The Islamic Declaration emphasises both equality of all persons (and thus of both men and women), as well as the right to own property:

- Every individual and every people has the inalienable right to freedom in all its forms, physical, cultural, economic and political – and shall be entitled to struggle by all available means against any infringement or abrogation of this right; and every oppressed individual or people has a legitimate claim to the support of other individuals and/or peoples in such a struggle.<sup>10</sup>
- All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.<sup>11</sup>
- Every person is entitled to own property individually or in association with others. State ownership of certain economic resources in the public interest is legitimate.<sup>12</sup>

Given the importance of the family unit in Islam, the Declaration pays specific attention to family matters:

- Art. XIX. Right to Found a Family and Related Matters
  - Each of the partners in a marriage is entitled to respect and consideration from the other.
  - Every husband is obligated to maintain his wife and children according to his means
  - Every child has the right to be maintained and properly brought up by its parents ...
  - Within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives
  - No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.
- Art. XX Rights of Married Women. Every married woman is entitled to:
  - Live in the house in which her husband lives;
  - Receive the means necessary for maintaining a standard of living which is not inferior to that of her spouse, and, in the event of divorce, receive during the statutory period of waiting (*iddah*) means of maintenance commensurate with her husband’s resources, for herself as well as for the children she nurses or keeps, irrespective

<sup>8</sup> Adopted by the Organization of the Islamic Conference (OIC), 05 August 1990, available at: <http://www.oic-oci.org/english/article/human.htm>.

<sup>9</sup> Adopted by the Islamic Council (London-based affiliate of the Muslim World League NGO seated in Saudi Arabia), 19 September 1981.

<sup>10</sup> UIDHR, Art. II(b)

<sup>11</sup> UIDHR, Art. III(a)

<sup>12</sup> UIDHR, Art. XV(c)



of her own financial status, earnings, or property that she may hold in her own rights;

- Seek and obtain dissolution of marriage (*Khul'a*) in accordance with the terms of the Law. This right is in addition to her right to seek divorce through the courts.
- Inherit from her husband, her parents, her children and other relatives according to the Law;
- Strict confidentiality from her spouse, or ex-spouse if divorced, with regard to any information that he may have obtained about her, the disclosure of which could prove detrimental to her interests. A similar responsibility rests upon her in respect of her spouse or ex-spouse.

### 2.1.3

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

The Cairo Declaration was adopted by 45 members of the Organisation of Islamic Cooperation (“OIC,” formerly the Organisation of the Islamic Conference), including Somalia. The OIC is comprised of 57 member states across 4 continents, and describes itself as “the collective voice of the Muslim world, and ensuring [sic] to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world;”<sup>13</sup> Somalia has been a member since 1969.<sup>14</sup>

While the Cairo Declaration has created significant controversy among the human rights community, it affirms many of the same rights described in the UDHR, and includes the following relevant protections for women’s HLP rights:

- All human beings are God’s subjects, and the most loved by Him are those who are most useful to the rest of His subjects, and no one has superiority over another except on the basis of piety and good deeds.<sup>15</sup>
- Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.<sup>16</sup>
- Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most-High.<sup>17</sup>
- Everyone shall have the right to legitimate aims without monopolisation, deceit or harm to oneself or to others.<sup>18</sup>
- Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership, without prejudice to oneself, others or to society in general. Expropriation is not permissible except for the requirements of public interest and upon

<sup>13</sup> <http://www.oic-oci.org/oicv2/home/>

<sup>14</sup> <http://www.oic-oci.org/oicv2/states/#>

<sup>15</sup> Cairo Declaration, Art. 1(b)

<sup>16</sup> *Id.*, Art. 6.

<sup>17</sup> *Id.*, Art. 11

<sup>18</sup> *Id.*, Art. 14

payment of immediate and fair compensation. Confiscation and seizure of property is prohibited except for a necessity dictated by law.<sup>19</sup>

- All individuals are equal before the law, without distinction between the ruler and the ruled. The right to resort to justice is guaranteed to everyone.<sup>20</sup>

## The Pinheiro Principles

2.1.4

The Pinheiro Principles are a set of guidelines that provide guidance on how to address the complex legal and technical issues surrounding housing, land and property restitution. These principles are highly relevant in the context of the Somalia given the large numbers of displaced people, including women and children in the country. They underscore the importance of women and women's rights in the process, as evidenced by principles 3 and 4:

Principle 3: The right to nondiscrimination.

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

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

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

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

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<sup>19</sup> Id., Art. 15

<sup>20</sup> Id., Art. 19

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

This provision is meant to combat sex discrimination which may occur when only male 'heads of households' are informally recognised as rights holders or when they are provided with formal title to housing or other property ownership rights, leaving women without legal control over what should also be treated as their property. This bias is often most visible when women are regarded as the 'head of the household' only if they are single or otherwise unaccompanied by a man. To avoid this, the *Principles* call for recognition of joint ownership rights within families. As such, restitution programmes should seek to implement a gender strategy, in particular where the *status quo* effectively discriminates against women's right to ownership, either in law or in practice. This can be ensured by conferring equal rights to women and/or joint ownership rights when restitution claims are considered by the relevant judicial bodies.<sup>21</sup>

## 2.1.5

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

Somalia has also assumed obligations under regional agreements, including the African Charter on Human and People's Rights (the Banjul Charter) (signed 6 Feb 1986, and ratified 31 Jun 1985), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) (signed 23 Feb. 2006, but not ratified).<sup>22</sup> The Maputo Protocol notes that despite the ratification of the Banjul Charter by States, women in Africa still continue to be victims of discrimination and harmful practices, and includes strong substantive provisions for the protection of women's rights, as well as provisions to ensure greater representation of women in decision-making processes.

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

<sup>21</sup> Handbook on Implementing Pinheiro Principles (2005)

<sup>22</sup> <http://www.achpr.org/instruments/women-protocol/ratification/>

### **African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (“the Kampala Convention”)**

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention), adopted by African governments in 2009, entered into force on December 6, 2012, and stresses that states bear primary responsibility for protecting and assisting IDPs within their borders. IDMC reports that Somalia ratified the Convention internally in November 2013, but has not yet registered its ratification with the African Union.<sup>23</sup>

The Kampala Convention reflects the norms outlined in the 1998 UN Guiding Principles on Internal Displacement, and provides clear objectives and responsibilities which include the responsibility to promote national measures to “prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions,”<sup>24</sup> and confirms the state's obligations to prevent arbitrary displacement, and ensure the protection of the human rights of IDPs, including humane treatment, non-discrimination, equality and equal protection of law.<sup>25</sup>

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

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

<sup>23</sup> <http://www.internal-displacement.org/sub-saharan-africa/somalia/summary>

<sup>24</sup> Kampala Convention, Article 2(a)

<sup>25</sup> Kampala Convention, Article 3(1)

<sup>26</sup> Kampala Convention, Art. 4(4)

<sup>27</sup> Norwegian Refugee Council (2015a)

<sup>28</sup> Kampala Convention, Art. 9(2)

## 2.2

## DOMESTIC STATUTORY LAW

It is difficult, if not impossible, to describe a fixed set of conditions which one will find applicable or present in every part of the Federal Republic of Somalia. The three regions covered in this study – Somaliland, Puntland, and South Central – have significantly different histories and contexts. Somaliland is a self-proclaimed state, unrecognised by the international community, but has functioned fairly independently since 1991. Puntland functions autonomously, but is not seeking independent statehood like Somaliland. South Central is a collection of troubled regions, including the capital of Mogadishu.

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

### 2.2.1

#### **Federal Republic of Somalia, Provisional Constitution (adopted August 1, 2012)**

- Women must be included, in an effective way, in all national institutions, in particular all elected and appointed positions across the three branches of government and in national independent commissions.<sup>29</sup>
- All citizens, regardless of sex, religion, social or economic status, political opinion, clan, disability, occupation, birth, or dialect shall have equal rights and duties before the law.<sup>30</sup>
- Every person has the right to personal security, and this includes: the prohibition of illegal detention, all forms of violence, including any form of violence against women, torture, or inhumane treatment.<sup>31</sup>
- Every person has the right to own, use, enjoy, sell and transfer property.<sup>32</sup>
- It shall be ensured that women, the aged, the disabled and minorities who have long suffered discrimination get the necessary support to realise their socio-economic rights.<sup>33</sup>

<sup>29</sup> Federal Republic of Somalia, Provisional Constitution, Art. 3(5)

<sup>30</sup> Id., Art. 11

<sup>31</sup> Id., Art. 15(2)

<sup>32</sup> Id., Art. 26(1)

<sup>33</sup> Id., Art. 27(5)



- The state shall promote the positive traditions and cultural practices of the Somali people, whilst striving to eliminate from the community customs and emerging practices which negatively impact the unity, civilisation and wellbeing of society.<sup>34</sup>
- The law shall provide for adequate procedures for redress of violations of human rights. Redress of violations of human rights must be available in courts that the people can readily access.<sup>35</sup>
- Land is Somalia's primary resource and the basis of the people's livelihood. Land shall be held, used and managed in an equitable, efficient, productive and sustainable manner. The Federal Government shall develop a national land policy, which shall be subject to constant review. That policy shall ensure: (a) equity in land allocation and the use of its resources; (b) the guarantee of land ownership and registration; (d) that any land and property dispute is resolved promptly and satisfactorily for all; and (f) that the land and property market is regulated in a manner that prevents violations of the rights of small land owners.<sup>36</sup>

### **Puntland Constitution<sup>37</sup>**

### **2.2.2**

- This Constitution ensures the women's rights of independence, socio-economic and political rights that is not forbidden in the Islamic Shari'a. The Puntland State shall protect the women's rights in this Article.<sup>38</sup>
- All citizens of Puntland State are equal before the law. No one can be discriminated by colour, religion, citizenship, origin, financial status, opinion, political attitude, language and ethnics. The constitution safeguards the rights of the minority groups.<sup>39</sup>
- Every person shall have the right to display free expression of his/her opinion.<sup>40</sup>
- Every citizen shall have the right to have his/her own property, within the framework of the law. Any unlawful act of producing is prohibited. No personal commission or property levy may be imposed not in compliance with the law.<sup>41</sup>
- Every person shall have the right of securing his body and personal dignity.<sup>42</sup>
- The Constitution ensures the rights and liberty of every person.<sup>43</sup>
- Every person shall have the right to institute legal proceedings, under conditions of full equality before lawfully constituted courts.<sup>44</sup>

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34 Id., Art. 31(1)

35 Id. Art. 39

36 Id., Art. 43

37 Constitution of Puntland, adopted 18 April 2012, available at <http://www.puntlandgovt.com/puntland-constitution/>

38 Id., Art. 18

39 Id., Art. 23

40 Id., Art. 25

41 Id., Art. 30

42 Id., Art. 31

43 Id., Art. 32

44 Id., Art. 39

Additionally, the Puntland Policy Guidelines on Displacement<sup>45</sup> commit to protecting all citizens against arbitrary displacement; promoting the search to durable solutions to causes of displacement; and facilitating either the voluntary return, resettlement, integration or re-integration of IDPs. Specifically, the Guidelines guarantee to do so in a manner that is equitable and does not discriminate against women, and that responds to the particular needs of vulnerable categories:

- 4.1 The Puntland Government has the primary duty and responsibility to prevent and protect people from arbitrary displacement, to mitigate its consequences, to provide protection and humanitarian assistance and to identify durable solutions for IDP women, girls, boys and men in an equitable manner. Derived from this duty, IDPs have the right to request and to receive protection and assistance from the Puntland Government.
- 4.2 IDPs shall enjoy the same rights and freedoms as all other nationals and, in particular, should not be discriminated against in the enjoyment of any rights and freedoms on the grounds that they are internally displaced. Measures undertaken to address particular assistance and protection needs of specific categories of IDPs, such as children, especially separated children, expectant mothers, female-headed households, persons with disabilities and older persons, do not constitute discrimination if, and to the extent that, they are based on specific needs.

### 2.2.3

#### Somaliland Constitution<sup>46</sup>

- All citizens of Somaliland shall enjoy equal rights and obligations before the law, and shall not be accorded precedence on grounds of color, clan, birth, language, gender, property, status, opinion etc. Precedence and discrimination on grounds of ethnicity, clan affiliation, birth and residence is prohibited; and at the same time programmes aimed at eradicating long lasting bad practices shall be a national obligation.<sup>47</sup>
- In order to ensure that the economic system does not lead to the exclusive enrichment of a group or a small section of the public, and to avoid (both) the creation of economic classes consisting of those who are prosperous and those who are not, and the widening of the economic gulf between the urban and rural communities, the state shall ensure that social benefits and economic opportunities are provided in a just and equitable manner.<sup>48</sup>
- The articles which relate to fundamental rights and freedoms shall be interpreted in a manner consistent with the international conventions on human rights and also with the international laws referred to in this Constitution.<sup>49</sup>

<sup>45</sup> Puntland Policy Guidelines on Displacement (2012), available at <http://www.somaliareturnconsortium.org/publications/ds.html>

<sup>46</sup> The Constitution of the Republic of Somaliland (31 May 2001), available at [http://www.somalilandlaw.com/somaliland\\_constitution\\_1960.HTM](http://www.somalilandlaw.com/somaliland_constitution_1960.HTM)

<sup>47</sup> Id., Art. 8

<sup>48</sup> Id., Art. 11

<sup>49</sup> Id., Art. 21

- Every person shall have the right to have his dignity, reputation and private life respected.<sup>50</sup>
- The rights, freedoms and duties laid down in the Constitution are to be enjoyed equally by men and women save for matters which are specifically ordained in Islamic Shari'a. The Government shall encourage, and shall legislate for the right of women to be free of practices which are contrary to Shari'a and which are injurious to their person and dignity. Women have the right to own, manage, oversee, trade in, or pass on property in accordance with the law. In order to raise the level of education and income of women, and also the welfare of the family, women shall have the right to have extended to them education in home economics and to have opened for them vocational, special skills and adult education schools.<sup>51</sup>

The Draft Somaliland IDP Policy Framework echoes the protections of its Constitution, and further includes ambitious measures to guard against arbitrary displacement, protections to prevent forced evictions, and recognises that women affected by displacement have specific needs that the government pledges to address. In this Draft Policy, the government also commits to protecting the right of all IDPs, including women, to own land and property, to be assisted with property registration, dispute resolution, and reclamation, and to be assisted with improving living conditions and finding durable solutions.<sup>52</sup>

## SHARI'A LAW

## 2.3

While the issue of how women are treated in Islam, particularly in relation to men, is a highly contested one, it is neither the purpose nor scope of this report to join the many voices in that debate. Rather, this section seeks to highlight significant HLP rights that are accorded to all women under Islam, and operates from the pragmatic position that: Somalia is a Muslim country; nearly all Somalis are Muslim; Islamic teachings are one of the most respected sources of rights and truth by Somali men and women alike; and all women interviewed during this study want the rights Islam accords them. However, as with many other rights regimes, the existence and acknowledgement of rights are but the first step; the real challenge lies in the ability of the rights-holders to access those rights.

Article 2 of the Federal Constitution of Somalia states that "No law can be enacted that is not compliant with the general principles and objectives of Shari'ah." Article 5 of the Constitution of Somaliland reads, "The laws of the nation shall be grounded on and shall not be contrary to Islamic Shari'a." The Constitution of Puntland is also based on Shari'a, and Article 18 stipulates that "This Constitution ensures the women's rights of independence, socio-economic and political rights that is not forbidden in the Islamic Shari'a," (which also implicitly protects women's rights that are explicitly mentioned in Shari'a). Thus, all statutory laws in Somalia also support women's HLP rights under Islam.

<sup>50</sup> Id., Art. 24

<sup>51</sup> Id., Art. 36

<sup>52</sup> Draft Policy Framework on Internal Displacement in Somaliland (4 June 2014).

Norton observes that a significant number of Shari'a precepts and practices were assimilated into *xeer*, the customary law system,<sup>53</sup> and interviews during this study with Somali men and women, government officials and religious scholars, indicate that as pertaining to women's rights in marriage, divorce, and inheritance (including HLP rights), the official position is that the teachings of the Qur'an (rather than customary law) that must be followed. Notably, key Islamic legal materials generally support women's right to acquire, hold, use, administer, and dispose of property. Sait explains:

Muslim women—unmarried, married, divorced, or widowed—have extensive independent rights to property under Islamic law and human rights. There is explicit recognition in the Koran of women's rights to property acquired through purchase, inheritance, *mahar* (property transferred to the wife from the husband as security for marriage), and other transactions. There are no restrictions on the property a Muslim woman can purchase out of her earnings, on the gifts she may receive from her natal family or her husband's family, or on the endowment she may enjoy as a beneficiary of a *waqf*. In all these respects, she is entitled to equal treatment with male members of the family.<sup>54</sup>

### 2.3.1

#### Inheritance

Of particular import to the discussion at hand, Islamic law provides significant protections for women's inheritance rights:

Inheritance rules which provide women within the family of the deceased with their own specific shares, support women's more general rights in Islamic law to gain, retain and manage their own land and wealth. Women's rights in relation to inheritance under the Shari'a signified an improvement upon their pre-Islamic position and historically stood in marked contrast to the less privileged position of women in the West, until a few decades ago. Despite barriers and constraints on women's access to inherited land and their lesser shares in comparison with men, inheritance remains an important source of access to land for women.<sup>55</sup>

According to the Qur'an<sup>56</sup>:

- Concerning your children, God commands you that a son should have the equivalent share of two daughters. If there are only daughters, two or more should share two-thirds of the inheritance, if one, she should have half. (4:11)
- You inherit half of what your wives leave, if they have no children; if they have children, you inherit a quarter. [In all cases, the distribution comes] after payment of any bequests or debts. If you have no children, your wives' share is a quarter; if you have children, your wives get an eighth. (4:12)

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<sup>53</sup> Norton (2008)

<sup>54</sup> Sait (2013)

<sup>55</sup> Sait & Lim (2006)

<sup>56</sup> Haleem (2005)

- If a man leaves a sister, she is entitled to half of the inheritance; if she has no child her brother is her sole heir; if there are two sisters they are entitled to two-thirds of the inheritance between them, but if there are surviving brothers and sisters, the male is entitled to twice the share of the female. (4:176)
- God makes this clear to you so that you do not make mistakes; He has full knowledge of everything. (4:176)

Additionally, widows are granted explicit protection: “If any of you die and leave widows, make a bequest for them: a year’s maintenance and no expulsion from their homes [for that time].” (2:240).

## Mahr

### 2.3.2

*Mahr* is a payment, or promise of payment, that a husband makes to the wife at the time of marriage;<sup>57</sup> the Qur’an instructs that men must: “Give women their bridal gift upon marriage, though if they are happy to give up some of it for you, you may enjoy it with a clear conscience.” (4:4). Comments from religious scholars in Somalia confirm that *mahr* is a specific gift for the woman upon marriage. There are no strings attached: she does not need to share it with or use it for family, she does not lose it if the couple later divorces, and under no conditions is she required to return it. There is no fixed amount, or determination, as to what constitutes *mahr*. Discussions indicate that it is negotiated and can take varying forms, such as money or livestock, and will vary based on the practice of an area, and well as the economic capacity of the man.

## Marriage: Maintenance and Separate Property

### 2.3.3

While women do inherit lesser shares than men, it has also been observed that there is a balancing factor, in that men are charged with providing economic support for his wife/wives and children, including food, shelter, clothing, and medical care.<sup>58</sup> As a UNICEF report on women’s rights in Somalia notes, in principle, “no married woman is required to spend a penny from her property and income on the household. Generally, a Muslim woman is guaranteed support in all stages of her life, as a daughter, wife, mother, or sister.”<sup>59</sup>

In addition to the absence of any Islamic obligation to contribute monetarily to the upkeep of the family, married women also have the right to have their own property, separate from her husband and protected against his acquisition, or addition to general household funds. The Qur’an instructs, “Give orphans [women] their property, do not replace [their] good things with bad, and do not consume their property with your own – a great sin.” (4:2).

<sup>57</sup> Sait & Lim (2006)

<sup>58</sup> Id.

<sup>59</sup> UNICEF (2002)



### 2.3.4

#### Divorce:

Unlike the husband, the wife does not have the right to divorce by repudiation. However, her rights to her property are protected in the event that a divorce does take place:

- Divorce can happen twice, and [each time] wives either be kept on in an acceptable manner or released in a good way. It is not lawful for you to take back anything that you have given [your wives] (2:229)
- If you wish to replace one wife with another, do not take any of her bridegift back, even if you have given her a great amount of gold. (4:20)  
She is also entitled to certain care as maintenance as prescribed in the Qur'an:
- Divorced women shall also have such maintenance as is considered fair: this is a duty for those who are mindful of God. (2:241)
- Do not drive them out of their homes – nor should they themselves leave – unless they commit a flagrant indecency. (65:1)
- If you are in doubt, the period of waiting will be three months for those women who have ceased menstruating and for those who have not [yet] menstruated; the waiting period of those who are pregnant will be until they deliver their burden: God makes things easy for those who are mindful of Him. (65:4)
- House the wives you are divorcing according to your means, wherever you house yourselves, and do not harass them so as to make their lives difficult. If they are pregnant, maintain them until they are delivered of their burdens; if they suckle your infants, pay them for it. (65:6)
- Let the wealthy man spend according to his wealth. But let him whose provision is restricted spend according to what God has given him: God does not burden any soul with more than He has given it – after hardship, God will bring ease. (65:7)

### 2.4

#### CUSTOMARY LAW (“XEER”)

*Xeer* is the set of rules and obligations developed between traditional elders to mediate conflicts and maintain peaceful relationships amongst Somalia's clans, and has the capacity to change and evolve based on the circumstances and needs of a particular time and place.<sup>60</sup> However, Somalia is a largely male-dominated society, and women do not have equal political rights with men. They have little to no role in forming and interpreting customary law,<sup>61</sup> which continues to include many discriminatory practices such as: *dumaal* (where a widow is forced to marry a male relative of her deceased husband), *higsiiian* (where a widower is given the right to marry his deceased wife's sister) and *godobtir* (the forced marriage of a girl into another clan as part of a compensation payment or inter-clan peace settlement).<sup>62</sup>

Little is written about women's land rights under Somali customary

<sup>60</sup> Norton (2008)

<sup>61</sup> Le Sage (2005)

<sup>62</sup> Vargas (2011)



law, but comments from the IDPs about how land was managed in their home areas indicate that similar to other customary land regimes in Africa, land is always in the name (and control) of male members of the family. Describing the practices in their home areas, displaced women in Somaliland explained that all land and property belonged to the men; “a married woman cannot own land.” Generally, women were also unable to inherit land, and the few that reported receiving an inheritance said that it could not be in the form of land. Their testimony corroborates other observations from southern Somalia:

[I]n terms of inheritance practices in southern Somalia at least, Besteman reported that “contrary to Islamic practice, when a man died, his widow and daughters had no rights to his land, which was inherited by his sons”. If the sons were too young to inherit, then the land usually passed to the deceased husband’s brothers or sons by earlier marriages, and although the widow might be able to work the land on their behalf she would forfeit this on remarriage.<sup>63</sup>

The women interviewed for this study indicated that while there was no explicit bar to women buying land, in practice this was rarely done because most women did not have money, and men were not supposed to sell land.

There were mixed reports about women’s rights in the event of divorce, particularly in regards to who would stay in the family home after a divorce. This particular area of customary law is one that all men interviewed said followed Shari’a, which would in theory mean that women would continue to receive shelter and maintenance, as discussed above. However, women clearly expressed a different view, stating that custom required women to leave without any provision of maintenance. Additionally, an immediate difference between descriptions of commonly reported practice and Islam was the consideration of the presence of children as a preliminary factor: as is common under other African customary regimes, if there were no children, divorced women were entitled to nothing and had to leave. The varying perceptions of what was reported on this matter will be discussed further in Part III(D)(b).

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63 Norton (2008)



## FROM RURAL TO URBAN: NEW REALITIES, NEW CHALLENGES



## OPERATIONAL COMPLEXITIES

3.1

As of March 2015, IDMC reports an estimate of more than 1.1 million IDPs in Somalia: approximately 893,000 in South-Central Somalia, 130,000 in Puntland, and 84,000 in Somaliland.<sup>64</sup> Estimates based on previous displacement patterns suggest that at least 70-80 percent of the IDPs are women and children.<sup>65</sup> Despite decades of international assistance and involvement, Somalia remains a complex operational environment with many needs and challenges.

### **Writing in 2005 as the Transitional Federal Government was preparing to return to Somalia, Le Sage notes:**

*Somalia has been the world's purest example of a collapsed state for over a decade. Despite more than a dozen international peace conferences, the country has had no functioning and internationally recognised government since 1991. Some two dozen different armed factions and regional administrations lay claim to different portions of Somali territory. Traditional clan elders and armed clan militia have wielded authority where organized political groups are absent .... Although lacking an effective central government, the country has had no lack of governance over the past decade. The latter has been established both top-down by powerful political interests seeking to entrench control over particular towns and regions, and bottom-up by Somali religious leaders, businessmen and local communities, attempting to establish basic security conditions for the normalization of social life and the expansion of trade.<sup>66</sup>*

### **Seven years later in 2012, UNDP observed few changes:**

*It now presents the longest running case of state collapse in post-colonial Africa. Nearly 20 years of diplomatic, military and state-building efforts to unite Somalia under a viable national government have achieved little more than the alienation of large sections of the population. In a situation where governance and security are provided by a mix of traditional institutions, modern governmental authorities, religious bodies, private militia, and transnational enterprises supported by international organizations, the conventional state-centric model of peacemaking between a government and opposition parties has limited applicability. ...*

*Gender inequality is alarmingly high ... with Somalia at the fourth lowest position globally on the Gender Inequality Index (GII) if internationally comparable data were available. Women suffer severe exclusion and inequality in all dimensions of the index—health, employment and labor market participation. Somali girls are given away in marriage very young, and violence against girls and women is widespread. Traditional laws, used in lieu of a state judiciary, are highly discriminatory against women .... Traditional Somali society is conditioned not to openly discuss issues such as domestic violence and rape, which further hampers women's access to justice. Many courageous*

<sup>64</sup> <http://www.internal-displacement.org/sub-saharan-africa/somalia/2015/somalia-internal-displacement-as-of-march-2015>

<sup>65</sup> IOM (2014)

<sup>66</sup> Le Sage (2005)

*efforts of Somali women to rise above patriarchy have been isolated and short lived, and they have yet to achieve the critical mass in decision-making required to effect wider change. Young women end up greatly disadvantaged in all spheres of life, a reality that hinders their rights and development, and perpetuates intergenerational cycles of gender inequality and the feminization of poverty.*<sup>67</sup>

The task of providing assistance to a large displaced population is difficult in any setting, but is made even more so in a country of over 10 million people with a poverty rate of over 70%, and where the identity of the government and reach of their laws remain highly contested. UN OCHA highlights the additional risks faced by female IDPs:

*“The 1.1 million displaced people remain the most vulnerable group in Somalia. Among these, girls and female-headed households are the most vulnerable as they face the greatest risk of gender-based violence. In addition to the food insecurity, malnutrition and serious protection violations they face, their displacement and return dynamics continue to evolve, and events such as military operations in southern and central Somalia that started in March 2014 have created new displacements. Displaced people also continue to be the primary victims of evictions from government buildings and by private landlords, particularly in Mogadishu. From January to September 2014, 34,254 people were evicted in Mogadishu. Most displaced people are in urgent need of improved transitional and permanent shelters that offer more protection, privacy and dignity over longer periods of time. These people also need to be provided with durable solutions as per their preference, including reintegration and resettlement. Conditions are not conducive to large-scale voluntary returns of displaced people.”*<sup>68</sup>

The difficulties of addressing their situation is further complicated by ongoing threats against those seeking to help. According to one report, at least 363 aid workers have been attacked or kidnapped in Somalia between 1997-2014, at least 147 of whom were killed; and between 2012-2014, there were 13 separate attacks in which 18 aid workers were killed.<sup>69</sup> Localised bombings in Mogadishu continue to occur with disturbing regularity. These risks have resulted in a structure where the majority of UN and humanitarian decision makers reside in Nairobi, while modest numbers of programme managers and other implementers are deployed throughout Somalia in areas that are deemed safe enough for operations.<sup>70</sup> This disconnect, while at some level understandable, has nonetheless resulted in a situation where those controlling the assistance going into the country have relatively little oversight over how, and to whom, that assistance is given, and the impact it is having on those on the ground.<sup>71</sup>

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67 UNDP (2012)

68 OCHA (2015)

69 Drumtra (2014)

70 Id.

71 Jaspers, S. and Maxwell, D. (2008). This study on the complexities of targeting in Somalia provides first hand accounts of distributions, and describes agency targeting of WFP food assistance as “just a mechanism to transfer ownership of the food from the CP [Cooperating Partners] to the community. Once in the possession of the community, food assistance is almost invariably redistributed in some other way.” Id. at 31.



## Who is an Internally Displaced Person (IDP)?

### 3.1.1

While the introduction highlights the complexities involved in understanding who to engage with to help the displaced, this section emphasises the difficulties in understanding who the displaced are, and the painful decisions that must be made when there are more persons in need than humanitarian actors are able to assist.

The UN Guiding Principles on Internal Displacement defines IDPs as follows:

*Persons or groups of persons who 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 generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”<sup>72</sup>*

Who fits these criteria, and subsequently, who receives humanitarian assistance, is a complicated question in Somalia. The combination of over 20 years of armed conflict, constant power struggles amongst clan factions, additional security threats like Al-Shabaab, and severe drought conditions, has resulted in a complex mix of displacement and migration, making it difficult to distinguish between an IDP, an economic migrant, or the urban poor. Additionally, two-thirds of the population traditionally led pastoralist or agropastoralist lifestyles which included seasonal movements,<sup>73</sup> and the displaced themselves often move between areas as part of their coping strategy when they cannot find all they need in a single location.

The plight of IDPs is also exploited by those seeking commercial gain, and there are a multitude of actors seeking to profit from the provision of humanitarian assistance to Somali IDPs, each with their own interests, costs, and priorities. As the amount of humanitarian assistance given tends to increase in correlation with the number of IDPs, there is significant motivation amongst these many actors to report the highest plausible number of IDPs, in hopes of increasing the pie and thus each of their cuts. A 2014 report from the Brookings Institution notes that some relief workers think the actual number of IDPs might be much less than 1.1 million, observing that, “Local employees of one NGO believe that some IDP settlements they serve in Mogadishu contain fewer than half the officially cited population. Local staff of a UN agency in Mogadishu estimate that official IDP numbers are inflated by an average of 25 percent at sites they visit frequently.”<sup>74</sup> Others note that obtaining accurate population figures in Somalia is difficult due to politics, as clan power is also linked to numbers.<sup>75</sup>

<sup>72</sup> United Nations General Assembly (hereinafter UNGA), Resolution Adopted by the General Assembly, 2005 World Summit Outcome, A/RES/60/1, October 24, 2005. This definition is also used by the Puntland and Somaliland IDP Policies.

<sup>73</sup> Amnesty International (2014)

<sup>74</sup> Drumtra (2014)

<sup>75</sup> Jaspers and Maxwell (2008)

Further complicating matters are the practical difficulties of accurately counting IDPs. For example, programme staff explained that IDPs register multiple times in different areas to maximise the assistance received. The displaced themselves are mobile out of necessity, and those interviewed for this study had often lived in multiple cities during their displacement. Additionally, humanitarian actors report that better-off IDPs would accept assistance packages to return to their areas of origin, and then come back to their area of displacement for more assistance or access to services that are not present in their home area.

A second, highly relevant question, relates to who should receive the humanitarian assistance being provided. That is, if the agencies can determine who is and is not an IDP, should that be the sole basis of receiving assistance given the reality that parts of the host community are as vulnerable, if not more so, than the IDPs? Operationally, some humanitarian actors have responded by using a quota system, setting aside some percentage of the assistance for members of the host community, while others have started targeting based more on other vulnerability criteria, with less emphasis on displacement status. The appropriate way to deal with this complex matter has been the subject of some debate: A recent Brookings Institution report notes a general trend of mainstreaming and worries that, “Calls to protect IDPs are being replaced with references to ‘vulnerable groups,’ ‘civilians,’ and ‘affected communities,” which makes it more likely that specific needs related to displacement, such as shelter and loss of documentation, might be overlooked.<sup>76</sup>

At the same time, others highlight the equally valid concern of directing assistance only towards IDPs, particularly in contexts with vulnerable host communities:

*Discrimination may also work against non-displaced communities. That may happen when the level or type of protection and assistance provided to IDPs provides them with a standard of comfort noticeably higher than that of surrounding communities that have similar or even greater needs than the IDPs. Populations that host displaced groups often do so at significant cost to themselves and should be consulted on measures proposed to assist IDPs in order to ensure that those measures benefit all concerned. For instance, when IDPs are temporarily sheltered in important public buildings such as schools, consultations with host communities may facilitate the rapid resumption of classes through prioritised provision of alternative shelter. In such situations, instead of focusing solely on IDPs competent authorities should consider addressing the needs of displacement-affected communities—that is, not only the displaced but also host communities and communities receiving returning or relocated IDPs—to the extent that those needs are a consequence of the forced movement taking place.<sup>77</sup>*

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76 Ferris (2014)

77 Brookings-Bern Project on Internal Displacement (2008)

### The Business of Displacement: Gatekeepers in Somalia

Even when one can determine whose permission is needed to provide assistance, and then to whom, security concerns often prevent direct access to the displaced, which has resulted in the use of intermediaries – “gatekeepers” – between humanitarian actors and IDPs. The exploitation of IDPs by gatekeepers has received significant attention in Mogadishu, likely because that is where a substantial part of Somalia’s humanitarian assistance has been channelled, but the phenomenon was observed in all regions, albeit to varying degrees of exploitation. Despite substantial documentation of the harms suffered by those at the mercy of gatekeepers, little has been done to address the problem.

In essence, the practice of gatekeeping involves some member(s) of the host community acting as an intermediary between IDPs and the things they need, whether land on which to live or humanitarian assistance to ensure survival. Under positive interpretations, the practice appears to have started as a means for sympathetic host community members to help IDPs by finding landowners who could provide land access, and lobbying aid agencies for other assistance. One report suggests that the practice began in 1993 when aid agencies and UNOSOM came to Mogadishu, receded after UNOSOM left in 1995, and re-emerged in 2007 when aid agencies returned.<sup>78</sup>

It is interesting to note that IDPs in Mogadishu reported being assisted by primarily female gatekeepers. While it is rare in Somali culture for women to hold many public positions of power, the number of women gatekeepers may indicate the initial benevolent intent of the practice; the activities associated with gatekeeping have a strong nurturing component at its root, something typically associated with women in the Somali culture. It may also be a sign of the changing conditions in which women are gradually gaining control in culturally acceptable ways. For example, one study on Mogadishu’s gatekeepers notes that:

Many respondents recognized that, given the significant gap in service delivery to the IDPs,

gatekeepers can be considered as an example of the ‘private sector’ stepping in to provide a service. Consequently, the majority of the IDPs interviewed stated that the gatekeeper has a positive impact on their respective sites and in IDP communities in general, as they provide them with services.<sup>79</sup>

The study team had the opportunity to speak with several female “umbrella leaders,” as one tier of gatekeepers is known, who explained their role in positive terms, explaining that they felt a need to help the IDPs after the conflict “brought them together.” “We are the government,” for them, one leader explained, describing her responsibilities of finding land and lobbying humanitarian NGOs for the IDPs. NRC staff and other reports also note that gatekeepers provide

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<sup>78</sup> Bryld et al., (2013).

<sup>79</sup> Bryld, et al. (2013)



services like security that capitalise on their access to more powerful persons in the community.<sup>80</sup>

In some ways, this phenomenon echoes the power-balancing nature of Somali relationships in general. Accounts of Somali history describe practical relationships where weak or less powerful clans (such as minority or low-caste clans) seek client status with a more powerful clan.<sup>81</sup> In a context where neither government institutions nor external actors are able to guarantee their rights, IDPs have adopted a similar strategy by becoming “clients” of gatekeepers in return for the protection and resources that they can provide.

Whatever their beginnings or benefits, this phenomenon now presents clear risks for IDPs, and exploitation by the gatekeepers has been well documented.<sup>82</sup> Programme staff note that most IDP beneficiaries preferred not to talk about the demands that were made by their gatekeepers, but provided the following anecdotal evidence about the wide range of “payments” that are demanded:

- If the organisation provides free shelters for IDPs to use, gatekeepers demand rent or threaten eviction
- If the organisation gives \$500, the gatekeeper takes \$50
- If the organisation gives \$250, the gatekeeper takes \$100
- If the organisation gives 150 kits, the gatekeeper will take 15
- If the organisation asks for 100 beneficiary households, the gatekeeper will select 20-30 of them<sup>83</sup>

Other studies report: gatekeepers charging fees ranging from \$2-\$30 a month for the right to erect a shelter at an IDP site; cases of aid diversion of up to 80%; and situations where gatekeepers were complicit in schemes to evict IDPs for a share in the sale of land proceeds.<sup>84</sup> Humanitarian actors interviewed for this study suspect collusion between gatekeepers and landlords to create camps with the objective of obtaining humanitarian assistance, and several IDPs and gatekeepers interviewed in Mogadishu suggested that settlements might “close” if more assistance was not forthcoming.

<sup>80</sup> Id., Interview with NRC staff.

<sup>81</sup> Norton (2008)

<sup>82</sup> See e.g., Refugees Intl. (2012); Human Rights Watch (2013)

<sup>83</sup> Interviews with humanitarian staff

<sup>84</sup> Drumtra (2014)

## LIFE IN URBAN SETTLEMENTS

3.2 ———

### Finding a Place to Call Home

3.2.1 ———

Whether displaced because of conflict, drought, or economic distress, one of the first challenges that must be tackled is finding a place to call home. Displaced families look for friends or family that can host them first, but if none can be found, they will then search for a house to rent or land on which to construct a shelter, typically in or close to towns where they can look for work. Several IDPs reported renting a house in town for some period before moving to the settlement in which they resided at the time of the study. The most common reason for the move was the inability to make the rental payments, forcing them to relocate to where housing costs are lower.

Unfortunately, these savings are then offset by the higher transport costs and greater protection risks for women traveling longer distances to town to find work. If women cannot afford transport costs, then they cannot work, perpetuating their insecurity and vulnerability. Some women who were relocated to settlements with free shelters expressed regret about the move. For instance, women in a settlement in Galkayo reported that due to the distance, they could only go to town if they knew there was work for them. They would not go and knock on doors as some had done previously when they lived closer to town, and were thus unable to earn money to provide for their families.

Among married households, there was general agreement that it was the women's responsibility to look for houses to rent. In all study sites, the women overwhelmingly reported that they had been the ones to make inquiries and knock on doors, though experiences differed as to whether it was more common for men or women to finalise the arrangement with landlords. In Mogadishu, some male and female respondents indicated that male landlords would prefer a married, male-headed household, citing the reason that landlords preferred being able to deal with a man if there were any problems with their tenants. Interestingly, there were many reports of women acting as landlords as well; and female tenants opined that it was "better to give the money to the woman, because if you gave it to the man, he would not share [the money] with his wife." While the women landlords mostly seemed to be acting as representatives of their households, this still indicates the influence and increasing role of Somali women in matters related to housing.

As a general rule, respondents in all three regions did not report widespread discrimination against women headed households: the determining factor was money. If you could pay rent, you could find a house; if you could not pay, you would not find a house. The prevalence of renters in formal IDP settlements is noteworthy, as it indicates the establishment of a thriving real estate market that has been in part facilitated by the provision of shelters by the humanitarian community. That said, the shortage of affordable housing and relatively high rates of renting in urban Somalia is not a new phenomenon. As early as 2002, the World Bank and UNDP Socio-Economic Survey described



an already stressed housing situation under pressure from migration from rural to urban areas, displaced persons, and returning refugees; the survey found that a third of the households in urban areas had two or more families living in the same house, and approximately half of them shared single-roomed houses.<sup>85</sup>

3.2.2

**Illegal Rent Demands, Unlawful Evictions, and Forced Evictions**

The obvious risk of renting a home is that of eviction; and given the difficulties of finding work and economic stress, every IDP interviewed who was renting expressed an imminent fear of eviction. However, while many IDPs said they would be forced to leave if they missed their payment by a few days, cases brought to NRC typically involved several missed payments, suggesting that if a tenant is able to seek help with her situation, landlords can be understanding, as illustrated by Nissa's case below:

**BOX 1: NEGOTIATING DOWN RENT DEBT - GAROWE, PUNTLAND**

Nissa is living in Jawle 2 Settlement with her husband and 4 children. They found this house through the agents of land and property owners that work there, and pay \$10 a month to the owner of a Corrugated Galvanized Iron shelter (CGI), and \$5 a month to the landowners. Her husband has been sick for a long time, and she has not been able to find work for over a month. She owed \$60 in back payments for rent, and when she heard about the services being provided by NRC through one of their information campaigns, she decided to see if they could help her. Through the mediation service supported by ICLA, Nissa's two landlords agreed to participate in a mediation session, and they ultimately agreed to forgive the \$60 that she owed. She is very happy about the outcome, but her husband is still sick, and she still has not been able to find work. She is afraid this is only a temporary reprieve, and the debt will begin to accumulate again.



85 World Bank and United Nations Development Programme (2002)

Unfortunately, the harsh reality faced by most IDPs is that if they cannot pay in accordance with their rental agreement, landlords are often within their rights to refuse to allow tenants to stay. However, there is an important distinction between evictions carried out in accordance with law, which are legal (though often no less distressing), and “forced evictions,” which violate international human rights standards. The United Nations defines forced eviction 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.”<sup>86</sup>*

To ensure that IDPs are protected as much as possible, landlords and tenants both need better understandings of their rights and obligation, as well as what constitutes lawful evictions. Rental arrangements described to the study team were rudimentary, rarely including more than an oral discussion about the amount that was to be paid and when. IDP tenants typically had no knowledge of the particularities of what would happen if they missed a payment, or what opportunities might be available to negotiate an alternate solution or ease a difficult transition.

## BOX 2: EVICTIONS: LAWFUL OR NOT?

In considering whether an eviction is lawful or not, certain aspects should be accorded particular attention<sup>87</sup>:

1. The way evictions are decided: i.e., no consultation or participation, no information, no recourse mechanisms
2. The way evictions are planned: i.e., no notification, no relocation available, compensation not provided, delayed or subject to unjustified conditions
3. The way evictions are carried out: i.e., at night or in bad weather, no protection for people or their belongings
4. The use of harassment, threats, violence or force: i.e., forcing people to sign agreements, use of bulldozers or other violent means
5. The results of the eviction: i.e., disruption of children’s education, interruption of medical treatment, mental trauma, loss of jobs and livelihoods, no access to basic services or justice NRC’s ICLA programme in Mogadishu has made notable strides in addressing this issue, working with the protection cluster and through the HLP sub-cluster to ensure both state and non-state actors adhere to a set of Eviction Guidelines, which has been agreed to by the government but implemented selectively. Some of the key provisions are included in Box 3:

<sup>86</sup> (Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing: forced evictions).

<sup>87</sup> UN Habitat (2014)

**BOX 3: EVICTION GUIDELINES ESTABLISHED IN MOGADISHU (FULL DOCUMENT AT ANNEX D)****Sec. 1. Conditions for lawful evictions**

- Evictions occur in exceptional circumstances only and are resorted to where no feasible alternatives exist.
- Evictions are always subject to the following safeguard:
  - Evictions should not render individuals homeless or vulnerable to the violation of other human rights.
  - Appropriate measures should be taken to ensure that adequate alternative shelter is made available to those unable to provide for themselves.

**Sec. 2A. Applicable Eviction Procedure**

- IDPs and others at risk of forced evictions are informed and consulted throughout the entire eviction process. The specific needs and perspectives of women, children, the disabled or elderly are taken into account.
- Adequate and reasonable notice of eviction is given to all affected persons.
- IDPs and other at risk of eviction have the right to have the lawfulness of the eviction reviewed. Eviction notices are suspended until the lawfulness of the decision is determined by the relevant authority.

**Sec. 2B. During an Eviction**

- Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected.
- Police officers and other law enforcement official present during the evictions do not use force during eviction and protect communities from the use of force by militias.
- It is prohibited to destroy or demolish habitations as a means of force.

Similar protections have been incorporated into the current draft of the Somaliland IDP Policy Framework (see Annex E) that is pending approval.

In addition to advocating for protective policies, NRC has successfully worked together with local government actors to implement projects that both provide access to land and shelter, and increase tenure security to reduce the risk of forced evictions for a number of IDP families. Under these arrangements, the government obtains land from private owners, and NRC assists with shelter, WASH infrastructure, and other community needs. IDPs are not required to pay rent for use of the land for some specified period of time, typically ranging from 3-10 years.

Unfortunately, reports from IDPs indicate that landowners are violating the agreement, and have been threatening to unlawfully evict the IDPs if rent is not paid. The problem appears especially prevalent in Puntland. In Garowe, the Municipal Department of Social Affairs has signed agreements with twelve landlords for land to be used by IDPs for periods ranging from 5 to 10 years, during which time no rent is required; unfortunately several of these landlords are now demanding payment from many IDP tenants. A paralegal working in the ICLA programme describes the situation in Jawle 2 Settlement in Puntland:

I go around every day to ask people if everything is ok. About 3-4 months ago, the landlords started coming around and asking for money. The landlords have agents in the camps; they know every person and

every shop. When a new shop is built, the agent will go and ask for money – usually they ask for \$10 a month. The landlords think that if someone has a shop, it means they have money, and should pay. Some landlords also argue that they only gave the land for the IDPs to live, not to have business.<sup>88</sup>

To protect IDPs from such a threat, NRC is working with the local government to facilitate the provision of tenure documents for IDPs that state their right to remain on the land without payment. It is not clear whether all IDPs understand their rights under these agreements, and possession of the documents may not be sufficient, particularly for women, many of whom are illiterate and unable to verify what is written on the documents. Even if IDPs do understand their rights, they may be unwilling to fight the landlord because of the fear of eviction; they are in a much weaker position of power than the landlords, and simply cannot risk being evicted.

Women headed households are at greater risk of this threat, as they are often viewed as easier targets than households where adult men are present. While humanitarian actors acknowledge this problem, they add that it is difficult to address, as IDPs are often unwilling to bring this complaint to agencies. Sadly, unless IDPs believe that legal infrastructure is available to guarantee and enforce their rights, most will try to find a way to make the payment, rather than risk being evicted. However, IDPs who know their rights and are willing to speak out can protect themselves, as evidenced by the case of the women in Qasab 1 Settlement in Baidoa, South Central:

#### **BOX 4: KNOWLEDGE OF RIGHTS HELPS WOMEN DEFEND AGAINST ILLEGAL THREATS OF EVICTION**

On August 17, 2014, a gatekeeper in a settlement in Baidoa (South Central) unlawfully evicted 6 women who had received shelters from NRC because they refused his demands to pay rent. One of the women reported the case to the NRC office, explaining that she and the other women had been forcefully evicted by the gatekeeper for “accumulated rent arrears” for the CGIs that had been constructed by NRC. The parties eventually agreed to have a dispute resolution committee composed of community elders and IDP leaders hear the case, at which time the committee determined that the gatekeeper had breached the communal land agreement and failed to protect the HLP rights in evicting the women.

Unfortunately, there have also been increasing reports of mass forced evictions perpetuated by the State, particularly in Mogadishu where the value of land has been increasing, due in part to improved security conditions and the return of Somali diaspora.<sup>89</sup> While much emphasis has been on the situation of Mogadishu, evictions have increased in other towns as well; a report from the Brookings Institution notes that almost 50,000 persons were forcibly evicted from their shelters since the start of 2013.<sup>90</sup> The experience can be especially harsh on displaced youth, as recounted by young men and women in Hargeisa:

<sup>88</sup> Interview, paralegal Garowe

<sup>89</sup> Drumtra (2014); Human Rights Watch (2013); Refugees International (2012).

<sup>90</sup> Drumtra (2014)

**BOX 5: "BULLDOZERS AND LORRIES" – AYAHA III SETTLEMENT, HARGEISA**

The government came and told our community that we would be relocated. The IDP leaders went to the site first, but they saw there were no services and it was far from town. They refused to move. The government decided to forcefully evict us – bulldozers and lorries came. They were shooting; some people were wounded by the bullets.

**3.2.3****Land Conflicts in the Settlements**

IDPs in all study sites reported the availability of land as a serious constraint; thus where they find space to settle, they seek to accommodate as many families as they can. Settlements are described as "often overcrowded, with limited or no access to electricity ... [and] in urgent need of improvement or replacement to be made secure. Huts (buuls) are often made of highly flammable materials such as sticks, rags and cartons."<sup>91</sup> In these settlements, even though IDPs create committees to help with the process of deciding where each family should construct their house, the unplanned process and space constraints do not allow for clearly demarcated boundaries between each household. As a result of this ambiguity, conflicts tend to arise when one person feels that space is being encroached upon, or when they do not like what their neighbour is doing.

The ICLA programme facilitates access to mediation services in all its implementation areas, and a review of programme documents and interviews with NRC staff and partners indicate that conflicts related to sanitation (such as the location of toilets and waste sites), access routes, and encroachment are the most common complaints brought to mediators in Somaliland and South Central. These types of conflicts are often a manifestation of other social tensions in the sites, and can have substantial effects on the well-being of the family. In addition to creating unpleasant odours, toilets that are very close to living and eating spaces increase risks of diseases. The denial of access through a neighbour's land can substantially increase the distance to necessary communal infrastructure (like community latrines), and women reported fear of physical attacks or rape if they had to use extended routes.

While both men and women made clear that men were "responsible" for the family, and thus had final decision-making power regarding nearly all matters that could arise, women clearly played very strong roles regarding conflicts related to the land and the house in the settlements. Mediation services providers and IDP committee leaders stated that nearly all such conflicts were brought by women, and were between women.<sup>92</sup> One male IDP leader from a camp in Mogadishu went so far as to say that that "All conflicts are brought by women," indicating a disassociation by men regarding these matters. The following case below offers some insight into a possible explanation for why men do not take interest in these problems:

<sup>91</sup> Internal Displacement Monitoring Centre (2013)

<sup>92</sup> In contrast, complaints brought by men in the settlement were usually linked to economic disputes: the most common issues were related to debts owed for qat, or to casual employment agreements where the employer was refusing to pay.



**BOX 6: “WHY FIGHT ABOUT LAND WHEN IT’S NOT YOURS?” SAMIRA, MOGADISHU.**

Samira and Bishaaro were neighbours in an IDP settlement in Mogadishu, and had lived next to each other for almost 2 years. One day, Bishaaro's landlord came and demolished the toilet Bishaaro had built, which was on the side of the house furthest from Samira. After this happened, Bishaaro wanted to build a new toilet, but this time on the side that was close to Samira's house. Samira said no. While there was some confusion about where the boundary between their plots was, Samira's primary concerns were the smells and health risks that would be caused by the toilet. The dispute went to the community Elders in the settlement, and even to Elders from their area or origin (as the two women were originally from the same village), but no resolution was found.

Finally, the Elders in the settlement referred the case to NRC; Samira says she did not know who NRC was before this. With the help of a paralegal supported by ICLA, the two women were able to amicably resolve their dispute, and the toilet was not built next to Samira's house. Samira believed the mediation process was successful because the mediators talked to both her and Bishaaro, and because the women felt the mediator was more fair; he had no allegiance to a particular clan, and was not involved in the power dynamics of the settlement. This was a sharp contrast to the Elders, who Samira said did not listen and were dismissive of the women, commenting, “Why fight about the land when it's not yours?”

The last question helps illuminate what became a recurring theme throughout the research; men typically did not involve themselves unless some kind of substantial asset was involved. Where the subject of concern was seen to be of little value, women were left to resolve the matter. But where something that might increase their economic or social standing was involved – such as a house, land, or money – men would assert their power of control as the “responsible” member of the household, usually to the detriment of their wives.

## THE STRUGGLE OF WIVES: EVOLVING FAMILY DYNAMICS

3.3 —

In traditional rural contexts, land is one of the few assets that can signify wealth and power; by denying women rights of ownership and control over land, men maintain a superior position in culture and society. However, in the context of urban displacement where the vast majority of families are living on land that does not belong to them, men have a lesser opportunity to assert this advantage. During the study, the more common HLP issue faced by urban displaced women pertained to their ability to access and control economic resources, primarily money. Although Somali husbands again invoke religion and custom to assert control over money (as they did over land), urban displaced women are more assertive in resisting, and while they are gaining ground in their struggle, it is coming at a great cost, as will be discussed below.

### 3.3.1

#### Men are “Responsible”

The fact that Islam treats men and women differently in particular aspects has been the subject of sharp critique from the human rights community. Nevertheless, Islam plays a fundamental role in the lives of Somali men and women, and can provide an undisputed source of right and protection.

One of the core beliefs highlighted by men and women alike is the idea that men/husbands are “responsible” for their family. Men are accorded a greater share of inheritance than women, but are also charged with using that wealth to support their wives and children: *Husbands should take good care of their wives, with [the bounties] God has given to some more than others, and with what they spend out of their own money.* (4:34).<sup>93</sup> Women do not have a similar obligation to spend their money on the family.

Unfortunately, the concept that husbands are charged with caring for their wives by the Qur’an has been used together with discriminatory customs to justify the nearly absolute power that husbands claim over their wives and households. Discussions in one group of men in Puntland revealed the harmful views resulting from this interpretation:

#### BOX 7: “MAN IS RESPONSIBLE FOR ALL, AND HAS ALL RIGHTS.”

- “Women are property, just like land. Man is responsible for all and has all rights.”
- “When I marry, I pay the dowry<sup>94</sup>, so anything she gets afterwards is also mine. She is my property.”
- “Things are different in this town. Women say they have rights. If you beat them, they can call the police .... Man needs to have power to maintain control. This is good for the family.”
- If they gain control, “most women will destroy the family; they will forget their relatives.”

It is important to note that neither the Qur’an nor Islam articulates such positions; the above ideas are the interpretations of some men, which have taken root in a culture that has been dominated by men. As progressive scholars of women and Islam note, the Qur’an does not explicitly state that men are superior to women, or that they have the right to manage all any and all affairs of their wives. Referring to verse 4:34 above, Amina Wadud notes:

[O]nly under extreme conditions (for example, insanity) does the Muslim woman lose her right to self-determination .... Yet men have used this passage to exercise absolute authority over women. They also use it to argue for the male’s divinely ordained and inherent superiority.

She further observes, “

The Qur’an never orders a woman to obey her husband. It never states that obedience to their husbands is a characteristic of the ‘better woman,’ nor is it a prerequisite for women to enter the community of

<sup>93</sup> Haleem (2010)

<sup>94</sup> Bridewealth (or bride’s wealth) is the correct term for what the groom pays the bride or her family. Dowry is the payment made from the bride’s family to the groom. However, the two terms are often mixed up, and the word “dowry” is used above as it was the word used in the interviews.

Islam (in the Bay'ah of the women). However, in marriages of subjugation, wives did obey their husbands, usually because they believed that a husband who materially maintains his family, including the wife, deserves to be obeyed.<sup>95</sup>

The women interviewed for this study indicated that their husbands had more authority in the household because they were the primary, if not sole, economic providers, ensuring that the family had the money needed for food, shelter, and clothing. They did not take issue with accepting that men were responsible; rather, they were unhappy with their husbands' interpretation of what being responsible meant.

### Working wives: More Responsibility, Less Support

3.3.2

The role of the men as breadwinners has changed dramatically during displacement, with those coming from rural areas encountering a particularly disruptive shock. IDPs from rural areas of origin indicated that women handled all household affairs such as cooking and cleaning, and men were responsible for earning money, usually through managing livestock. Rural men coming to towns found that they lacked suitable skills for finding "good" work in the cities. As a result, they were forced to seek menial tasks, such as pushing wheelbarrows or digging holes. In contrast, much of the work that was available for female IDPs was domestic work they were used to doing. In general, IDPs described the work that they could find as follows:

- For Male IDPs: pushing wheelbarrows, digging holes, porters, building, driving
- For Female IDPs: collecting garbage, washing clothes, providing general domestic services for host community

Women demonstrated a willingness to take on virtually any kind of work that was available out of necessity to ensure that she could care for her children. However, several interviews with NGO workers and other stakeholders suggested that men as a whole did not demonstrate the same amount of flexibility, and that some male IDPs were too proud to do the kind of work that was available. While the last observation could not be confirmed by the study, the general trend observed amongst the IDP populations is more women working outside the home, and more unemployed men.

This reversal in the gendered role of economic providers has significant consequences. When men were the primary breadwinners, they had a stronger claim to decision-making power and authority in the household. Articulating how men have used economic power to justify denying women rights to land and property, Radhika Coomaraswamy, the former UN Special Rapporteur on Violence Against Women, notes, "The belief that male labour is bread-winning, while female labour in the home is only supportive, justifies many ... inheritance laws as fruits of the labour of male members of the household."<sup>96</sup>

<sup>95</sup> Wadud (1999)

<sup>96</sup> Coomaraswamy (2002)

Now, the role of women as primary breadwinners is challenging the construct used by men to justify their superiority. While women remain socially subordinate to men, displacement is making them less dependent on men for access to economic resources and other means of production. Generally speaking, this change has not translated into substantial advances for women yet, but based on the discussions with IDP women, the issue of economic empowerment is one of growing interest and importance for them.

The situation is not improved by the way men are responding to the crisis of displacement. Many women interviewed complained that their husbands contribute nothing, and spend what little money they can find on qat or other women. "Their only job is to chew qat," said the women in Somaliland.

#### BOX 8: KHAT OR QAT (CATHA EDULIS) IN SOMALILAND

The problem is particularly significant in Somaliland, due to its wide availability and the way it is integrated into social life; government offices and shops are even closed in the afternoons so that men can chew qat. One researcher has tried to offer some positive effects of qat on the Somaliland economy, arguing that the estimated \$50 million worth of qat imported each year from Ethiopia provides the government import taxes, and keeps drivers, sellers, and other such parts of the chain in business.<sup>97</sup> Whatever its positive effects on the economy may be, complaints from women, as well as civil society and some government actors reflect the belief that qat is a major reason as to why men are not working and failing to provide for their families. NGO workers suggested that a man may spend anywhere from \$5-\$20 per day on qat, which is significant given that many IDP families fear eviction if they cannot find \$10 a month for rent.

Qat was not the only complaint. Other common statements from the women interviewed include: "A husband is like an extra baby in the house;" "Women would be better off without a husband;" and "They use their money on drinking and other women, not on school fees and clothes."

#### BOX 9: "IT IS ME WHO MUST PROVIDE FOR THE FAMILY, THE CHILDREN, AND HIM." ANISA, DOLLOW (SOUTH CENTRAL)

Anisa is a young woman living in Qasahley Settlement. Her family is far away, and she is married to an old man. "It is better not to be married," she says. "He is too old to work or to help with the children," she explains, "so it is me who must work and provide for the family, for the children, and him." Anisa says that they often fight, because he complains and says her place is in the home, and that she should not be going out. "He says I cannot go out to work, but then he doesn't contribute anything for the family." Anisa has gone to the elders, but they always tell her to be patient. When asked why she doesn't leave, her answer is simple: "There is no where to go."

A significant number of men in nearly all study sites believed that women working was a positive development, as they held the general belief that women would use any extra resources to care for the family. Yet, even as women are working out of necessity to alleviate the pressure on the family, many men are blaming the women for their own feelings of failure, and recasting the situation as undermining their authority and causing conflict in the family:

<sup>97</sup> Hansen (2010)

**BOX 10: RESPONSES FROM MALE IDPS IN MOGADISHU**

- “It is difficult to get money out of the women’s hands. Men can only take what she chooses to give.”
- “This creates conflict, and leads women to divorce, because they are only thinking of themselves.”
- “The women care only about the children. They forget about the men.”
- “I never know how much money my wife keeps.”



In contrast, while some women said that working was good insofar as it allowed them to care for their children, the majority did not view having to work as a positive development. This is unsurprising, as working outside the home is simply an additional burden to the existing workload; the paid work they do is often menial, and detracts from the time they need for their household and family duties. One woman explained the choice she faced as follows: “You either stay with the children and they go hungry, or you go to work and neglect your children.” Additionally, the distances they must travel exposes them to new protection risks and requires additional spending for transport.

Both men and women indicate that the most negative effect of women working is the impact on childcare, largely attributed to the norm that women are assumed to be responsible for raising the children. This is one of the most difficult aspects of life faced by women-headed households, though some did reference having neighbours who could watch their children. However, married women in the discussion groups did not fare much better. Although a few women said their husbands might help with childcare sometimes, there is no general trend of men assisting with domestic work or childcare, even if they are unemployed. As one woman in Garowe explained, “Not all men are bad, some are just difficult. When [my husband] has money he will give some to me, but when he does not [have work] he will just sleep.”

A World Bank Gender Study looking at how men and women in 20 countries experience gender differences found this to be a strikingly pervasive phenomenon:

*The normative framework and power relations that impose a double burden on women (in and out of the house) do not disappear or*



*change when economic conditions do. Unemployed young and adult men have to find ways to employ their extra time when they have less income-generating work, but housework is not a viable option. When job and business opportunities for men diminish or unemployment strikes, and women must take on the role of provider and working to support their households, the norms shaping the allocation of time and men's duties do not change.<sup>98</sup>*

When asked about what would help them the most, the women overwhelmingly requested skills training and other things that would enable them to improve their economic independence. Women are not averse to working, but they need work that allows them some flexibility in time to do their other tasks, and keep them closer to home. This helps explain the popularity of having a "small business" which can be run out of, or close to the home, allowing her to fit in domestic work and childcare.

Although often overlooked, this changing dynamic is also impacting children and youth, and can potentially break family bonds as children adopt negative views of their fathers. One male youth leader in Ayaha III Settlement describes the situation he sees:

**BOX 11: "IF YOU ASK A CHILD WHO IS BETTER, OF COURSE HE WILL SAY HIS MOTHER."  
(ALI, AYAHA III, SOMALILAND)**

Many of the families here were evicted from government premises. The humanitarian agencies provided us these [CGI] shelters in 2013. But they are too small; there is not enough room for all the children. There is no money to add on to these shelters; the transport to town to find work is too expensive. The fathers here are not working. Children go to their father to ask for things, and he says he has nothing. "If you ask a child who is better, of course he will say his mother." She works and is able to provide.

### 3.3.3

#### Polygamy

The practice of polygamy is accepted in Somalia because Shari'a allows a man to take on another wife as long as he can be fair to all his wives, and he is capable of supporting this large family.<sup>99</sup> If he cannot meet both these requirements, he cannot take on a new wife. Further, Islam instructs that husbands cannot take from one wife to give to another: "Give [women] their property, do not replace their good things with bad, and do not consume their property along with your own." (4:2)<sup>100</sup>

In the context of Somalia's traditional pastoral livelihoods, polygamy was a common way to provide more hands and more income; but each wife and her children were a separate unit, with her own hut and animals, distinct from any other wives.<sup>101</sup> However, polygamy as explained by women during this study neither follows what is prescribed by the Qur'an, nor appears to serve any useful purpose for the family. A 2002 UNICEF report also observes the harmful effects of men marrying women they cannot support:

<sup>98</sup> Munoz-Boudet et al. (2013)

<sup>99</sup> Mohamud,;

<sup>100</sup> Haleem (2005)

<sup>101</sup> Gardner & El Bushra (2004)

There has been an upsurge in polygamy, where men, who have no means to look after one family, are marrying other women. This practice is the most frequent cause of divorce. In Somaliland, polygamy has had devastating psychological effects on women, causes economic hardship for the family, and is the source of conflict between siblings of different mothers.<sup>102</sup>

For both displaced and non-displaced women, the way in which polygamy is practiced today creates particular hardships for the women, because the men who are marrying second or third wives are unable to provide for them, and are taking from existing wives against their will, as in Suad's case below:

#### BOX 11: "... SHE HAD NO CHOICE; SHE HAD TO SHARE." - SUAD, DOLLOW

Suad says that when she and her husband got married, she was selling vegetables and her husband didn't have anything. They grew her business together and now have 4 children. They bought land together with her money, and she believed they registered the land in her name. Later, she heard rumours that he had married another woman. At first, she did not believe them, but then discovered it was true. She told her husband that it was ok, but she did not want to share her money or property with the other woman. Her husband told her she had no choice, and she had to share. When they started to fight about the land, Suad discovered that her husband had actually put the land in his name; she never knew because she cannot read. When she brought her case to the Elders, they told her to "go home and settle with your husband."

Women are increasingly expressing their displeasure with the practice, but as of yet have little recourse. In the case of displaced women, a common complaint raised is that their husbands will take additional wives if they earn any money, rather than contributing to the upkeep of the family they currently have. One of the more cynical views expressed by some displaced women is that men take on additional wives so that more women can care for him. The women also complain that polygamy is giving men a blanket excuse for refusing requests for divorce, in that rather than listening to the actual grievances about the behaviour of their husbands, the Elders simply dismiss the women as "jealous."

## Violence in the Home

3.3.4

### The problem is economic?

3.3.4.1

Problems of domestic violence appear widespread among the IDP settlements, particularly in Somaliland and Puntland. Women in both these areas expressed protection as a paramount concern, explaining that it is increasingly common for men to beat their wives. Generally, the women rationalised the men's behaviour, telling the study team that the root problem was economic and their husbands were stressed: "They don't have jobs, they stay in the house all day, the children are crying, and so they get angry." This narrative was fairly consistent across study sites, and IDP committee leaders who counsel the abused women gave the same explanation: "The problem is economic."

<sup>102</sup>UNICEF (2002)

Missing from this story, however, is the reality that Somali culture has been implicitly accepting of harsh, and sometimes violent, treatment toward women. Men who believe themselves superior feel they have the right to do whatever they please to their wives, as one comment from Puntland indicates: “My wife is my property. I can beat her every day if I choose.”

The factors of severe economic stress, male feelings of loss of empowerment, and male perceptions of women’s empowerment, have come together in a perfect storm during urban displacement, and are a likely cause in the increased domestic violence. The World Bank Gender Study suggests that this trend, unfortunately, is also global. Drawing on research across 20 countries, that report notes:

The focus groups’ narratives consistently reported that men who are unable to fulfil their provider role often act out their frustrations with violence, and that it remains acceptable in many communities to sanction women harshly for minor infractions that are perceived as challenging male authority or norms of feminine conduct. ...

Perhaps to be expected, economic factors, such as poverty, joblessness, hunger, and financial problems and mismanagement, emerged most often as causes of domestic violence. The narratives revealed, moreover, that many times these fights are not just about economic hardship. Men may also become belligerent because they feel they need to re-assert or maintain their dominance, because they have lost the provider status or ability that underpins their power in the home, or because their partners are gaining economic independence.<sup>103</sup>

### 3.3.4.2

#### Mine, Not Yours

The second major trigger of domestic violence was related to women who actually sought to claim and protect their HLP rights, particularly in regards to land or money.

#### BOX 12: WOMEN IN PUNTLAND

Question: What do you think NGOs or the government can do to help women claim their rights?

Answer: Protect them from violence.

This subject will be discussed in greater depth in Part IV(C)(a), and is only briefly introduced here. Humanitarian shelter and livelihood interventions for the IDPs have resulted in more women in a married household holding “title,” represented by an ownership card that serves as tangible evidence of ownership of shelters or other assets provided for the family. Discussions with humanitarian actors and the women themselves indicate that this has often been unintentional; although there is a preference for women to be given control of these assets, external actors have to date been wary of interfering with the gender dynamics in a married household. A woman is often registered as the head of household simply because she is there when the agencies come by and her husband is not.

<sup>103</sup>Munoz-Boudet et al. (2012)

Unfortunately, several women report that the idea that his wife is in control of property, and he is not, is unacceptable to their husbands, who become angry when they learn what has happened. If the wife refuses to give him the ownership card and cede her control, violence often ensues. While this study could not ascertain how common this situation was within a particular settlement, in all study sites where this kind of shelter intervention with ownership documentation had been done, there was at least one woman who reported this situation, and usually knowledge amongst the group of another woman who had suffered a similar fate. Nimo's story illustrates how much women can suffer when this happens:

### BOX 13: NIMO, DIIGALI SETTLEMENT, SOMALILAND

Nimo has 6 children. She used to live with her husband's family, and his parents supported her and the children because her husband was "not good, and always using drugs." She and the children moved because of the drought, and her husband came after her. She received a CGI shelter from NRC, and also received a card from the local government indicating that the shelter is hers. Because her husband was not in Hargeisa at the time the card was issued, it is in her name. When her husband returned, he demanded that she give the card for the shelter to him; she refused. He became angry and was physically abusive, saying that he owned her and the property. Since then, he leaves and returns periodically. He does not provide any financial support for her or the children, and every time he returns he beats her; a neighbour who has witnessed the violence says that she is afraid that one day Nimo's husband will kill her.

Nimo has reported her case to the IDP Committee many times, and this case has been discussed among the traditional elders more than 5 times. She says the customary system will not help her because she and her husband are from the same clan; the Elders always tell her that the family should stay together, and she and her husband should go home and work things out. She has attempted to use the formal court system, but the Elders have twice gone to court and told the judge that they were handling the case. The court always listens to the Elders. Nimo lives in constant fear, but continues to insist that the house is for her and the children.



#### Dialogue in the Home: "How should we spend this?"

#### 3.3.4.3

Despite these bleak stories, there is some evidence that positive changes can take place. In the majority of the discussion groups – both male and female – several participants indicated that there is now more consultation between husband and wife about how they should spend household monies. Though a seemingly minute matter, it is a big step for a culture in which it is assumed that men will make all decisions, and are the only ones with the authority to do so. Women who are not afraid to offer opinions that may be different from those of her husband are a meaningful sign of empowerment, even if not perceived as such at the time.

Interestingly, when it comes to money, men seem to trust their wives more than women trust their husbands. While most husbands felt that their wives generally told the truth about how much money they had earned, most women felt that their husbands did not show them all the money that they had earned. This suspicion appears justified, as several men admitted that they did indeed keep some money back.

Men and women also held different understandings of the idea of “consultation.” In the context of how money should be spent, both men and women indicate that the ideal situation is for both sides to “show the other” how much money they earned and discuss together how it should be spent. In reality, while both men and women agree they should discuss together how to spend a wife’s earnings, most men do not feel a reciprocal duty when it came to their earnings. This is also in line with the global trends highlighted by the World Bank Gender Study:

*The narratives from the communities in our research predominantly put men in charge of the family income, including any wages earned by other members of the household, especially women. Women never control men’s money (or at least not all of it), and shared control (by men and women) of a man’s money is rare, but common for a woman’s money.<sup>104</sup>*

What is more ambiguous is how much the woman’s suggestion, if different from that her husband, will be considered. Men clearly expressed the feeling that while a husband and wife might discuss matters together, the husband retained the ultimate authority to make a decision. One man in Mogadishu reasoned that if he did not have ultimate authority, then “the family would be like their country ... in constant conflict as people are fighting to lead.”

Also of note is the difference in rationale for the consultation. Somali men articulated an obvious feeling of entitlement; they believed their wives had to consult them because they were men, and the head of the family. Women on the other hand, agreed that they should discuss how to spend the money they earned with their husband, because if they didn’t, there would be conflict. In essence, women are relinquishing some control over their property rights to avoid angering their husbands and maintain peace in the family. In this context, women’s ability to earn and control income becomes exceptionally important: income gives a woman some independence from her husband and increases her bargaining power, improving her capacity to engage her husband in more meaningful negotiation. Several women suggest their ability to do so also earns more respect – however grudgingly – from the men; as one woman said, “If she has money, her husband will love her more.”

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104 Munoz-Boudet et al. (2012)



## HLP RIGHTS UNDER ISLAM: IN THEORY, NOT PRACTICE

3.4

### BOX 14: GENDER PERSPECTIVES

Men say, "Women are protected by religion."

Women say, "We would be happy if they gave us what religion says."

As discussed above in Part II(C), women are accorded specific HLP rights under Shari'a. However, as is the case with other rights regimes, the existence and acknowledgement of rights are but the first step; the challenge generally lies in the ability of the rights-holders to access those rights. This section looks at the particular cases of mahr, maintenance and acquisition of property during marriage, divorce, and inheritance, as they are the most relevant to the IDP women.

### Mahr

3.4.1

Discussions with men and women indicate that the right of mahr is well known; the couple may negotiate what the mahr will be, but the woman is entitled to her mahr the day she is married, and it is hers to do with as she pleases. Below in Box 15 are the mahr payments that one group of male IDPs in Galkayo agreed to pay their wives:

### BOX 15: MEN IN GALKAYO EXPLAINING MAHR:

- 40 head of livestock
- 44 goats
- \$1000
- 6 cows
- \$200
- \$1500
- \$100



In practice, relatively few women interviewed said that they had received their mahr, and men and women in the same settlement usually gave the study team different answers as to whether the right of mahr was respected there. For example, in Tawakal Settlement in Galkayo (Puntland), the men interviewed said that mahr was always given to the women because it was their right under Islam. In contrast, the women told the study team that mahr generally was not given. One woman said that in her case, she tried to get her mahr from her husband, but he refused. She went to the Elders and camp leaders, but says they refused to help her.

A religious scholar in South Central confirmed that a woman has a right to receive her mahr at the time of marriage, but explained that even if it is not given then, she never loses the right to mahr. If the couple decides to divorce, the man must pay the mahr before the separation. However, women are now reporting that if men give mahr at all, they are doing so only in the event of divorce. While the women

said they would like their mahr during the marriage, they indicate that there is little they can do about it. Groups that dominate a culture often attempt to create a benevolent rationale for the norms that suit them best, and this issue serves as an interesting example. Men in Garowe (Puntland) justified their decision to ignore women's rights to mahr with the following creative explanation: "Religion says you give [mahr] on the first night of marriage, but in practice, no. If you give mahr, she knows you want to divorce her."<sup>105</sup>

### 3.4.2

#### Divorce

Discussions with IDP women in the settlements indicate that several women in displacement were seeking divorce, though it is unclear whether current rates of divorce are higher than before displacement. The women said that the stresses and problems caused by displacement are increasing tensions in the homes, which is leading to more violence in the home. Women who want a divorce generally indicate the presence of two factors: 1) her husband is not providing for her and the children, and 2) he is treating her badly. Under Islam, a woman is entitled to seek divorce if the first factor is true; but these IDP women are not seeking divorce solely for this failure. Rather, it is the way in which men are responding to this stressful situation – by becoming abusive or violent, taking on other wives, and making claims on her property – that is causing them to seek divorce, as conditions have reached a point where they believe that they will be better off attempting to care for the family themselves.

Men who wish to divorce their wives can do so with a simple, unilateral renouncement of the marriage. In sharp contrast, a woman seeking divorce needs her husband's acceptance. If he refuses, she can seek a court order, but will face a difficult battle during which she is pressured at multiple points to give up. Before she can take the case to a court, a woman must first take the case to the customary Elders to see if a resolution could be reached there. Nearly all women interviewed reported that the Elders would pressure her to reconcile with her husband, whatever the complaint. They further said that reconciliation at this point was often useless: "He will agree to anything in front of the Elders, but then he will delay. He says he will pay after 2 months, then after 5 months, and eventually you will give up."

If a woman manages to convince the Elders that her complaint is genuine, once she gets to court she is again pressured by the judge, who will usually order mediation to again attempt reconciliation. The logic of forcing this process is questionable, and one judge in Mogadishu admitted that such efforts would usually fail. He observed that "divorce was usually being withheld by the man" for some reason. A 2014 study by Legal Action Worldwide notes that there are no female judges in Somalia.<sup>106</sup>

Further eroding the protections and rights granted to women in the event of divorce, some men are seeking to reshape the norms that are clear

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<sup>105</sup>FGD in Garowe

<sup>106</sup>Legal Action Worldwide (2014)

under Islam, while at the same time proclaiming themselves to be good Muslims. As discussed above, religious leaders in Somalia confirmed that mahr is a specific gift for the woman upon marriage. There are no strings attached: she does not need to share it with family, and she does not lose it if the couple later divorces. Disturbingly, interviews during the study included numerous stories of husbands refusing to divorce a woman unless she agreed to relinquish her claims to mahr and maintenance. For example, if a woman wanted a divorce because her husband was abusive and he was not contributing to the family's care, he would refuse to grant the divorce unless she renounced her claim on her mahr and any other demands. His demand was often accepted by the Elders.

### BOX 16: "NEW CUSTOM: MAHR MUST BE USED TO BUY THE DIVORCE."

Female members of the IDP committee from a settlement in Puntland explained that men are creating the "new custom" of only agreeing to a divorce if the woman agrees not to ask for any money. IDP women in South Central provide further testimony to the erosion of women's rights across the country, and comments heard by the study team included, "Inheritance is only for children. Mahr is for the wife at the time of divorce," and "Mahr must be used to buy the divorce." One woman in Mogadishu also raised the point that a woman's right to mahr can be violated, even by her own family: "Sometimes the family will get involved, and will tell the man to give their daughter back and forget about the mahr. But the mahr is hers, not her family's. She loses twice – the marriage and her mahr."



In light of the ability and history of men reinterpreting custom in their favour and curtailing women's other rights, the importance of mahr should not be missed. It is not just a symbolic gift, as one woman explained: "When you are married, you must leave your mother's home. Everything you earn belongs to your husband. You just take your mahr."

Another key question in the event of divorce relates to the women's rights after divorce: Who will stay in the house, and who will leave? During the study, IDP men said that their custom on this matter followed Islamic law. The Qur'an instructs:

- Divorced women shall also have such maintenance as is considered fair: this is a duty for those who are mindful of God. (2:241)
- Do not drive them out of their homes – nor should they themselves leave – unless they commit a flagrant indecency. (65:1)

Yet, among both men and women, there was little mention of the provision of maintenance for either the wife or the child, and the majority of women reported that they were forced to leave the house without anything. Box 17 below shows the conflicting answers to this question that were provided by men and women (interviewed separately) from the same study site:

**BOX 17: WHO KEEPS THE HOUSE?**

WOMEN'S RESPONSES	MEN'S RESPONSES
IDP Women, Mogadishu: If there are children, the men will leave. Unless the man will be the one to stay with the children. Then the woman will go	IDP men, Mogadishu: Sometimes, if there is a divorce, she can stay in the house for 3 months and the man will pay [as per Islamic law]. But in practice, the women will go.
IDP Women, Galkayo: If there is conflict, generally the husband will leave	IDP men, Galkayo: If there is divorce, men will leave
IDP Women, Garowe: If there is divorce, the woman must leave. Men want to keep it so he can have another wife.	IDP Men, Garowe: We don't have houses. We live in houses made of cartons and sheets, built by women. If there is a problem we will go.
IDP Women, Dollow: If she gets the house with her own money, it is hers. If not, it is his.	IDP men, Dollow: If there is divorce, the property and children will be left with her.
IDP Women, Hargeisa: If there is a family problem, women must leave and men will keep the house.	N/A



Traditional Elders who make decisions on this matter also deviate from the teachings of the Qur'an, leaving women in a precarious position where her ability to claim her rights is contingent upon the existence of children. Discussions in all study sites remained fairly consistent in explaining that the needs of children are prioritised during a divorce. For women who have children they will continue to support, there is a reasonably good faith effort by the Elders to ensure some kind of shelter remains available. However, women who have no children are offered no protection, and are generally forced to leave her home with nothing.



## Inheritance

3.4.3

### BOX 18: GENDER PERSPECTIVES:

- Men: "Customary and Shari'a law are the same."
- Women: "When it comes to inheritance and divorce, they forget Islam."

The right to inheritance and the rules governing the process in the Qur'an are very specific; no male or female interviewed for the study said that the rules were wrong, or should not be followed. However, the majority of women indicated that they had not been able to access their inheritance from either their late husbands or parents, and very few men could or would confirm that their sisters or female in-laws had received any inheritance.

Somali men interviewed during the study indicated that customary law is based on Shari'a; therefore there could be no conflict between the two. The same argument was observed by Le Sage:

*Shari'a judges assert that there is no conflict between Islamic law and traditional Somali clan law (xeer). They state that Somali culture was fully integrated into Islam and thus no conflict was possible.<sup>107</sup>*

In contrast, women clearly indicated that, in relation to matters of inheritance and divorce in particular, elders and others with decision-making power would "forget" the Islamic teachings, relying instead of "custom."

### BOX 19: "WHEN IT COMES TO INHERITANCE, THE MEN FORGET ISLAM." - COMMENTS FROM MOGADISHU

- Alin's first husband died, but left an inheritance for her and their son. His parents have taken his property by force, and will not allow her son to claim his rights. (Dollow, South Central)
- "Inheritance is usually done the traditional way. It is difficult to get your full rights under Shari'a."
- "[The tradition] is unfair. You are taken from your family. You work just the same, but then are told you have no rights."
- When it comes to inheritance, the men forget Islam.

Women felt that whether they would receive their inheritance depended on the attitudes of their brothers. Some said that the Elders/customary court was not helpful, because they would often tell the woman to let go of her claim. Others said they did not feel that they could go to anyone for help when inheritance was denied, because they were not comfortable talking about inheritance issues in front of the Elders; they believed that confronting customary leaders about this matter would cause problems in their community. Sadly, experience and history have led women to believe that those who question the male-dominant paradigm will be ostracised and punished, furthering the fallacy that a community can only be stable if women maintain a subservient role to the men.

<sup>107</sup>Le Sage (2005)



Ironically, widespread acknowledgement of the Islamic rules seems to itself obscure the significance of this problem for Somali women. When the issue was discussed with government officials and NGO staff, their answer was always the same: "Inheritance is not a problem; they are protected by religion." One high ranking male official said inheritance was not an issue, and further reasoned that inheritance *could* not be an issue, because Somalia is a Muslim country, and women are entitled to inherit under Shari'a.

The women clearly believed the traditional system of inheritance to be unfair, but while a majority demonstrated knowledge of Islamic courts (noting that most references to Sharia or Islamic courts seemed to loosely refer to proceedings where a religious scholar examined the case and made a decision based on Islamic law, rather than the specific institutions that arose in Mogadishu), few women appeared to be using its services. In general, women said that the Islamic court would be fair because it had to follow the Qur'an, but they did not always feel like they could access this forum, as will be discussed later in Part III(E). Another reason may relate to the sometimes impractical outcomes of the strict application of Shari'a, particularly in the context of large Somali families, as illustrated in the following case shared by an Imam in Dollow:

#### BOX 20: INHERITANCE CASE – ISLAMIC COURT, DOLLOW

A woman was living in town with her husband on her late father's land. Her father had been a powerful member of the police under the Barre regime with many parcels of land, but also with many children. Her brother returned, and without speaking to the woman, told his brother-in-law that they had to leave the land. Still without speaking to his sister, the brother told people in town that he was selling that land, and started negotiating prices. When the woman found out what her brother was doing, she went to the administration, who directed the case to the Islamic court.

The court found that the property belonged to both of them, and more. Under Islam, all children inherit, so more than 17 children and 2 wives held claims to the property. During the case, the court talked with people from Somaliland, Ethiopia, Mogadishu, etc. After the property (28m<sup>2</sup>) was divided among all the heirs, each person had a claim to just under 1.5m<sup>2</sup>.

### 3.5

## BARRIERS TO RIGHTS AND JUSTICE

Whatever HLP rights and protections that might exist for Somali women, their stories and NRC programme files clearly indicate that there are many obstacles that prevent the women from exercising them. Many stem from chronic poverty, and the male dominated traditions and cultures that underpin Somali society. Women who seek to vindicate their rights are further stymied by the somewhat ad-hoc nature of Somalia's legal institutions, in that there is still general uncertainty as to what legal rights and rules exist, which ones govern, and where they can be adjudicated.

#### 3.5.1

### Poverty

For all displaced Somali women, poverty remains one of the root barriers to tenure security and the ability to claim other HLP rights. Whether owning or renting, the women interviewed described precarious lives.



Renters lived in constant fear of eviction if they could not pay rent, and homes that are closer to urban centres and job opportunities are more expensive because of their location. Several women had moved to informal settlements on the outskirts of town because they could not afford rent. After moving, it became even more difficult to travel to town and find work, making it nearly impossible to earn enough money to break the cycle.

IDP women who had recognised, legal ownership of their homes in the formal settlements were better off than those who were renting in either formal or informal settlements, but poverty also created challenges for them in maintaining and protecting their tenure security. Shelter is but one of many needs, and those who own their houses still need money for food, water, and other necessities. The lack of livelihood activities often translates to difficult situations where women must decide which needs must be fulfilled at the expense of others, as noted by officials in Galkayo:

**BOX 21: “ YOU CAN GIVE THE PEOPLE A HOUSE, BUT THEY WILL SELL IF THEY NEED MONEY.”**

Of the IDP camps in Galkayo, local government officials explain that they are in the corner of town, and so there is little access to town for jobs. Transport is \$2 each way, and the IDPs cannot afford that, especially if the work is not guaranteed. Access to housing and land is an important first step, but it does not address the underlying problem of poverty: “You can give the people a house, but they will sell if they need money.”

Additionally, IDPs who owned their houses often lived on land that belonged to others. As mentioned above, landowners who promised not to ask for rent sometimes reneged, and in Garowe, women reported that if they could save some money and make improvements to their house, the landowners would come and start demanding more money.

Regardless of where they lived, most women were afraid to leave their homes to look for work because they were worried about their children, they could not afford transport costs, and they feared for their safety. Unfortunately, their options are limited, as many are uneducated, illiterate, and have no savings. Women-headed households reported feeling particularly vulnerable, because they have no man to help contribute financially, or to stand for them with a landlord who is threatening eviction. Less intuitively, married women expressed similar

fears because their husbands were not working, and sometimes took the money that they earned.

Poverty also prevents the women from being able to protect their rights or seek justice. Married women with abusive husbands often stay in the relationship, because they have no assets or savings to care for themselves and the children. As one woman in Puntland explains, “The poverty means you must stay. Even if he beats you, if you have no money, there are no other options.” Without money, women cannot afford transport or other associated costs necessary to seek redress from a court, as explained by IDP women in Somaliland.

**BOX 22: “IF WE HAD MONEY, WE WOULD PREFER COURT .”**

Women: “The tol (customary court) can be ok sometimes; sometimes they will listen to women. But when it comes to rape or something involves violence, the outcome is against her 100% of the time. The court is expensive, and far – it is \$4 to go and come. The case can also take long. But we cannot go to court; we have no budget. We have no transport costs.”

Question: “If you had money, which would you prefer?”

Women: “If we had money, we would prefer court.”

Question: “Why?”

Women: “There is a lawyer in court. They use justice and written law. So if you have support [money from the NGOs or the government to go to court], it can be fair.”



## Male-Dominated Culture and Society

3.5.2

With women excluded from positions of leadership and conditioned to avoid undermining the authority of men, men have shaped and defined the story of what is today expressed as Somali “tradition” and “culture.” During this study, several examples, including the treatment of the right to mahr in Box 23 below, arose of how men continue to redefine what is socially acceptable to retain more advantaged positions, while simultaneously constructing a narrative to justify why the changes are beneficial for women.

### BOX 23: “IF YOU GIVE A WOMAN HER MAHR, SHE THINKS YOU WANT TO DIVORCE.”

Women: “The *to/* (customary court) can be ok sometimes; sometimes they will listen to women. But when it comes to rape or something involves violence, the outcome is against her 100% of the time. The court is expensive, and far – it is \$4 to go and come. The case can also take long. But we cannot go to court; we have no budget. We have no transport costs.”

Question: “If you had money, which would you prefer?”

Women: “If we had money, we would prefer court.”

Question: “Why?”

Women: “There is a lawyer in court. They use justice and written law. So if you have support [money from the NGOs or the government to go to court], it can be fair.”

By controlling the story of why certain practices become customs, men can justify the decisions they take to maintain dominant positions in society. In many instances, the rationales they create to explain why women accept inferior positions run counter to what women say when given the opportunity to speak:

### BOX 24: GENDER PERSPECTIVES

- Women leave the house after a divorce because she is embarrassed to stay after everyone knows she is divorced. – Male religious leader
- It is women who must leave. It is not right, but it happens. – IDP woman
- Joint title for land is possible, but it is generally men who will have their names on documents, because women are busy with the family. – Male government administrator
- Men won't allow their wives to have documents with their name. – IDP woman

## Customary Justice: “Men will support men”

3.5.3

Given the inaccessibility of courts and considerable confusion over which rules apply where, the use of xeer rules and the referral of problems or issues to the Elders continues to be the primary way in which Somalis seek to solve problems that arise. The institution of the Elders and the power and authority that they command may vary throughout the country, but as has been noted elsewhere:

*In the absence of the state, elders have proven to be immensely important in upholding law and order, and they have been central to all Somali-led reconciliation processes. Neither Puntland nor Somaliland would have survived their internal wars without the constant support and involvement of elders in resolving political and security problems. Although these*



*traditional institutions do not enjoy the resources of a state, their decisions – whether reached under a tree in the pastoral areas or in a modern house in urban centres – can carry the power of a government.*<sup>108</sup>

Unfortunately for the women, the system is inherently exclusionary:

*[T]he position of 'elder' is common to all clans. The term 'elder' can be applied to all adult males at every level of the clan family, from the nuclear family upwards. And all elders, thus all men, have the right to speak in an open council (shir) which can be called for at every level of segmentation, as required. Shir are 'called to discuss relations between groups, to settle disputes, or to decide upon war or peace .... Shir exclude women'.<sup>109</sup>*

Elders chosen to decide the outcome of a *xeer* dispute usually represent the clans of the person bringing the complaint and the alleged offender; if possible, a neutral, third-party clan may participate as well.<sup>110</sup> Women interviewed for this study corroborate this idea, explaining that the Elders who listened to their grievances against their husbands included men from both her clan and his. The primary aim of this system is to maintain balance and peace between clans, but in doing so, it ignores the needs of the women as individuals, whose situation is made worse when displacement takes them away from their fathers, brothers, and other protectors.

**BOX 25: "... NOW THERE IS NO ONE FOR ME."**

For all problems, the women come to the committee first, then to the clan elders. If the case involves violence, clan representatives of both parties will come together to talk. The women often don't go to the police because they will demand money. Sometimes the women are beaten so badly that they can't walk, but they will still stay because there are children. The Elders will try to 'cure' the situation; they will try to reach an agreement so that the man will stop beating his wife and promises to care for her. The poverty means you must stay. Even if he beats you, if you have no money, there are no other options.

Look at me. I have 10 children, and my husband beats me over and over. But I have nowhere to go. Before, a woman would have the protection of her father and brothers, but now there is no one for me.



108 Osman, Abdurahman A. (2010)

109 Gardner & El Bushra 2004)

110 Norton (2008)



This system is especially problematic for women who marry men who are members of the same clan. Prioritising the maintenance of peace within the clan, male relatives will be more reluctant to intervene in a marital conflict to help the woman. As related by Nimo (discussed above in Box 13), because her abusive husband was of the same clan, the Elders did not help her, but instead insisted she go home and make peace with him, going so far as to block her case from going forward in court.

Similar to what has been noted in other reports,<sup>111</sup> the IDP women also explained that although they might participate as a witness, they are not formally allowed to speak for themselves, and must have a male relative or clan member to speak for them. One woman in Dollow said that sometimes, the women weren't even allowed to speak to the Elders: "They will reach a decision on their own, and then just come and tell you that your case is solved."

Although a few IDP women felt that some Elders would try to listen and help, the vast majority did not believe that the system was fair to women. An interesting exchange with women in Garowe helps understand women's ultimate perception of customary justice:

#### BOX 26: "MEN WILL SUPPORT MEN."

During a discussion with women in Garowe about gendered aspects of land ownership, Feza mentioned the possibility of having both hers and her husband's name on the title document. All of the women in the group agreed that it was possible, and it was a good idea. Then Hawa spoke quietly: "But if there is conflict, it is always men working to resolve the problem. And men will support men."

Given the exclusion of women from both the process of dispute resolution, as well as the process of defining the rules that are used, it is not difficult to understand why women feel like they have little voice or protection in the customary justice processes. Still, the system is part of the backbone of Somali culture, and often the women have no other choices.

### Customary Barriers to Courts and other Services

#### Statutory Courts

Statutory courts exist as an alternative to the customary system, but they are often viewed as either inaccessible, or so entwined with the customary system as to be rendered ineffective. Somaliland was the only region in which women felt that courts were a viable forum for their HLP grievances. This is likely due to the more structured and secular nature of Somaliland, as well as the existence of several legal aid and human rights organisations that have focused on providing women legal assistance. For example, the Somaliland Women Lawyer's Association said that as a general rule, they would help take any woman's case involving land to court, because customary rules left her little recourse.

The feelings of the IDP women themselves were somewhat more ambivalent, though most said that if they had money, they would prefer

<sup>111</sup> Norton (2008); Vargas (2011)

using the statutory court rather than the *tol* (customary court). However, many women also indicated that access to a court might not be as straightforward as finding a lawyer or organisation to take her case. In all study sites, women confirmed that disputes would go to customary elders as the first step in finding a solution. Women who tried to go to the court first found that they would not get very far without if they did not have the support and approval of the Elders:

#### BOX 27: "WE CAN'T GO TO COURT."

- "The case can only go to court if the customary way fails three times. The Elders will interfere if you try to bypass them and go to court. The problem here is that elders control everything." – Woman in Dollow
- "The Elders came to the court, and told the judge not to hear the case. They said they would handle it 'their way.'" – Woman in Hargeisa

Other reports have commented on the routine practice of courts registering/confirming decisions made by traditional leaders. Of the judiciary in Somaliland, the Academy for Peace & Development writes:

*The judiciary tends to be soft on conflict issues, generally preferring to defer to and seek mediation from the elders instead. After mediation, the courts announce the decisions. The decisions may not be in line with procedures, but what is decided by the elders 'for the common good' is usually adopted. This reduces public confidence in the judicial system and the stature of the court, rendering its decisions ineffective and sometimes unjust.<sup>112</sup>*

Even if women are able to get to the court, they continue to face obstacles related to the discriminatory nature of Somali culture, as the women's stories suggest that the value of men and women's words in court are not yet seen as equal. Host community women in Dollow explain that it is difficult to bring a case against a man because: "Women are down; men have more power. Most of the time, men can bring fake witnesses, and [the court] will believe the men."

Additionally, despite having the right to speak for themselves in court, interviews in Mogadishu suggest that in some courts, women would still be required to have a man there to speak for her. One male member of the court justified undermining a woman's autonomy and ability to protect her rights as in her best interest:

*If the woman comes alone, the court will ask if she has a father, uncle, brother, or some other male to speak for her. If she says yes, she must bring him. If she says no, the court will do a background check, and send someone to ask the clan. This 'makes the case easier for her.'*

In seeming contradiction to the women's reported inability to access courts, humanitarian staff and government officials are generally confident that women have access to the courts and administrative institutions. Yet, it is likely that both realities are true. Government, NGO, and civil society actors have made significant strides in increasing the accessibility of these services for women, but there are

<sup>112</sup>Academy for Peace & Development (2006)

likely still many others who face other obstacles, or who have not been able to benefit from these efforts.

#### Mediation

Elders also inadvertently act as gateways to mediation services provided by NRC in certain areas, but this phenomenon seems more a by-product of operational security conditions rather than intentional action. The NRC programme supports paralegals to facilitate mediation services inside the IDP settlements. However, in highly insecure conditions such as Mogadishu, NRC protects programme staff by ensuring that staff movement is not widely known. Because they cannot advertise their presence, or the times and phone numbers of staff, the NRC mediators would tend to take cases that are referred by community leaders, typically because disputants were dissatisfied with how the Elders treated their case.

While this is generally a good example of cooperation between international actors and the traditional leaders, dispute resolution service providers should be cautious of allowing these leaders alone to determine who can and cannot access their services. Somalia is a hierarchical society, and controlling access is often a symbol of status. For example, in Garowe, it was noted that members of the IDP committee were very insistent on monitoring access to IDPs and followed the mediation work very closely. In general, it would be helpful to consider how more women could be made aware of NRC services without endangering security of NRC staff, and to further examine how accessible IDP women find these services to be at present.

### **Fear of Violence and “Family Matters”**

**3.5.5** —

One of the most significant obstacles to women's ability to exercise their HLP rights, particularly within the marital household, is domestic violence, or the fear of conflict that could trigger such abuse. As has been described above, violence perpetrated by husbands who are angry when their wives exercise their HLP rights is a pervasive threat. Stories from the women, members of IDP committees, and mediation service providers all confirm that the typical outcome of a domestic violence case in the traditional system is some attempt at agreeing upon compensation for the pain and injury that was inflicted upon the wife, and a promise by the man not to harm the woman again. But, there is little in the way of enforcement or guaranteed protection for the women. As they explained, “Some men are good. But others, they will repeat.” Women in Somaliland report that even if the court is available, its enforcement power is weak. “Sometimes the men won't respect the judgment, and then they will kill her.”

Unfortunately, there is also a reluctance in the Somali culture to use a court or government institution for “family matters.” Judges and government officials themselves felt that family issues are best resolved within the clans or by the elders, and because conflicts stemming from women trying to claim their HLP rights are often categorised as such, she is encouraged to keep this within the customary system and to find a way to keep the peace within her family.

### 3.5.6

#### Legal Institutions: Understanding who does what

Compounding the obstacles just discussed regarding access to courts is the general lack of clarity about Somalia's legal institutions.

In 2005, Le Sage identified four different justice systems in Somalia: 1) formal judiciary structures in regional administrations and central governments created at international peace processes; 2) *xeer*, the traditional, clan-based system; 3) Shari'a courts in urban areas, particularly Mogadishu; and 4) civil society and private-sector initiatives, as well as ad hoc mechanisms established by Somali militia-factions.<sup>113</sup> Even before the conflict, legal questions of jurisdiction, conflicts of law, and procedure abounded. Courts in northern Somalia continued to rely on precedent, while courts in the south applied civil and penal codes, resulting in courts using different laws in accordance with the region's history, and the knowledge and language skills of jurists.<sup>114</sup> A recent 2014 report counts at least six governments overlaying that structure: the Federal Government of Somalia in Mogadishu; the government of self-proclaiming independent Somaliland; the government of autonomous Puntland; a half-formed government in the Baidoa/Bay region seeking autonomy; a nascent autonomous government in the Jubba area; and a separatist group that claims to possess a government structure.<sup>115</sup>

The level of legal education of members of the court is also quite varied, making the effectiveness of the court as a source of justice somewhat questionable. For example, a 2012 IDLO report found that of the 22 judges in the Mogadishu District Courts, six had university legal training, three had Shari'a training, and thirteen had no formal education at all; no judges in the Hodan, Hamarweyne, Wardhigley, and Dharkenley districts had a university-level law degree.<sup>116</sup> In Puntland, out of 104 judicial officers, including 52 judges and 10 prosecutors, 5 have university law degrees, 13 have university degrees in Shari'a, and 15 have informal or "police" training.<sup>117</sup>

What IDPs referred to as "Islamic courts" or "Shari'a courts" during this study should be distinguished from the specific Shari'a courts that were established in Mogadishu to serve and protect the Hawiye clans in Mogadishu;<sup>118</sup> most references to an "Islamic court" seemed to loosely refer to proceedings where a religious scholar examined the case and made a decision based on Islamic law. Instead, in Puntland and parts of South Central like Dollow, respondents described the court simply as an institution that could apply Shari'a for family matters, or criminal law for serious crimes like rape. Adding further confusion, what IDPs in Dollow called "the court" was in actuality an audience with the District Commissioner, who functions like court for most matters, with serious crimes and cases being referred to Mogadishu.

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<sup>113</sup> Le Sage (2005)

<sup>114</sup> *Id.*

<sup>115</sup> Drumtra (2014)

<sup>116</sup> International Development Law Organization (2012)

<sup>117</sup> *Id.*

<sup>118</sup> Barnes, C. and Hassan, H. (2007)

In contrast, in Somaliland and highly urban contexts like Mogadishu, Shari'a courts, and statutory courts were generally understood as 2 distinct and specific concepts.

Somaliland has the most order and predictability, with its own Constitution, laws, and courts. In practice, the most relevant areas of law for women's HLP rights – family law and inheritance – are based on Shari'a, so both statutory and Shari'a courts would have similar outcomes. Where human rights organisations or legal aid providers are present and functioning, there appears to be a growing preference among the women to use the statutory court for cases involving violence and HLP rights. However, many women said they still could not use the court unless they received monetary support for costs like fees and transport. The Shari'a courts in Somaliland are a separate institution, and although all women in Somaliland seemed aware of them, none of the discussion participants reported having gone to one.

In contrast, women in Puntland reported far less knowledge and confidence in state court systems, and greater reliance upon clan identities and systems. However, the municipal governments are increasingly engaged in IDP matters, particularly where they relate to housing and land initiatives, and IDP women and service providers indicated that a large number of HLP disputes have been brought to the municipal government. In Garowe, female officials from the Department of Gender and Village, Land Registration, and Health Services explain that they have good relationships with the IDP committees in the settlements, and work to ensure that the women understand their rights. Female authorities in Galkayo explained that they do a significant amount of outreach with the women in the settlements to raise awareness of rights and address problems that occur.

There is significant confusion throughout South Central, and little clarity about which rules particular courts or institutions are using. Evidence gathered during this study suggests that many IDP women, and some local government employees themselves, view the administration representatives as the most useful source of assistance. This is likely due to the fact that women's access to HLP rights in displacement is generally linked to assistance that has been provided by international humanitarian actors, who are working closely with the government; they are thus well-positioned to explain the protections and rights that women have under these interventions. Other IDPs in camps in Mogadishu appear fairly self-contained, telling the study team that they resolved all problems internally within their settlement committees.

Finally, while all discussion participants agreed that all Somalis should follow Shari'a, it was less clear whether they knew what Shari'a said. In one interesting session with male participants, the study team asked the men whether joint ownership and title (i.e., having the names of both the husband and wife) was possible in Somalia. After some internal debate, the men decided that such a practice was not allowed under Shari'a. Among the group was a religious scholar, who had remained quiet during their discussion. After the other men had given the study



team their answer, the scholar corrected the others, providing clarification that partnership, and things being owned in partnership – including between husband and wife – was recognised and allowable under religious law.

### 3.5.7

#### Perceptions of Power: Relations in the Household

Displacement and humanitarian interventions are changing the power dynamics and gender relations in households, but the traditional assumption that the husband is the superior authority remains a significant obstacle for women seeking to exercise her HLP rights. In Somali culture, the man is recognised as the “responsible” one, who must earn money for the things the family needs, and who has the most authority and final say over family decisions. Although men’s position as the head of household is not questioned, in practical terms, their authority and power in the family is closely linked with the ability to earn money; as they start to lose that, their ability to retain the superior position is drawn into question.

In her influential writings on land rights for women, Agarwal suggests that a rural woman’s bargaining strength within the family vis-à-vis subsistence needs would depend on eight factors: ownership of and control over assets, especially arable land; access to employment and other income-earning means; access to communal resources such as village commons and forests; access to traditional social support systems such as of patronage, kinship, caste groupings, etc.; support from NGOs; Support from the State; social perceptions about needs, contributions and other determinants of deservedness; and social norms.<sup>119</sup>

Whereas the majority of these factors tended to lean in men’s favour in the rural, pre-displacement context, the changes caused by urban displacement are potentially tipping the scales back slightly in women’s favour, though not yet enough to be in equilibrium. In urban displacement, the majority of IDPs do not own the land and houses in which they are living, which weakens one of the primary sources of men’s bargaining strength and power. Similarly, access to employment, which was previously not available to rural women, is now available to both men and women, with the reality that it is women who are now earning more income. NGOs and the State have also been able to provide more support to women in the urban areas.

With these changes, women are beginning to assert more control, and men increasingly feel that their authority is being undermined. Those who are unable to cope with these new circumstances and show signs of questioning their own sense of empowerment can be the biggest, practical obstacle to a woman’s ability to exercise her HLP rights, as will be discussed in more detail in Part IV. The majority of men spoken with for this study viewed decision-making authority within the family unit as a zero-sum construct: that is to say, any gain in women’s control (i.e., any increase in her ability to make decisions about how to use land and/or property) came with a corresponding diminishment in

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<sup>119</sup> Agarwal (1997)

men's authority and control. A major challenge in supporting women's struggles here will be the challenge of reframing this dynamic within the home.

Consistently throughout the study, men, often in positions of authority, implied that women's empowerment is causing a decline in society. While agreeing on the one hand that helping women brings more positive benefits to the household, they also frame women's empowerment as the cause family and social discord. For example, one male authority figure observed:

"Girls are misusing [their rights]. Women are saying they have rights and causing trouble. Before, they used to be shy; now they will fight even with the elders. Families are falling apart because there is no one at home to watch the children."<sup>120</sup>

These comments insinuate that women must remain subservient for both the family and the society function peacefully. Yet, while suggesting that the family is falling apart because women are working, little reference is made to the failure of men to either contribute economic resources or to care for the children. Unfortunately, this sentiment was not uncommon; even when men supported the idea of women's empowerment, they did so only to the extent that it did not threaten the existing gendered hierarchy of authority.

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<sup>120</sup>Interview in Dollow

4



## LOOKING FORWARD: NEW CHALLENGES, NEW OPPORTUNITIES

## WHAT DO WOMEN WANT?

4.1

This report has documented many of the obstacles and practical realities faced by Somali women in trying to access and exercise their HLP rights. It has also tried to examine how displacement and existing humanitarian interventions are further affecting women's HLP rights. Ultimately, the fundamental question is how to help the women turn the tragedy of their displacement into a story of opportunities:

- To be heard and fairly treated
- To claim their HLP rights and still have marriages with respect
- To be economically empowered, and
- To seek justice when they have been wronged.

### Let us be heard

4.1.1

#### BOX 28: GENDER PERSPECTIVES

Men: The women are shy.

Women: They don't listen to us.

Male authority figures and service providers consistently told the study team that “women were shy,” and while there is some truth in that sentiment, it is more important to look at the institutional factors that influence women's decisions not to speak. Most government officials and police officers are men. Customary Elders are men. Judges are men. Even the majority of NGO workers are men. In a culture where a woman is strongly discouraged from speaking with men outside her family, there are few options as to where she can go and who she can speak with. In the customary forums where her rights are adjudicated, she is not allowed to speak for herself, and even in statutory courts, she is pressured to bring a male representative to speak for her. While some Somali women may be “shy,” the research suggests that women do not have a problem with speaking; they have a problem with finding spaces where they can speak, and decision-makers they can speak to.

During the discussions where women shared stories of being denied inheritance rights, of being forced out of her home with nothing, or of being forced to give up her mahr, a consistent theme that came up was a sense of hopelessness – that there was no one to talk to who had the power to help. If she went to the customary Elders, she had to find a man to speak for her, which was understandably difficult if the men in her life (like a brother or husband) were the cause of her problem. Even after the Elders heard her case, she would likely be told to “be patient,” or to “find a solution.” Additionally, the social pressure to conform is great, and a Somali woman's life typically depends on the need to be accepted and supported by her family and the clan. Referring to her inability to seek help to claim her inheritance, one woman in Mogadishu explained, “Women can't talk about inheritance in front of the elders, and we are ashamed to ask our brothers. Confronting the Elders would cause problems.”

IDP committee leaders confirm that in the settlements, women bring their problems to the female representatives, and men bring their problems to the male representatives. NGO workers find similar preferences in their work; it is difficult for men to provide counselling assistance to women, because women may not tell him the whole story; for example, women are unlikely to tell men outside her family if she is being abused by her husband.

Most IDP women in the study sites came from rural areas where the culture of male control is strong; and they have lived in a society that strongly discourages them from questioning or undermining male authority within the family and clan. That they are reluctant to do so still should not be interpreted as agreement, but perhaps as a learned behaviour to avoid conflict or loss of the social structure on which their life depends. The notion of what is socially acceptable, and what is not, is constructed by those who have the power and position to impose their views. While the women interviewed expressed a desire for a “responsible” husband who would treat her well and care for the family, they also strongly desired choices that would allow them to exercise their rights if they wanted to, and to have alternatives to abusive or “not responsible” men.

#### 4.1.2

### Our HLP Rights under Islam

#### BOX 28: GENDER PERSPECTIVES

- Men: Women are protected by religion.
- Women: We would be happy if they follow religion.

In all study sites, the majority of women knew that they had rights under Islam to own and control land and property, and expressed the desire to do so. While there were a few women who said they did not have any rights (reflecting the position of customary law), other women in the group corrected them, affirming that women had rights under religion. Islam is a primary source of rights for the women; and as statutory law is based on Islamic law, it is unclear whether looking to statutory law would further strengthen women’s property rights to mahr, inheritance, maintenance, and other HLP rights.

The ability to access and control any land, property, and/or housing to which she is entitled provides a foundation upon which women are able to forge their independence. As Coomaraswamy argues:

*[W]omen's equality will only come about with women's economic independence and, therefore, access to land rights is imperative with regard to other areas of women's rights. For example, domestic violence might decrease if women have their own plot of land and their own economic resources ... Access to land also provides security against poverty in old age. With access to land, women's status and bargaining power will increase dramatically.<sup>121</sup>*

<sup>121</sup> Coomaraswamy (2002)



Unmarried women typically said poverty was their biggest obstacle to their HLP rights, while married women identified both their husbands and poverty as the main impediments. According to women in the discussion groups, men tried to maintain control by coercing them into giving up money they earned, and threatening or inflicting violence if they tried to claim ownership rights of property. Although men use religion to justify this behaviour, none of these strategies are sanctioned by Islam.

Men's attempts to frame their obstruction of women's rights as in her best interests were equally unconvincing. Contrary to what some men suggested, the women did not believe that a husband who gave her mahr was going to divorce her. All women were vehemently opposed to the growing practice of having to release their mahr in order to obtain a divorce from an abusive husband, and made a clear distinction between the intentional refusal to give mahr, from the situation where husbands simply lacked the economic capacity to give mahr.

Regarding inheritance from their parents, many women stated that although they would have liked to receive it, they did not believe they had any options if their brothers disagreed. Male authority figures and service providers said that "inheritance is not a problem," because of the clarity of Islamic law, implying that women who do not receive inheritance do so out of choice. However, the women explained that they did not ask, either because they felt ashamed to mention the matter, or because they expected a denial. Women in Mogadishu listed their options as follows:

- The only solution is that the father or brother must give when he is alive
- We must depend on our brothers and negotiate
- We can go to customary court and traditional elders, but there are only 2 options: They will either give or tell us to let go

### **Economic Empowerment: We Want Choices**

### **4.1.3** —

The displaced Somali women interviewed for this study generally framed their goals in terms of being able to provide for themselves and their children. Currently, the majority of women indicate that they are collecting garbage, washing clothes, and collecting firewood to earn money. These tasks require that they leave their settlements to go to town, which they cannot do if they do not have husbands, family members, or neighbours who they trust to watch their children. If they can find trustworthy childcare, many still cannot afford to travel to town because of transportation costs. Finally, even if they can deal with both those challenges, they still risk of being attacked or raped during the journey.

Given all these issues, most women asked for technical skills and other support that would allow them to run small shops, which can be done from their homes, and so allows them to balance childcare and other domestic chores with work. Women in local government also noted the need for women to better understand how to run a business, explaining that "women sell things, but they don't know how to calculate cost and profit."

Without a stable income, women who are renting homes live in constant fear of eviction if they cannot make their rental payments. The importance of having a livelihood is obvious for women-headed households, including widows, and divorced and abandoned women. As the sole provider for her family, she must find a way to balance the demands of caring for children, managing a household, and earning money by herself. However, those wishing to assist must ensure that in focusing on one group of vulnerable women, they do not lose sight of the others. It is of equal import to ensure that married women are not overlooked, simply because they are married.

Typically, vulnerability assessments by humanitarian actors have relied on the reasoning that married women have another adult in the household, and thus must be less vulnerable than her single counterpart. Yet, widespread testimony during this study indicates that many husbands are unable to contribute financially due to the inability to find work or responsibilities for other families, and are unlikely to contribute significantly to domestic responsibilities due to social and customary practice. The result is that married women with husbands in that category have an additional adult to care for, adding to her workload.

Women in focus group discussions who said it was better to be single were not single – they were married with husbands who were not contributing to the household, but were still making demands on her time and earnings. While this logic may appear somewhat counter-intuitive, the phenomenon has been noted elsewhere, as illustrated by observations from gender and developmental scholars:

**BOX 30:** One year after markets in Zambia were liberalised in the 1980s, and the price of fertilizer increased, a study showed that entire villages abandoned maize production (which required fertilizer) for soy bean production (which did not). Traditionally, income from soy was considered women's income, but after the shift in crops, conflicts increased as more men started claiming the profits. "Contrary to conventional wisdom, married women were particularly vulnerable due to the fact that 'While wives have no claim to husband's earnings, husbands make culturally legitimated claims on their wives' time, work, and in some cases income.'"

The men interviewed during this study seemed afraid that if women had greater control of land and property, it would undermine their authority and diminish their importance as men. Yet, women did not want to be the "man" of the household, as the men seemed to fear. On the contrary, unless they had specific, bad experiences with their husbands, they still believed that it was better to be married than single – that it was better to have someone to "help support you, to watch the children, and to talk and cry with." Women want "good husbands," who try to help provide for the family, and who will not threaten them or treat them badly for attempting to seek some autonomy and respect.

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122 Beneria (2003)



### BOX 31: "I WANT TO STAY AND FOR US TO HAVE A GOOD MARRIAGE." - RAJA, DOLLOW

The organisation gave me the card for the house I live in with my husband. But now, he is always arguing with me about the card. Over and over again, he asks me why it is in my name. Maybe he is afraid – maybe he thinks I will leave him now. But I don't want a divorce. I want to stay and for us to have a good marriage.

Women interviewed for this study did not want houses or land so that they could be free from their husbands; they wanted them as protection in case their husbands threatened or abandoned them. Somali women are no different from women elsewhere in desiring to be free from fear of abuse or abandonment, or being pushed out if their husbands take other wives. However, if such things happen, they need an exit strategy from a disastrous marriage that allows them to care for themselves and their children. Knowing they cannot be forced from their home was viewed as a substantial base for such a strategy. Women are already well skilled in managing money; what they want now are more and better opportunities through which they can earn it, so that they can have better choices about how to live their lives.

## Justice, regardless of gender

4.1.4

### BOX 32: GENDER PERSPECTIVES

- Men: Our customary system is fair.
- Women: If there is conflict, it is always men working to resolve the problem. And men will always support men.

When asked whether the customary system of dispute resolution was fair, all men answered in the affirmative, many women were hesitant in answering, and a less but not insignificant number answered in the negative. This ambivalence is not surprising; women are excluded from shaping the rules of the system, from acting as decision-makers in the case of the disputes, and often from speaking for themselves if they have grievances. It is relevant that many women were reticent to

openly criticise the system in front of their peers, but calls to mind an observation by Agarwal:

*Observationally it is difficult to infer from people's overt behaviour whether they are conforming to an unequal order because they fully accept its legitimacy, or accept it partially, or out of fear, or because they believe they have no other options. For understanding women's perceptions about the inequitable nature of gender relations, we therefore need to examine not only their overt acts of resistance but the many covert ways in which they express their disaffection.<sup>123</sup>*

Using that approach, while not attacking the Elders or openly calling for new ways, the women's statements about consistent unfairness and lack of representation and voice would certainly indicate unhappiness with the prevailing order of norms. Additionally, comments from the men also suggest that women are questioning the system, blaming with varying degrees of irritation and anger what they view as outside interference:

*"Before, women would accept what men would say. Now more conflicts are coming from the work of the organisations."* – male IDP leader, Galkayo

Looking at available alternatives in which to seek justice, all displaced Somali women interviewed for this study believed that the Islamic court was fair, (noting that most references to an "Islamic court" seemed to loosely refer to proceedings where a religious scholar examined the case and made a decision based on Islamic law, rather than the specific institutions that arose in Mogadishu). Proceedings in statutory court were viewed as possibly being fair, with the twin caveats that some organisation or outside actor provided "support" (typically referring to financial and legal assistance), and customary Elders did not interfere in proceedings. At the same time, none of the women who expressed these viewpoints had actually used the court systems, and while factors like cost and distance (or even existence) of the court are likely the most practical obstacles to access, women were most emphatic about the difficulty of "going around the Elders" in explaining why a court was hopeless or out of reach.

Ultimately, responses from women during the interviews did not indicate any real measure of confidence in existing systems to help them obtain justice. Unable to articulate for a reality they have never seen, the women only know that the way things are now is not fair, and they want something better.

## 4.2

## WHAT CAN WE DO?

Part IV(A) above documents the needs and desires articulated by women during this study. This section will now discuss ways in which international actors can use their resources and influence to respond to those needs. The following list is not exclusive, but seeks to highlight practical and useful ways through which external actors can support

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<sup>123</sup>Agarwal (1997)

women who wish to claim and exercise their HLP rights:

- Creating a space where women can speak and be heard
- Facilitating access to decision-makers
- Empowering women to claim their rights
- Increasing access to justice
- Protecting women who claim HLP rights
- Working with governments to support women, and
- Implementing programme activities in a gender-sensitive manner

## **Help Women Be Heard: Raising Women's Voices**

**4.2.1** ———

### **Space to Speak**

**4.2.1.1** ———

Somalia's displaced women need a space where they can speak. Historically, women have found strength in numbers in order to make their voices heard; this is a common strategy observed in many parts of Africa, where women's associations have proliferated. However, it is difficult for displaced Somali women to form such groups, as they must focus all their energies on finding work and securing food and shelter, with little time to take up larger causes. Their current plight of displacement has torn apart connections with family and friends, and the women must spend nearly all their energy focusing on survival. There are few spaces where women can come together and talk about problems, and discuss possible ways to improve their lives. Being forced to face overwhelming challenges alone can have longer-term, negative impacts on the women's outlook on life and hopes for improvement.

Additionally, IDP women would benefit from greater exposure to women in positions of strength or authority, and there should be a space where successful women can share their message and experiences to encourage the displaced women and give them hope. Groups of strong host community women, such as the Somaliland Women Lawyer's Association, and women in local government, are already helping the displaced women. However, IDP women need more active roles in these efforts, such that they are not simply passive beneficiaries of assistance, but also have the opportunity to use their strengths to improve their plight.

Organisations like NRC can leverage the relationships they have with these various parties to help create a platform or space where they can start dialogue. For instance, NRC is already working with local government actors and IDP women very closely in Puntland; relationships like this can start as the foundation. Legal assistance actors can also be included where present and able to support women's HLP rights, such as the Puntland Legal Aid Clinic in Garowe, or the Somaliland Women Lawyer's Association in Hargeisa. NRC can use its community ICLA centers as a safe space to bring the women together, grow their networks, and benefit from the different experiences, personalities, and expertise together.



Seeing other women speak freely and hold positions of authority can encourage displaced women to speak themselves, and serve as proof that women can succeed and have better lives. This exposure holds significant value, as noted by other gender scholars:

Women and men constantly adapt their choices to what is happening around them. If the context does not provide fair conditions for action, this inequality is registered by households and individuals, and shapes their preferences in ways that may be detrimental (particularly women). These “adaptive preferences” have an impact on agency. What you do not see, you do not know and you cannot aspire to.<sup>124</sup>

The practical meaning of the above paragraph is illustrated by the exchange with women in Kabasa Settlement in Dollow, in Box 33 below:

### BOX 33: “WE HAVE SEEN THINGS WE DIDN’T KNOW BEFORE.”

- Question: Were you able to receive your inheritance in the places you come from?
- Answer: No, usually our uncles or brothers will take.
- Question: Do you think the same thing would happen now when you go back, or are things different now?
- Answer: Things have changed; we have changed. We know our rights now. We have seen that women can go to court, and that they can go to the police for help. We have seen things we didn't know before.

#### 4.2.1.2

#### Access to Decision-Makers

Bringing women together to build confidence to speak is the first step. Next, it is necessary to help women gain access and audience with the male decision-makers in both statutory and customary systems. The reality remains that the vast majority of decision makers and political authority figures are male, and women will have a higher chance of advancing when men and women cooperate. In this author's experience with other patriarchal African societies, facilitating communication between women and male leaders can help build the foundation upon which women can explain the discrimination they face and the improvements they seek.

For example, male government authorities interviewed by the study team did not believe that accessing inheritance was a problem for Somali women, because their rights are expressly outlined in the teachings of Islam. Even though the reality is far different, the IDP women do not have easy access to their leaders to explain the problem in comfortable and safe settings. An organisation like NRC that works closely with influential government authorities who are interested in improving the plight of IDP women could help create a space where IDP women can articulate and present their message.

Bringing together women and male customary leaders may be a more complicated undertaking, but remains an extremely important one. The Somali displaced women said that they are generally not able to

<sup>124</sup> Munoz-Boudet et al. (2012)

speaking directly with the Elders, and often cannot speak for themselves. Their cases and grievances are brought to the Elders individually, so they have not been able to utilise the strength of speaking collectively. However, if women are able to speak together to strengthen their voices, backed by government or NGO actors, the Elders may be more inclined to listen, and gaining their support can lead to great improvement, as illustrated by an innovative programme implemented by the Danish Refugee Council (DRC) in Somaliland:

#### BOX 34: EXCERPTS FROM “UNLIKELY ALLIES”

Recognising the importance of *xeer* as the dominant method of conflict resolution, the DRC decided to support a pilot project aimed at strengthening the customary *xeer* system in order to enhance the security and protection of vulnerable groups.

The first step was to facilitate a series of dialogues that brought together over 100 elders from five clans in Togdheer. This resulted in the Declaration of the Togdheer House of Aquils, which the elders signed in September 2003, committing themselves to curbing the main causes of inter-clan conflicts and addressing specific aspects of *xeer* that violated *shari'a* and human rights. An awareness campaign followed, led by 54 elders and reaching over 100 villages in Togdheer. A further conference, attended by 92 elders, was held in Burao, Togdheer Province, from 28 December 2003 to 1 January 2004. This conference produced a final resolution, [which] ... included, *inter alia*:

- the protection of the right of widows to inherit according to *shari'a* principles;
- the protection of the right of widows to marry men of their choice (eliminating the practice of *dumaal*);
- increased protection for vulnerable groups such as orphans, street-children, persons with disabilities and IDPs; and
- the formation of committees to resolve conflicts that were deemed threats to ongoing peace and security.

Although the project ultimately found that the goodwill of elders alone was not sufficient to “overcome the broader issues of gender and social discrimination deeply entrenched in Somali norms and culture,” the project did note some success, in that subsequent evaluation found “increased and more consistent referral of intentional and revenge killings to the state justice system, harmful practices such as *dumaal* [had] been abolished, and women’s access to inheritance has been increased.

Establishing a link between women and male authority figures is crucial to ensuring that the leaders of Somali society understand that the mistreatment of women and denial of their rights is more widespread and damaging than they wish to believe. During the study, men of all stations acknowledged that there are “some” bad men who disregard the teachings of Islam and are not “responsible” husbands and fathers. However, this partial recognition prevents honest engagement with the pervasive nature of the problem and blocks social change, instead hewing to the fiction that it is only a small number of women who are asked to suffer for the good of the family and society. A key strength of an actor like NRC is the ability to use its relationships with both statutory and customary authorities to assess who can engage in reshaping this conversation to include the voices of women.

<sup>125</sup>Vargas (2011)

<sup>126</sup>Vargas (2011)

While the goodwill of the Elders was not enough to effect all the desired changes in the DRC project referenced above, it is clear that failure to gain the support of customary Elders can conclusively prevent women from accessing their rights, as evidenced by women's dissatisfaction with the decisions of Elders, and their interference in women's court cases. During this study, displaced women shared convincing stories and arguments about the strength and benefits of the customary system, as well as why they needed better treatment and voices under that system. The women are capable of explaining what they need, and should be given the opportunity to make their case to the ones who are better positioned to do something about it.

## 4.2.2

### Empower women to claim their rights

#### 4.2.2.1

#### Increase knowledge of women's rights

As noted earlier, all Somalis agreed that women's rights regarding mahr, inheritance, and divorce are clear under Islam, and should be followed. However, discussions revealed that there was some confusion about what Islam says, and at times a conflation with more discriminatory customary practices. International agencies should work with all stakeholders, including religious, traditional, and civil leaders, to help clarify what Islam says, and raise awareness among both men and women regarding these rights.

It is important to ensure that both men and women are better trained on women's rights, and to emphasise the underlying right of all women to directly own land and property, protected by the Qur'an. In addition to clarifying the rights protected by Islam, these sessions should also facilitate more open discussion about why women are unable to access these rights. During the study, men insisted that Islam was followed (or should have been followed), and were reticent to admit that they were in fact denying women these rights. Thus, women and those who support them can capitalise on the fact that the majority of men take the public stance that Islam should be followed, by providing them the knowledge and tools to do so.

Such discussions can be sequenced, and agencies should consider how to safely facilitate dialogue between men and women themselves. This may be practicable in some settings but not others, and a programme could start with gender-segregated sessions, and then move on to integrated sessions after assessing the context and potential risks. As noted above, an overarching theme of external interventions should be the consideration of how to get men and women to talk about these issues collectively and with each other.

#### 4.2.2.2

#### Increase opportunities to access rights

Actors who wish to empower women to exercise their HLP rights must also consider how to create more opportunities for women to do so. Referring to education as an example, the World Bank Gender Study notes:

*Opportunities have not been equally distributed among women and men. For example, the fact that girls have achieved so much progress*

*in education is as much a shift in the distribution of opportunities as a change in society's view of what women and men are able and capable of doing. Most societies at different stages have resisted educating women. For some, educating women was not "natural": the reasons have ranged from ideas that women's nature does not include the ability to learn, that women do not need education to secure their future, to that there is no need for incentives for educating women. Teaching women to read and write was considered wrong because "a learned lady threatened male pride." But today, most societies agree on the value of education for both girls and boys.<sup>127</sup>*

Similarly, IDP women in Somalia have had few opportunities to exercise their HLP rights. For instance, many men and women in discussions affirmed that a woman can own a house or property if she purchases it with her own money. However, the reality for the vast majority of women is that they do not have the financial assets to accomplish this, and are often too busy with childcare and housework to find paid work as well. That women can and will seize opportunities that are made available to them is confirmed by looking at their response to humanitarian shelter interventions that given them title to their homes. Even at the risk of abuse and violence, the Somali women have demonstrated the tenacity and will to protect their HLP rights once given the chance to claim them.

The case of the IDP women in Baidoa who were given CGI shelters, and who subsequently defied a gatekeeper's demand for rent (discussed in Box 4 above) is an illustrative example: in offering title for the shelter to the women, NRC created a new opportunity for them women to exercise their ownership rights. This action contrasts sharply with the traditional practice of assigning ownership to a male head-of-household, which while not done with ill intent, has the practical effect of denying women an opportunity to exercise her HLP rights.

Humanitarian actors must examine their interventions carefully to see if they are distributing opportunities to men and women equitably, and ensure they are not inadvertently favouring men due to customs and traditional practice. Where possible, interventions should be structured to ensure that women have, at a minimum, a choice to exercise their HLP rights.

#### **Economic Empowerment: Confidence to make choices**

#### **4.2.2.3**

The goal of empowerment is to increase a woman's autonomy and control in deciding how she wants to live. In addition to having opportunities to access HLP rights, she needs the ability to choose to do so. Economic empowerment is one of the primary ways to increase women's feelings of confidence and strength, and women interviewed during this study indicated that knowing they can earn and control money helps them be better women and mothers. This strength frees them to make the choices that are best for the children, themselves, and the family without fear or abandonment, eviction, or divorce. This is also consistent with what has been seen in other countries:

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<sup>127</sup>Munoz-Boudet et al. (2012)

*[M]en and women explained that they gain more power and freedom in their lives through occupational and economic initiatives that mainly include getting a better job and sound financial management. Among the four groups (men and women, urban and rural), economic activities account for about one-third of the factors mentioned.<sup>128</sup>*

Financial security can reduce the fear of eviction and decrease dependence on men, allowing a woman to focus on the needs and actions that can improve her life. In a virtuous cycle, economic strength provides the sense of power and self that increases a woman's resolve to claim her HLP rights, and the ownership and control of property itself reinforces economic power. Many women interviewed during the study who knew they controlled their houses felt stronger economically, and were empowered to fight to keep that control, refusing to bow to traditional assumptions that denied them rights of ownership.

**BOX 35: "THE HOUSE BELONGED TO HER, AND THE MAN HAD TO ACCEPT THAT."**

My friend was given the card for the house the agency gave her. Then her husband got very angry with her, and he told her to leave. He said the house was his. She went to the government, and the government and the NRC office was able to help her. The government said that the house belonged to her, and the man had to accept that.

Women who lack financial independence are often afraid to exercise HLP rights if they think it will lead to conflict with men, because they are fully dependent on the men in their lives. As one woman from Hargeisa said, "Land and property belongs to men because they are responsible for the family. Changing this can cause conflict." Experience has shown them that when such conflict happens, women tend to lose, and as most have never had economic independence, they cannot take the risk.

Thus, even though IDP women dislike the circumstances under which they have been forced to work, they are starting to feel and appreciate the benefits of gaining economic control. They are finding that the ability to contribute to family finances and control assets improves their bargaining position at home,<sup>129</sup> and increases their ability to take more control of their lives. Economic empowerment can change the ending of the stories for the women who said, "If you have no money, there are no other options."

— 4.2.3

— 4.2.3.1

**Increase Access to Justice**

**Linking women, religious leaders, and traditional leaders**

Women know that Islamic law can protect their rights related to inheritance, mahr and divorce, and men acknowledge that Islamic law does protect women's rights. While this study could not conclusively establish why women were not more actively seeking to use Islam to claim their rights, it seemed that women lacked access to the appropriate forums where they can claim the protection of Islamic law. As

<sup>128</sup>Id.

<sup>129</sup>Id.; Agarwal (1997); Agarwal (2003)



mentioned already, all women referenced a court that uses Islamic law to pass decisions, though none had used it. Typical reasons of lack of money for transport were offered, and for some, the time and circumstances were not appropriate; for example, some women explained that their inheritance consisted of livestock back in rural areas to which they did not wish to return, and so there was little sense in pursuing such a case.

However, many women indicated that seeking outside assistance, including from an Islamic court, was just generally difficult. More research by implementing actors should be done to better understand the underlying cause, but if the reason is access, innovative mechanisms could be explored to bring religious leaders or scholars and women together. For example, UNDP has implemented mobile courts in Somaliland to increase opportunities for women to bring SGBV claims in statutory courts,<sup>130</sup> and a similar structure could be considered to help women connect with religious leaders who can clarify a particular woman's situation regarding HLP rights. Speaking of divorce, women in this study generally indicated that customary Elders did not take their claims seriously, but having the support of a religious leader may help strengthen a woman's case.

Improving this linkage with religious leaders can also help address enforcement problems. For example, some women said men would agree to anything in front of an Elder, and then continuously put off performance or payment. Strengthening these relationships, even with just a few religious or traditional leaders, can be the start of building a network that women can turn to for assistance.

#### **Facilitate access to legal assistance in both statutory and customary forums**

#### **4.2.3.2 —**

As statutory authorities made clear that women had rights to bring claims to courts (albeit, with a male representative), international organisations can help by continuing to facilitate legal assistance through either lawyers or paralegals in contexts where courts are available and deemed the appropriate forum. Where feasible, joint teams of men and women should be considered: women lawyers remain integral to such efforts, as women who need help will prefer to speak with other women, but this is an opportunity where the prevalence of male assistance providers is also an advantage. Rightly or wrongly, if courts feel more comfortable with men speaking for women, this may be an imperfect but practical method to explore as Somali women continue their fight for the right to speak for themselves.

The issue of interference by Elders regarding access to statutory court should also be further explored. Organisations can provide additional support for women by seeking to better understand why the Elders are taking such action, and if necessary, help make her case to the Elders as to why a court is the appropriate forum.

At the same time, less formal means of legal assistance could substantially help women in the settlements. As the vast majority of problems

<sup>130</sup>United Nations Development Programme (2014b)

are likely to be addressed internally, women would benefit from having more people within the settlement to go to for help, or more direct access to those who wish to help. External actors like NRC can help develop networks within the settlements, where women are trained on their rights and able to provide support for each other. Such networks should build on existing outreach and awareness initiatives that are currently implemented by local governments, and where possible, should include men who understand the importance and benefits of supporting Somali women. Ultimately, women need assistance in improving their outcomes when customary systems are used, as that is where the vast majority of their issues still go. The key stages in which they are fighting for access to or control of their rights are also typically viewed as “family matters” in which male judges do not wish to intervene.

Finally, the value of allowing women to speak for themselves cannot be overstated. Organisations can help create forums where women are able to explain to the courts, Elders, or other relevant stakeholders, the harms they suffer when their cases are refused or discounted due to traditions. Such an activity can help skeptical authorities understand the painful reality that persists for many women.

### 4.2.3.3

#### **Increase impact of mediation**

Mediation service providers should consider the feasibility of using mediation as a space to advance the conversation about women’s HLP rights, engaging both men and women. Mediation is providing valuable assistance to many, but at the moment, the majority of IDP women’s HLP cases are disputes between women themselves over land use rights and practices in urban settlements. There are some exceptions: notably, NRC’s mediation programme in South Central has had success in mediating cases of husbands attempting to force their wives out of homes provided by NRC, but this does not appear to be a significant portion of the caseload.

Because of its weak enforcement power, mediation is often limited in its ability to press outcomes that go against social norms. However, mediation can serve as a safe space where contested issues like women’s land and property rights can be discussed. Even if women are not always able to get the outcome they want, the process of mediation can still play a significant role in changing the norm of allowing women to speak about land matters with men and customary leaders.

The impact of mediation could also be increased if women had greater knowledge of and access to mediation services. In many study sites, IDP women in the settlements were unaware of mediation service providers, or did not know how to contact them. Knowing how to reach mediators directly (without first having to go through a male leader to have the case referred) would make a difference in impact for threats that happen quickly or involve violence.

One possibility to explore would be for existing mediation programmes to work with the actors to whom women turn to for assistance for HLP problems with men, such as local government authorities and legal aid clinics. While the dispute resolution mechanisms are different,

each of these forums represents a potential opportunity to engage in constructive discussion between men and women on this issue. The idea is not to supplant successful work that is already being done, but rather to incorporate an element of discussion where women and men must talk, and listen, to each other about these important but controversial issues.

### Protect women who claim their rights

### 4.2.3.4

#### BOX 36:

Question: What do you think NGOs or the government can do to help women claim their rights?

Answer: Protect them from violence.

Throughout the study, the prevalence of violence linked to women trying to claim their HLP rights was of consistent concern, particularly in Puntland and Somaliland. International actors who wish to support women's HLP rights must face the reality that creating opportunities for access is a crucial, but not sufficient step. Despite men's recognition that women have the right to own property, whether through purchase, mahr, or inheritance, the evidence indicates that denial of those rights is commonplace and often accompanied by physical threats.

The study team interviewed many strong women who were willing to suffer the violence to protect the claim to a house or land for the sake of her children, but many others may not be so able. Regardless, no woman should have to accept that violence is the price that must be paid for a right that is hers. Women, IDP leaders, NGO staff, government authorities, or other stakeholders that are likely to be aware of violence occurring must also be aware of protection referral systems where they exist.

Those who know where there is a high risk of GBV occurring should advocate for organisations that do address GBV to provide trainings or other activities to raise awareness of the problem and encourage women to seek help. Additionally, activities that are controversial and may result in unintended violence, such as those that question entrenched social norms or challenge the authority of dominant groups, should be preceded by soft programming to help sensitise stakeholders to the issue, and seek to mitigate the risk of violence early on. GBV is a complicated social problem that not any and every person is equipped to address. However, all actors should coordinate to ensure that those who can respond are made aware of the problem, and to facilitate a faster and more holistic response to displaced women's needs. This could take the form of a team consisting of both GBV and HLP specialists in recognition of the interlinked nature of these issues for many women, and at a higher level, the HLP Working Group could also serve as a coordination mechanism that links HLP actors to other clusters or working groups.

## 4.2.5

### Work with Government to Support Women

National authorities bear primary responsibility for protecting and assisting its displaced citizens; IDPs are citizens of their country and are entitled to protection and assistance on that basis alone.<sup>131</sup> For humanitarian actors, there are at times tensions between efforts to support government authorities on the one hand, and ensuring effective assistance to IDPs and maintaining independence on the other. Admittedly, the latter can be particularly challenging where some IDPs view agents of the state as a threat themselves, or governments are unwilling or unable to respond to the needs of its IDPs. However, this study notes that efforts to provide assistance to IDP women in accessing their HLP rights are the most successful where NGOs and government actors work together.

In one example of this partnership, governments identify land for IDP families, NGOs provide shelters and other community infrastructure, and the two work together to ensure tenure security. As a result of these projects, hundreds of households have confidence in their ability to stay in their homes, as well as the lands on which they reside (albeit to varying degrees based on whether the access to land is permanent or temporary). Including the IDPs, these three stakeholders offer different but necessary components to finding durable solutions: governments enforce laws that guarantee rights and punish violations; NGOs provide material and advocacy support, knowledge, and capacity building; and the IDP women have the determination to drive the processes that can bring about the changes they seek.

In Dollow (South Central), the District Commissioner and local authorities have been proactive in managing IDP affairs from the beginning. The IDPs in one of the settlements explained that when their group of approximately 150 families passed through the town on their way to Ethiopia, the District Commissioner came and told them that they could stay because the area was safe, and NGOs were present and providing some services. In Mogadishu, the National Commission for Refugees and IDPs has had some success facilitating cooperation between the government and international agencies (including NRC), particularly in regards the challenges surrounding government eviction.



<sup>131</sup> UN Guiding Principle on Internal Displacement; Principle 3

In Galkayo (Puntland), women members of local government working with IDPs are very active in working with NRC and IDP committees in regards to women's HLP rights. One authority in Galkayo said that she and the IDP committees carry out sensitisation and mobilisation activities to explain why it is beneficial to provide housing documents to women in the settlements. Another in Garowe (Puntland) reports maintaining regular contact with the IDP women to ensure that they know they can come to her office if they face any threats.

Government actors have the enforcement power that humanitarian agencies lack, and when functional, can support women in a way that agencies often cannot. As officials in Puntland explained to the study team, they make clear to the IDPs that men who violate women's HLP rights will be arrested, and if they are informed of the need, they will protect the women with the power of their office:

#### **BOX 37: "OUR OFFICE INTER VENED." - MUNICIPAL GOVERNMENT OFFICIAL, GAROWE**

When the humanitarian agencies distributed the tents here, they gave a tent to a woman. She went to town, and while she was gone, her husband called the police and asked them to detain her, because he wanted the tent. Fortunately, our office intervened, and the investigation showed that the tent was in her name, so she was able to keep it.

The female authorities interviewed for this study had direct experience working with displaced women, and so understood the challenges that they faced. Championing the need for education and livelihood interventions, as well as for strengthening land and housing ownership rights, women in office are some of the best spokespeople for the displaced women. Their existing collaborations with organisations like NRC should be strengthened and built upon to broaden the impact of their effort. Additionally, supporting women in office has the overall effect of strengthening women's political voice and representation, which will help ensure that displaced women's rights and needs stay on the political agenda.

### **Implement Gender-Sensitive Programming**

**4.2.6** —

#### **BOX 38: GENDER PERSPECTIVES**

- Man: "My wife chose to put our house in my name."
- Woman: "Men are responsible, so they own the land and property. Changing that would cause conflict."

### **Recognise Gender Bias**

**4.2.6.1** —

Those seeking to provide assistance to women must also hear and understand the viewpoints of women, from women themselves. As highlighted throughout this report, Somali culture is not one that encourages women to speak out publicly, and the vast majority of leaders and service providers in Somalia are male. Most NGO workers and representatives of groups specifically assisting women are male, and while their work is admirable and well-intentioned, the fact remains that men and women can have vastly different perspectives that impact how problems are seen and addressed. In carrying out the research for



this report, the author notes that while men working on HLP issues are far more accessible than women, basing decisions and programmes on their perceptions alone can have unintended effects, particularly in evaluating what types of improvements are prioritised, and which causes need to be addressed.

As this report has tried to show, there are marked differences between how men and women view women's HLP issues, such as the belief by men that inheritance is not an issue for women because they are protected by Islam, and the testimonies of women which show that the majority are denied inheritance rights by brothers, uncles, and in-laws. Men may sometimes have a tendency to interpret the women's failure to speak out certain norms as support for them, when in reality, most women have been conditioned not to question these norms to avoid bringing conflict or troubles which may worsen her position, illustrated by Box 38 above. Importantly, men and women also offered significantly different views and interpretations on the seriousness and prevalence of domestic abuse.

These are but a few examples of different gender perspectives on issues relevant to supporting women's HLP rights. In one area, the study found a tendency of the part of some male humanitarian actors to presume that women were the instigators in certain kinds of HLP conflicts, when a review of case files in fact showed the opposite. While this kind of bias may not be intentional, it is important for actors wishing to intervene to look for and address it within their own institutions. Unintentional bias is often the most difficult to address, because people may not recognise that it is colouring their decisions.

One way to counter internal institutional bias is by hiring more female staff. Unfortunately, this seemingly simple recommendation can be difficult to implement in a context like Somalia. One of the most obvious reasons is the fact that women have fewer education opportunities, and so appear less qualified than male applicants in exams or meeting job criteria. However, in the same way that seemingly "gender neutral" laws can have a discriminatory effect on women who historically have less freedom of movement or access to economic resources, so too can job requirements unintentionally favour men. This is not a new problem, and organisations must make difficult decisions as to whether they are willing to create positions that are specifically for women, or include particular actions to help women develop the skills that are required for employment.

#### 4.2.6.2

#### **Understand the Gender Sensitivity of Programming**

An important part of gender-sensitive programming includes understanding how interventions will impact both men and women. For instance, it has been noted that the traditional method of vesting control of assistance in the single head of a married household tends to have the effect of strengthening the position of male family members, vis-à-vis female family members. In context, giving title to land or shelter to the husband consolidates all relevant rights for him, with the result that the wife is less protected from the possibility of expulsion should problems arise later. Failure to consider who has claims on a

wife's earnings may similarly lead to an overestimation of the impact of an income generating activity given to women.

More thought must be given to how some family members may respond in reaction to the perceived benefits given to other members. While Somali women have been conditioned to accept the dominance of men, the same cannot be said of men who feel their wives are gaining strength over them. Understanding the gender sensitivity of programming intended to assist women means also considering how men will react; taking thoughtful steps to avoid potential misunderstandings and problems; and including implementable strategies to diffuse or mitigate problems should they arise.

Discussions with male respondents revealed highly contested feelings about agency preferences to give money or other resources to women. Most men did not discuss this topic in terms of what benefits might be wrought by giving women some control. Rather, their comments were framed in terms of why organisations did not give to men, suggesting that the men believe that would have been the recipients were it not for certain perceptions about their behaviour. These feelings were prevalent in all study sites, and were generally some version of the following statement from a man in Mogadishu: "The organisations will only give to women. They don't trust men; they think the men only chew qat."

Male NGO staff also flagged these perceptions on the part of men, explaining that many IDP men believed "that only women are receiving attention; that democracy and human rights are only looking after women." Such a belief is dangerous, and can strengthen the resolve of men to impede the development of both human rights and women's rights if not addressed. Thus, while much attention is rightfully paid to addressing women's needs and addressing discrimination, intervening actors must also be cautious that the advancement of women is not perceived as coming at the expense of men.

One point that should be better analysed is how the general economic insecurity is affecting men as well as women. The World Bank Gender Study emphasises the importance of economic strength in gender norms, and found that participants from all 20 countries agreed that a "good husband" is equated with a good provider. That study also finds that urban women have perceived significantly more gains in their power and freedom than any other group sampled, while urban men have expressed a sense of loss of power and freedom over the same time period:

*Women seem able to climb their ladders in good times or bad, and claim more empowerment whether they gain more voice in their domestic or public roles. Men's sense of agency, by comparison, appears to be much less multidimensional and more contingent on their status as providers and local economic trends.<sup>132</sup>*

This observation is applicable to what is happening to Somalia's IDPs; efforts to assist displaced women – as well as the women's sheer will to do whatever necessary to survive – are helping to educate and

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13243 at 121

empower women. However, men who are unable to find a job and thus “failing” to be the good men they are expected to be, are feeling further marginalised by humanitarian interventions.

The perceptions of men should not be underestimated; attempts to empower women can result in significant risks to them if many men resent such efforts, as will be discussed further in Part C. Tellingly, when women were asked whether they felt that activities seeking to empower women would cause conflict in the family or community, many said yes. One woman in Garowe said, “Men feel the international community is interfering, and it might be increasing conflict.” Another reasoned that such activities would lead to domestic violence because “men are sensitive.” This seemingly simple statement alludes to women’s innate understanding that their rise is causing some men to feel that their masculinity is under attack, and that feeling is a likely trigger for violence.

To be clear, this report is in no way suggesting that efforts to support women should not continue, or are to blame for men’s behaviour. Women are adamant in the need to continue strengthening their ability to claim their HLP rights, and explained that “good” men who believe in Islam would not have any problems. The key takeaways from this discussion are that there is also a need: to better understand the behaviour of men (which has been identified as a primary obstacle to women’s ability to exercise HLP rights); to include men in the discussion on women’s rights and empowerment; to identify possible risks caused by frustrated or angry men; and to develop mitigation and protection strategies should they occur.

#### 4.2.7

### **Be Creative: Test New Ideas**

Finally, those seeking to support women’s HLP rights should not be afraid to try something new; after all, new challenges may require new solutions.

For example, if men do not accept the idea of married women owning a house, and women do not seek to create conflict, alternative middle grounds could be explored. One idea may be joint ownership; as mentioned earlier, men who initially thought such an arrangement was not allowed under Islam became more open (even if marginally) to the idea after a religious scholar confirmed it was possible. Women were open to the idea, but were skeptical that male Elders would ever protect their interests in the event of future disputes. Identifying these various concerns and interests can lead to the creation of strategies to address them. Local authorities in Puntland tried another idea, and attached photos of the entire family to ownership documents to demonstrate that a single person did not have full and sole rights over houses provided by humanitarian actors.

As another example, this report notes that humanitarian livelihood interventions were typically aimed at individual women: IDP women in general did not seem to incline towards forming women’s groups or associations, and programming also tended to treat women as individual beneficiaries. However, as discussed above, women around the

world have often drawn strength from each other, and another option to explore would be the facilitation of women's groups, or activities that support groups of women, rather than individuals. This strategy has been used in other countries to support livelihood activities for married women, as it is often more difficult for husbands to make claims to collectively owned benefits.

Other scholars have also raised the possibility of using Islamic tenure systems, such as the mechanism of *waqf* (Islamic endowment) to increase access to land and tenure security for the poor or disadvantaged.<sup>133</sup> Appealing to the charitable aspects of the Muslim faith may help increase access to and ownership of land and housing for women-headed households that do not face objections from men regarding ownership, and while this strategy does not appear to have been specifically used to gain access to land, the research indicates that charitable intent remains a persistent element of Somali culture.

Rather than starting with known and tested responses, and then searching for problems to which they can be applied, actors in Somalia should look at the problem first. Somalia is a constantly shifting context, and external actors should try to understand the people and the interests involved; then look for responses that can speak to the needs in a way that accounts for the varying interests. The fact that something has not been done before does not mean it cannot succeed if done the right way, and trying new strategies can result in better interventions, if not perfect ones.

## LESSONS LEARNING: WHAT CAN WE DO BETTER?

4.3 ———

This last part will look at current humanitarian interventions that aim to support women's ability to exercise HLP rights; describe how men and women experience the impacts of these projects; and using the suggestions outlined above, identify lessons that humanitarian actors can be learning to improve future outcomes.

### Introducing Assets: Land & Shelter Interventions

4.3.1 ———

#### Who owns the house: Something to fight over

4.3.1.1 ———

In an innovative partnership between NRC, local governments, and local landowners, the ICLA and Shelter programmes are helping hundreds of IDPs gain stable access to shelter and land after years of displacement. The government secures land from landowners, the Shelter programme provides houses, and the ICLA programme facilitates the provision of legal documents which increase tenure security

for the IDP families, giving them a legal and protected right to stay on the land they occupy. Where relevant, NRC advocates for permanent land access for IDPs who no longer believe that return to their home areas is a possibility. All stakeholders appreciate this durable solution: IDPs are secure in the knowledge that they will not be forced to move,

<sup>133</sup>Sait & Lim (2006); Sait (2008); Norton (2008)

and local governments can properly integrate their presence into development plans for the areas.

This is one of the most successful kinds of land and housing responses for IDPs in Somalia, but is also illustrative of the kinds of risks that can be created for women if one does not examine the gendered impact of the intervention. In terms of documentation, the IDP family is given a card or other document to indicate full title/ownership of the structure. In areas where permanent access to land has been acquired for the IDPs, they will receive a similar document explaining their rights over the land. If access to land is temporary, the document will state the amount of time the family can use the land without having to pay rent, and without fear of eviction.<sup>134</sup> This intervention follows the “head of household” model, and thus one member of the family is selected during the registration process, whose name will be on the card.

Given the general acceptance that women use whatever resources they have for the welfare of the children and the family as a whole, there is a preference among humanitarian and development actors to give women ownership of the shelters provided. Service providers interviewed for this study concurred with this view, but closer examination of the interventions reveal many of the shelters given to married households were registered in the names of the women more by chance than by design. Humanitarian workers who participated in registration process admitted that they did not have any role in determining whether a husband or wife was registered; rather, they found that married women were often the only adult representative of the household present during the registration process, and de facto ended up with their names on the documents.

Somali women underscore the importance of continuing to give ownership of the cards/houses to women, but also identify the risk: “It’s important for women to own the house, because then she has confidence. But it still creates conflict if the husband disagrees,” explains one woman in Hargeisa. They said that owning the house makes women strong, and provides security so that if her husband wants a divorce or takes another wife, she and her children will be protected.

Unfortunately, there are also many stories from women whose husbands were unhappy with the arrangement. Humanitarian actors should consider that a CGI shelter is a significant asset for families that have been displaced, and for a man who holds traditional beliefs about male superiority and control, the idea that his wife would hold more power than him as the owner is not something that he will tolerate. The failure to address this dynamic can result in catastrophic results for a woman who is left to fend off her husband’s anger, as in Fatima’s case below

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<sup>134</sup>See Annex C for examples of the different kinds of ownership cards.





### BOX 39: "SHE JUST WANTED TO BE FREE OF HIM." - FATIMA'S STORY, GALKAYO

Fatima says that her husband was not a good man. She has one daughter from a previous marriage, and when she married this man, he took the house that she and her daughter had been living in. He did not help her build the bush house that she was living in before NRC gave her a CGI shelter. The CGI is in her name, she says, because her husband was not around when NRC helped her. Fatima says that when he saw the new home, he started to harass and abuse her. He was angry that the new house was in her name and he wanted the home. "Now he has another wife and children, and he doesn't want us. He was abusive, and I wanted a divorce. He refused, but said if I gave him the house, he would give me the divorce." She did not want to do this, but finally agreed, because she just wanted to be free of him. Now Fatima lives with her 2 children in a bush house that she built on some free land.

However, improvement is possible. Closer coordination between humanitarian agencies, local government actors, and IDP committees is helping some women understand and protect their rights, as in Samira's case below:

### BOX 40: SAMIRA'S STORY, DOLLOW

Samira is married, but her children are from a previous marriage. She put her children's name on the card for the CGI shelter that she received. Her husband was angry about this, and he changed the name on the physical document to his own. When a conflict arose later, he tried to say that the house was his. Fortunately, Samira was able to go back to NRC to find the name that had been registered in their computer, and she was able to show the Elders the fraud that her husband had committed.

Humanitarian actors are understandably reluctant to interfere in the marital relationship by actively choosing to give women ownership of assets, if it runs counter to Somali custom. However, the failure to engage with these issues is undermining the protection that the assistance was meant to afford to the women, as seen by one high-ranking government official who recounted her time in Municipal Government in Galkayo:

*I was working with the land registration unit. The [humanitarian] organisations were giving the women cards for land that had been acquired for them, but when it came time to register the land with the government, the men wanted their names registered instead. Many times, then, that land was resold, and the women were left with nothing.*

Of course, there is always more than one side to a story, and while some men had no problem with the cards being given to their wives, others said that it was creating problems. Box 41 below provides some examples of the men's responses to the question of how this intervention of giving title cards to their wives was affecting their family:

#### **BOX 41:**

- When women have cards, she says, 'This is my home. Get out.' – IDP Men, Galkayo
- When a husband owns the house, his wife recognises his authority. It will always bring disputes if women own the property. – IDP Men, Dollow
- My wife has land and money, but she won't help the family. When my mother was sick, she refused to help pay for my mother's care. – IDP man, Hargeisa
- Before, women would accept what men would say. Now more conflicts are coming from the work of the organisations – IDP man, Garowe

### **4.3.1.2**

#### **Formalising Housing Rights: Consolidating the Bundle**

Another result of giving IDP families ownership documents for the shelters has been the unexpected erosion of some protections that customary systems had afforded married women, particularly when it came to divorce. This development is similar to what has been observed regarding the formalisation of land rights, in which statutory systems failed to account for all the use rights that had existed under the customary systems. As discussed earlier, when Elders were looking at who would stay with the house in the event of a divorce, emphasis was placed on ensuring that the children would be cared for. Despite the common custom of forcing women to leave, there was evidence that leaders were increasingly advocating for women with children to be allowed to stay with the house. Whatever factors may have been considered before, the name on the card is now widely viewed as the rightful owner of the house, regardless of how the name was chosen or other factors of the case. This development further explains why the name that is on the card is so important: women who suffer initially if their husbands insist on being the cardholder will suffer again if conflict arises in the future, as the card has now solidified his claim to their house. In Box 42, women from Dollow recalled how this happened to someone from their settlement:

**BOX 42: "... BECAUSE HIS NAME WAS ON THE DOCUMENT." - DOLLOW**

The house and land was given to the woman, and her husband didn't like that. He tried to take it by force. The woman's name was registered by the NGO, but during the process to register the land title, they gave the husband's name. When there a conflict, the case went to the community leader to decide who owned the house. The leader said it depended on whose name was on the document. The woman argued the house was hers because she was registered by the NGO, but the leader found in favour of the man because his name was on the document. He stayed, and she was forced to leave the house.

**The CGI Market****4.3.1.3**

The large-scale introduction of CGIs and other shelters has resulted in a market in these commodities, with many IDP beneficiary families choosing to rent out the shelter instead of residing in it. According to discussions with current tenants and programme staff who have knowledge of the matter, as owners of the CGIs, the beneficiary families have full rights of sale and transfer, unless specifically stated otherwise. However, different implementation schemes are used regarding this issue; for instance, in Puntland, beneficiary families can sell or rent out their CGI if they choose, while in South Central, beneficiaries cannot. Interviews with the current tenants in the CGIs in Puntland and Somaliland indicate a lack of understanding about what rights and protections remained with the original owner, and what rights and protections passed to the new tenant. For example, when this kind of shelter assistance is provided, NRC works with the government to ensure that beneficiaries do not have to pay rent to the landowner for some period of time. However, some new tenants were paying rent to both the shelter owner (the original beneficiary), as well as the landowner, raising the question of whether landlords were violating their agreements to not demand rent.

There is also a lack of clarity about what kinds of rights are being transferred in these transactions. The rights that are given to the initial beneficiary family vary based on the circumstances of each settlement. In some areas, beneficiaries receive both land and CGI ownership rights. In other areas, beneficiaries receive ownership rights to the CGIs, and a temporary use right to a particular piece of land without rent for some number of years. Subsequently, different documents are issued to account for these various scenarios. However, given the number of variables, it is unsurprising that misunderstandings occur, and there is a risk that some people will pay for rights that the seller does not have the authority to sell. For example, one woman returning from Yemen reported paying \$300 for land and a CGI, and received an ownership card that was issued by a humanitarian agency in the transaction. However, whether a true land sale was effected is questionable: \$300 was well below market value for land in that area, and most IDP families who receive CGIs only have use rights to the land; they do not possess the right to sell the land.

Finally, it appeared that many IDPs did not fully understand the various processes that they were supposed to complete with government offices to register and protect their rights. For example, families in Somaliland who are able to benefit from permanent access to land

receive a card from the government indicating land ownership, but that card is only the first step. The family must then go to the Municipality to pay a fee and complete the registration process. No one interviewed for the study in Somaliland who had received the card had actually completed the process with the government, and project staff suggest this is primarily because the IDPs do not have money to pay the fee. Regardless, the buyer and seller are treating the cards as sufficient evidence of a transferable right, which will likely create complications in the future as conflicts arise over ownership and land transactions.

### 4.3.2

#### Livelihood Interventions

Just as giving title for houses to women in a married household had unintended effects, the livelihood interventions targeting women may also have unexpected outcomes.

There is an increasing number of cash-transfer programmes for IDPs, and actors implementing these projects generally admitted that while women are targeted as beneficiaries, the project team does not interfere in household dynamics as to who decides how the money is managed or spent. In 2012, the Somalia Cash Consortium commissioned a gender impact analysis of unconditional cash transfers to look at this question, and consistent with the discussions held for this study, women were generally defined as the household managers, while men were viewed as the decision-makers outside the household and for overall decisions. That study found “little evidence of hostilities arising within the household from the husbands of female beneficiaries, or from other family members;” rather, the majority of social tensions that did occur came from non-beneficiaries outside of the household, such as neighbours and friends.<sup>135</sup>

However, other people working on cash transfer projects interviewed during this study noted reports from women about fights in the family over who would control money. One humanitarian worker related a story where the husband of one of their livelihood beneficiaries called to demand the assistance that was to go to his wife, arguing that the phone and token used to distribute the money belonged to him. Government officials in Puntland advocating for more income generating activities for women also admit that men are making demands on the money given to, or earned by, their wives in these programmes.

### 4.3.3.1

#### What can we do better?

This study revealed that the interventions discussed in this section are largely successful. The women are happy with the opportunities to own a house and earn income, which are improving their self-confidence and allowing them to care for their children. However, that success should not foreclose thoughtful evaluation as to whether some adjustments might bring even more benefits to the women.

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<sup>135</sup>Wasilkowska (2012)



In giving title to women by default due to the absence of their husbands, rather than as a purposeful effort to increase women's opportunities to exercise their HLP rights, agencies are avoiding both the challenge and opportunity to engage with the gender dynamics that favour men. While this route may make implementation simpler for NGOs, it creates risks for women whose husbands do not understand this development and react violently in anger. Agencies may believe they have avoided the risk that husbands will refuse the granting of ownership rights to their wives, but in reality, the risk remains, though without any steps of possible mitigation such as initial awareness campaigns and open dialogues.

In another twist, many Somali men are aware that humanitarian actors prefer to channel assistance through women, and some admit to regaining control of the situation by sending their wives to present themselves as heads of households to increase the likelihood of being selected as a beneficiary. While these women may obtain nominal title to assets that are given to them, in practice, they do not hold the corresponding decision-making power, which is retained by their husbands.

These scenarios highlight sensitive issues, and staff may be reluctant to intervene if they do not feel that they are able to do anything, or if they believe this is simply the culture. In the end, the various relationships between family members and the property that represents their wealth and power are complex, and they cannot be addressed unless they are acknowledged.

### **Identifying Risks and Messaging**

### **4.3.3.1** —

Before commencing with potentially controversial activities, it is recommended to analyse how men and women might respond differently to the proposed action. This section here will look at the shelter intervention, but the same process would apply to the livelihoods activities. If an analysis like this had been done before giving ownership rights of a house to married women (rather than her husband, as is the norm), it may have revealed: that women viewed this as a significant source of reassurance that she would not become homeless if anything happened in her marriage, and that some men perceived this as a challenge to their authority and custom. The purpose of such an analysis is not to oppose implementation, but rather to facilitate an honest assessment of what risks exist, how they balance against the potential advantages, and how they can be mitigated to ensure the best outcome possible.

That analysis should inform how the project is messaged (i.e., awareness campaigns, dialogues, or other soft programming) to explain to the community what is proposed. The process of messaging is used by the implementing agency to explain the rationale of the activity, and should allow both men and women to air their questions and grievances in a safe space. Based on their responses and questions, project implementers can better understand the risks that may appear, as well as gauge the likelihood of success of their mitigation strategies.





#### 4.3.3.2

#### Mitigating Strategies

After risks have been identified, the next step would be to determine what mitigating strategies could be put in place. This stage could also serve as another space where women can come together to talk; for instance, it might be helpful to bring IDP women and local government actors together to discuss how they would like to respond to threats of violence or eviction that might arise. This kind of collaborative discussion about strategies would empower women and give them some ownership of the process, and ensure that they know what to do and who to contact should the problems arise. This would also help implementing agencies understand how the women themselves view the risks and what their priorities are.

In this instance, mitigation strategies could have included efforts to explain the reasons for granting ownership rights of houses to women, as well as the creation of a reporting or counselling mechanism if women felt threatened by violence, or if men felt at risk of eviction. Other strategies could take the form of mechanisms that recognise the rights of all family members not to be arbitrarily evicted or deprived of their rights; for example, local government actors in Puntland explained that they attached photos of all family members to the ownership card as evidence that there were multiple rights holders regarding the house. This also helped reassure illiterate women, who could not read the names and words on the ownership document itself. Other steps may include commitments to use dispute resolution forums that the parties deem fair, such as mediation, whereby the parties agree to give each other equal voice in resolving conflicts that arise, or identification of particular actors, like humanitarian staff or religious leaders, who can be contacted if the need arises.

Ultimately, the strategies implemented should respond to the types of risks that are deemed likely by those affected.

### Monitoring and Protection

### 4.3.3.3

Finally, the implementing agency should take steps to monitor the situation and facilitate protection if the risks materialise. One action would be to ensure that women are aware of options available to her if she is threatened. During this study, women who reported being threatened by their husbands said they did not know who to contact for help; they felt their only options were to either accept the violence or relinquish her rights to her home. Agencies should also train their staff to look for signs that harms are taking place, and determine what protocol should be followed, such as the referral of cases to protection actors or follow up visits to explain the importance of rights and answer questions that beneficiaries may have. Conversations with Somali humanitarian staff often indicate awareness that problems are happening, but when there are not clear actions they can take, they are at a loss as to how to respond, and so do not respond.

Closer monitoring would also allow the implementing agency to identify unexpected outcomes, which can then be used to inform and improve subsequent interventions. For example, the above section also discusses the creation of an informal market in the various land and property rights that are being created, namely those for housing. Examining now what IDPs do and do not understand about those rights, as well as what they are choosing to do with them, can help lessen problems that may occur in the future. Acknowledging that IDPs who receive shelter assistance may themselves become a future generation of problematic landlords can also lead to the inclusion of specific steps to try and ensure that they become more responsible landlords who understand the importance of tenant rights and the unlawfulness of forced eviction.

Implementing agencies must take a “learn as you go” approach, and understand that in the fluid and complex conditions of Somalia, one should look for unexpected results so they can be addressed. After all, one cannot mitigate risks or address problems without first knowing they are there.

### The Development Gap

### 4.3.3.3

Unfortunately, there is no end to the needs, and humanitarian assistance can only address some portion of them. While all IDP women were very thankful for the shelters, they continued to stress that without a means of livelihood, and schools for their children, their ability to provide for their families remain uncertain.

Diigali Settlement in Hargeisa is one of the project sites where IDPs received permanent access to land. The landowner who donated the land for the settlement explained that he saw the IDPs in need, and decided to transfer the land to the government to help them. Humanitarian actors worked with the government to provide the shelter and tenure security documents for the IDPs, but the landowner made clear that other needs for all Somalis there remain:

*I wanted to help the IDPs, and I decided to transfer the land to the government, because they are the government's responsibility, not*

*mine. But we are hoping for improvement for everyone. We need a better road, and water infrastructure. These are things that will help all of us – not just the IDPs but the host community as well.*

NRC Databases from Puntland indicate that despite having free shelters, IDPs living in some of the settlements no longer want to stay there because they have little hope for survival: they are too far from town, there is no work, and there are no services. Women told the study team they were worse off in the settlements because they were afraid they might be attacked during the trips to look for work or to get water. Government actors in Mogadishu report that women are prioritising requests for education and WASH infrastructure over their personal safety concerns. These are clear cases of where development actors can step in, and as another study of Somalia pointedly notes:

*The reality is that many of the issues limiting durable solutions for IDPs are development issues – such as re-establishment of livelihoods and rule of law – rather than humanitarian ones. National development plans need to incorporate displacement and allocate funds for durable solutions. It simply does not make sense for humanitarian agencies to devote scarce resources to building expertise in areas where development actors already possess years of experience and good practices.<sup>136</sup>*

In many parts of the country, humanitarian actors are seen as primary service providers, and demands will continue to be made. While humanitarian actors should, and are improving their understanding of the longer-term impacts of their activities, the reality is that the humanitarian sector does not have the ability to meet all of the needs. Development activities must include the displaced citizens alongside all others as stakeholders in long term development planning. In this case, newer IDP settlements, or host communities that absorb large IDP populations, should be considered as potential sites for, or integrated into larger development projects.

The importance of access to justice and rule of law initiatives must also remain on the development agenda. While humanitarian actors can and do seek to facilitate access to services for displaced persons, it is beyond their remit to establish the infrastructure that is the foundation of provision of these services. Trainings on HLP rights for courts, tribunals, commissions, and other legal service providers can only be done where these actors exist; and the exploitative practices of gatekeepers will continue until other structures are in place to guarantee the rights to housing and security which IDPs need.

One possible avenue may be the Somali New Deal Compact, which identifies Somalia's national priorities, framed by five Peace-building and State-building goals: 1) Inclusive Politics; 2) Security; 3) Justice; 4) Economic Foundations; 5) Revenue & Services.<sup>137</sup> The Compact

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<sup>136</sup>Ferris (2014)

<sup>137</sup>The Federal Republic of Somalia, 'The Somali Compact', adopted at the A New Deal for Somalia conference, Brussels, 16 September 2013

is an agreement between Somalia and the international community, which is meant to increase the alignment between how international assistance is used and these priorities.<sup>138</sup>

The Compact further recognises the role women have played and will continue to play in community mobilisation and peacebuilding in Somali society. It promotes their economic empowerment and participation in political and public decision making processes. The Compact also recognises the need to address the development needs of the Somali population who are displaced inside the country, or returning from surrounding countries.<sup>139</sup>

As part of this agreement, the Compact establishes the Somalia Development and Reconstruction Facility (SDRF), as the preferred vehicle to streamline the use of funds to meet domestic priorities, and ensuring that the needs of Somalia's displaced women remains on the agenda could help bridge the development gap.

In looking for new arenas in which to discuss displaced women's land rights, another option would be to consider adding on to existing women's rights agendas. For example, UN Habitat is working with various government actors in Somalia to improve institutional capacity for land management, and is taking concrete actions to mainstream a gender component into land management trainings for government, customary leaders, and women activists. The voices of the displaced are often missing from governance and development forums, largely because they lack political representation – whether formal or otherwise – in the area of displacement. A possibility to explore would be the inclusion of the particular needs of displaced women in general, gender-mainstreaming activities.

Ultimately, displaced women will have a much better chance of maintaining the advances they make in claiming their HLP rights if all Somalis – men, women, displaced, and not – can see and benefit from inclusive development. The belief that some groups are being prioritised at the expense of others will foster mistrust, and the group that is feeling slighted will await the opportunity to claim back what it feels it has lost. Host community members who feel they are being ignored while humanitarian agencies focus on the displaced will continue to search out opportunities to get a cut of that assistance stream. Men who believe women are advancing at their expense are more likely to take drastic measures to maintain their superiority.

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138 Samuel Hall Consulting (2014)

139 The Somali Compact

## CONCLUSION & SUMMARY OF RECOMMENDATIONS

While the primary aim of this research is to better understand the reality faced by displaced women regarding their HLP rights, and to identify ways in which actors can better empower them to access and use their HLP rights, it is hoped that the report imparts broader lessons for those working on gender and land issues. Many of Somalia's cities are attempting to craft growth and development strategies in highly fluid political and security contexts, and must do so in a way that accounts for the long-term reality of the presence of IDPs, and that protects and capitalises on the strength and possibilities of both women and men. To accomplish this, the voices of the displaced must be included in the forums where such issues are discussed, and as has been noted here, displaced women are sorely lacking in both spaces to speak, and access to decision-makers who are willing to listen.

Additionally, the importance of Islamic and customary systems cannot be overlooked or legislated away. The majority of Somali men and women expressed the notion of identity within the framework of Islam and being a "good" Muslim, and, it is important to take this opportunity to ensure that women are included in the discourse of what Islam in Somalia means, and to ensure that they are not excluded in the way that they have been from the discourse defining Somalia's traditional culture. It is also important to remember that supporting women to access their rights under Islam at this stage does not close the door to future efforts to seek greater empowerment or access to other rights, as new circumstances present themselves.

The customary system also remains an integral part of Somali society. Even where certain aspects of it may be of less relevance in more urban settings, customary practices remain key in the management of social issues and relationships. At the same time, a deeper discussion about discriminatory customs and norms themselves should be had; those who adhere to them often guard them as the ways of "our people", but there are questions as to exactly who defined "our ways," as well as whether these norms are still relevant and justifiable today. Just as women should be included in the discourse about what it means to be Muslim in Somalia, so should they be involved in the ongoing process of defining Somali custom. More thoughtful engagement is needed to explore how these systems, religious leaders, and customary leaders, can come together to support and protect displaced women as they seek to claim their HLP rights and aim for better lives.

Struggling with the hardships of displacement, Somali women are nonetheless learning to navigate the opportunities and pitfalls of this upheaval in ways that will have a lasting impact on their conceptions of and access to HLP rights. Ultimately, Somalia remains a rich, complex, and complicated setting, and outside actors wishing to intervene must understand these dynamics to facilitate long-term and positive change, and to guard against creating further harm in this fragile context.



## 1. Help women be heard: Raising women's voices.

- **Spaces to speak:** Create spaces where women can come together and talk about problems, and discuss possible ways to improve their lives. Being forced to face overwhelming challenges alone can have longer-term, negative impacts on the women's outlook on life and hopes for improvement. Additionally, IDP women would benefit from greater exposure to women in positions of strength or authority, and there should be a space where strong women can share their message and experiences to encourage the displaced women and give them hope. Seeing other women speak freely and hold positions of authority can encourage displaced women to speak themselves, and serve as proof that women can succeed and have better lives.
- **Access to decision-makers:** Help women gain access and audience with the decision-makers, who are still primarily male, in both statutory and customary systems. Establishing a link between women and male authority figures is crucial to ensuring that the leaders of Somali society understand that the mistreatment of women and denial of their rights is more widespread and damaging than they wish to believe. The women are capable of explaining what they need, and should be given the opportunity to make their case to the ones who are well positioned to do something about it.

## 2. Empower women to claim their rights.

- **Increase knowledge of women's rights:** Ensure both men and women are better trained on women's rights, particularly those relating to mahr, divorce, inheritance, and emphasise the underlying right of all women to directly own land and property that is protected by the Qur'an. In addition to better understanding women's rights, more open discussion among men and women together is needed to understand why women are unable to access these rights.
- **Increase opportunities to access rights:** Create more opportunities for women to access and claim HLP rights. Examine interventions carefully to see if they are distributing opportunities to men and women equitably, and ensure they are not inadvertently favouring men due to customs and traditional practice. Where possible, interventions should be structured to ensure that women have, at a minimum, a choice to exercise their HLP rights.
- **Economic Empowerment:** Confidence to make choices: Empower women economically; this is one of the primary ways to increase women's feelings of confidence and strength, and women interviewed during this study indicated that knowing they can earn and control money helps them be better women and mothers. This strength frees them to make the choices that are best for the children, themselves, the family without fear or abandonment, eviction, or divorce. In a virtuous cycle, economic strength provides the sense of power and self that increases a woman's resolve to claim her HLP rights, and the ownership and control of property itself reinforces economic power.

### 3. Increase Access to Justice

- **Linking women, religious leaders, & traditional leaders:** Explore innovative linkages and mechanisms to bring together women, religious leaders and traditional leaders to create forums where women can claim the rights and protections offered under Islam.
- **Facilitate access to legal assistance in both statutory and customary forums:** Facilitate legal assistance through either lawyers or paralegals in contexts where courts are available and deemed the appropriate forum, using joint teams of men and women where possible to utilise the advantages of both genders. Develop networks within settlements where women are trained on their rights and able to provide support for each other, building on existing outreach and awareness initiatives, and where possible, seek the inclusion of men who understand the importance and benefits of supporting Somali women.
- **Increase impact of mediation:** Use mediation as a safe space to advance the conversation about women's HLP rights in a way that engages both men and women. Work with other actors to whom women turn to for assistance with HLP problems, such as local government authorities and legal aid clinics, to incorporate an element of discussion where women and men must talk, and listen, to each other about women's HLP rights.
- **Protect women who claim their rights:** Organisations that do not work with GBV, but whose staff are likely to be made aware of situations occurring, should advocate for organisations that do address GBV to provide trainings or other activities to raise awareness of the problem and encourage women to seek help. Coordinate to ensure that those who can respond are made aware of the problem, and to facilitate a faster and more holistic response to displaced women's needs. For example, this might take the form of a team consisting of both GBV and HLP specialists in recognition of the interlinked nature of these issues for many women.

### 4. Work with Government to Support Women

- **Build links where NGOs provide material support, knowledge, and capacity building;** governments enforce laws that guarantee rights and punish violations; and the IDP women bring the determination to drive the processes that can bring the changes they seek. Strengthen existing collaborations, like those where governments and NGOs work together to facilitate access to land, shelter, and tenure security for IDP women. Support women in office to strengthen women's political voice and representation, to help ensure that displaced women's rights and needs stay on the political agenda.

### 5. Implement Gender-Sensitive Programming

- **Recognise gender bias:** Hear and understand the viewpoints of women, from women themselves. There are marked differences between how men and women view women's HLP issues, ranging from the importance of inheritance rights to the prevalence of violence. Where possible, include more female staff, but at a minimum, ensure that women's perspectives are captured at all stages of programme design.

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

## 6. Be Creative: Test New Ideas

- **Do not be afraid to try something new;** new challenges may require new approaches. Instead of starting with known and tested responses, and then searching for problems to which they can be applied, look at the problem first. Try to understand the people and the interests involved; then create responses that can speak to the needs in a way that accounts for the varying interests. The fact that something has not been done before does not mean it cannot succeed if done the right way, and trying new strategies can result in better interventions, if not perfect ones.



# ANNEX

1. SOURCES
2. LIST OF INTERVIEWS
3. EXAMPLES OF HOUSE AND LAND TENURE DOCUMENTS
4. EVICTION GUIDELINES (MOGADISHU)

## ANNEX A: SOURCES

A ———

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## B ANNEX B: TABLE OF FOCUS GROUP DISCUSSIONS & INTERVIEWS

<b>HARGEISA, SOMALILAND</b>		
<b>DATE</b>	<b>LOCATION/ORGANIZATION</b>	<b>INTERVIEWEES</b>
30 Aug 2015	NAFIS Network	KII 1 – Abdirahman Osman Gaas, Network Coordinator
31 Aug 2015	University of Hargeisa Faculty of Law & Legal Aid Clinic	KII 2 – Mohamed Abokor Mohamed, Director of Legal Aid Clinic
31 Aug 2015	Human Rights Commission	KII 3 – Mahmoud Garaad Mohmed (Vice Chairperson); Hodan Mahamad Ali; Abdisamed S. Hassan (members)
31 Aug 2015	Somaliland Women Lawyer's Association	KII 4 – Rafuja Yusuf (Executive Director)
1-2 Sept 2015	UN-Habitat, Somaliland	KII 5 – Hassan Adan, Asha []
2 Sept 2015	Diigali Settlement	FGD 1 – IDP Women FGD 2 – IDP Men
3 Sept 2015	Daami Settlement	FGD 3 – IDP Women FGD 4 – Host Women
3 Sept 2015	Ayaha III Settlement	FGD 5 – IDP male youth FGD 6 – IDP women & female youth

<b>GAROWE, PUNTLAND</b>		
<b>DATE</b>	<b>LOCATION/ORGANIZATION</b>	<b>INTERVIEWEES</b>
6 Sept 2015	Jawle 2 Settlement	FGD 7 – IDP Women FGD 8 – IDP Women FGD 9 – IDP Men
7 Sept 2015	Puntland Development Research Center	KII 6 – Ahmed Osmen Adam (Security & Rule of Law Researcher); Said Mohamand (Decentralization Research Asst)
7 Sept 2015	Municipal Govt	KII 7 – Dept. of Social Affairs
7 Sept 2015	Puntland Legal Aid Clinic	KII 8 – Dean of Law Faculty; Director of Legal Aid Clinic; Coordinator of Paralegals
7 Sept 2015	Ministry of Women and Family Affairs	KII 9 – Deputy Minister
7 Sept 2015	Jawle 2 Settlement	KII 10 – ICLA Client (can't afford rent - \$10) KII 11 – ICLA Client (can't afford rent - \$15)
8 Sept 2015	Municipal Govt	KII 12 – Dept. of Social Affairs, section heads: Gender & Village; Sanitation; Health; Land & Follow Up (responsible for registration of land)
8 Sept 2015		KII – ICLA Client (CDR; rent negotiation)
8 Sept 2015		KII – male IDP committee members (2)
8 Sept 2015		KII – female IDP committee members (3)

<b>GALKAYO, PUNTLAND</b>		
<b>DATE</b>	<b>LOCATION/ORGANIZATION</b>	<b>INTERVIEWEES</b>
9 Sept 2015	Tawakal Settlement	FGD 10 – IDP men FGD 11 – IDP women
10 Sept 2015	Madina Settlement	FGD 12 – IDP women FGD 13 – IDP men FGD 14 – IDP Committee, females FGD 15 – IDP Committee, men
10 Sept 2015	NRC Galkayo Office	KII 13 – NRC Shelter Project Coordinator
12 Sept 2015	Galkayo Municipal Government	KII 14 – Dahabo Mohamed Baren (IDP Focal Point)

<b>MOGADISHU, SOUTH CENTRAL</b>		
<b>DATE</b>	<b>LOCATION</b>	<b>INTERVIEWEES</b>
14 Sept 2015	Peace Hotel	FGD 16 – Key NRC staff (ICLA, Shelter, FSL)
15 Sept 2015	NRC Area Office	FGD 17 – IDP Women
15 Sept 2015	NRC Area Office	FGD 18 – Host Women
15 Sept 2015	NRC Area Office	FGD 19 – IDP Men
15 Sept 2015	NRC Area Office	FGD 20 – Host Men
16 Sept 2015	NRC Country Office	FGD 21 – IDP Women
16 Sept 2015	NRC Country Office	KII 15 – Deputy Governor
16 Sept 2015	NRC Country Office	FGD 22 – Host Women / GKs
16 Sept 2015	NRC Country Office	FGD 23 – IDP Men
16 Sept 2015	NRC Country Office	KII 16 – District Appeals Judge
16 Sept 2015	NRC Country Office	KII 17 – NRC Staff (WASH, Education, BRICs)
17 Sept 2015	NRC Area Office	Association of Women Lawyers (ASWC)
17 Sept 2015	NRC Area Office	National Commission for Refugees and IDPs, Program Officer
17 Sept 2015	NRC Area Office	KII 18 – ICLA Client
17 Sept 2015	NRC Area Office	KII 19 – ICLA Client
17 Sept 2015	NRC Area Office	KII 20 – ICLA Client
17 Sept 2015	NRC Area Office	KII 21 – South Central ICLA staff

<b>DOLLOW, SOUTH CENTRAL</b>		
<b>DATE</b>	<b>LOCATION</b>	<b>INTERVIEWEES</b>
20 Sept 2015	Kabasa IDP Camp	FGD 24 – IDP Women
21 Sept 2015	Kabasa IDP Camp	FGD 25 – IDP Men
21 Sept 2015	District Administration Office	KII 22 - Secretary, Land Affairs Dept
21 Sept 2015	NRC Office	KII 23 – Imam
21 Sept 2015	NRC Office	FGD 26 – Host Women from Dollow
22 Sept 2015	Qasahley Camp	FGD 27 – IDP Women
22 Sept 2015	District Administration Office	KII 24 – District Commr; Dept of Social Affairs
22 Sept 2015	Qasakley Camp	KII 25 – Client Interview
22 Sept 2015	Qasakley Camp	KII 26 – Client Interview
23 Sept 2015	NRC Office	KII 27 – ICLA PC
29 Sept 2015	Skype	KII 28 – Teresa del-Ministro, UN Habitat, Land Programme Manager

## **C ANNEX C: EXAMPLES OF HOUSE AND LAND TENURE DOCUMENTS**

(To be sent as electronic attachments)



## ANNEX D: EVICTION GUIDELINES FROM MOGADISHU

D —

(Copy obtained from NRC ICLA team in South Central, Somalia)

### Eviction guidelines

#### Section I: Conditions for lawful evictions

1. Evictions occur in exceptional circumstances only and are resorted to where no feasible alternatives exist.
2. Such exceptional circumstances may consist in the legitimate need to reclaim public land and buildings occupied by IDPs or in the rightful need to restore the land rights of legitimate private land owners.
3. In such exceptional circumstances, evictions may be lawful
  - a. authorized by law;
  - b. carried out in accordance with the Constitution and applicable international human rights law reflected in these guidelines;
  - c. undertaken only for legitimate purposes that can be justified by compelling and overriding public interests in the particular case; and
  - d. conducted as a measure of last resort.
4. Are these conditions met and evictions are unavoidable, the eviction procedure in section II shall apply.
5. Evictions are always subject to the following safeguard:
  - a. Evictions should not render individuals homeless or vulnerable to the violation of other human rights.
  - b. Appropriate measures should be taken to ensure that adequate alternative shelter is made available to those unable to provide for themselves.

#### Section II: Applicable eviction procedure

##### A. Prior to an eviction:

1. IDPs and others at risk of forced evictions are informed and consulted throughout the entire eviction process. The specific needs and perspectives of women, children, the disabled or elderly are taken into account.
2. Adequate and reasonable notice of eviction is given to all affected persons.
  - a. A formal eviction notice is issued in writing at least 60 days prior to the eviction date;
  - b. The notice is issued during day time;
  - c. It is ensured that all members of the community to be evicted are informed about the eviction notice by authorities. Communities at risk of eviction must not be informed by gatekeepers;
3. There is one standardized official format used as eviction notice and issued by one designated authority to minimize misuse. In case of doubt, eviction notices are subjected to public verification.
4. IDPs and other at risk of eviction have the right to have the lawfulness of the eviction reviewed. Eviction notices are suspended until the lawfulness of the decision is determined by the relevant authority.
5. Timely information to confirm the date of eviction and the applicable procedure is given and decided in close consultation with the community.

**B. During an eviction:**

1. Authorities are present during the eviction and all persons carrying out the eviction are properly identified prior to the event.
2. Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected.
3. Evictions do not take place in bad weather, during night time or during holidays.
4. Police officers and other law enforcement official present during the evictions do not use force during eviction and protect communities from the use of force by militias.
5. It is prohibited to destroy or demolish habitations as a means of force.
6. Persons carrying out the evictions consider that among the communities are persons with mobility restrictions and disabilities.

**C. After an eviction:**

1. Those affected by the evictions have the right to an effective remedy and legal aid to seek redress.

**E**

**ANNEX E: SELECTED LEGAL TEXTS AND DOCUMENTS**

Federal Constitution of Somalia  
The Somali Compact  
Constitution of Somaliland  
Somaliland Draft IDP Policy  
Constitution of Puntland  
Puntland IDP Policy





