



EUROPEAN COMMISSION



Humanitarian Aid and Civil Protection

# HOUSING, LAND AND PROPERTY (HLP) TRAINING

**HARGEISA  
13  
AUGUST  
2014**



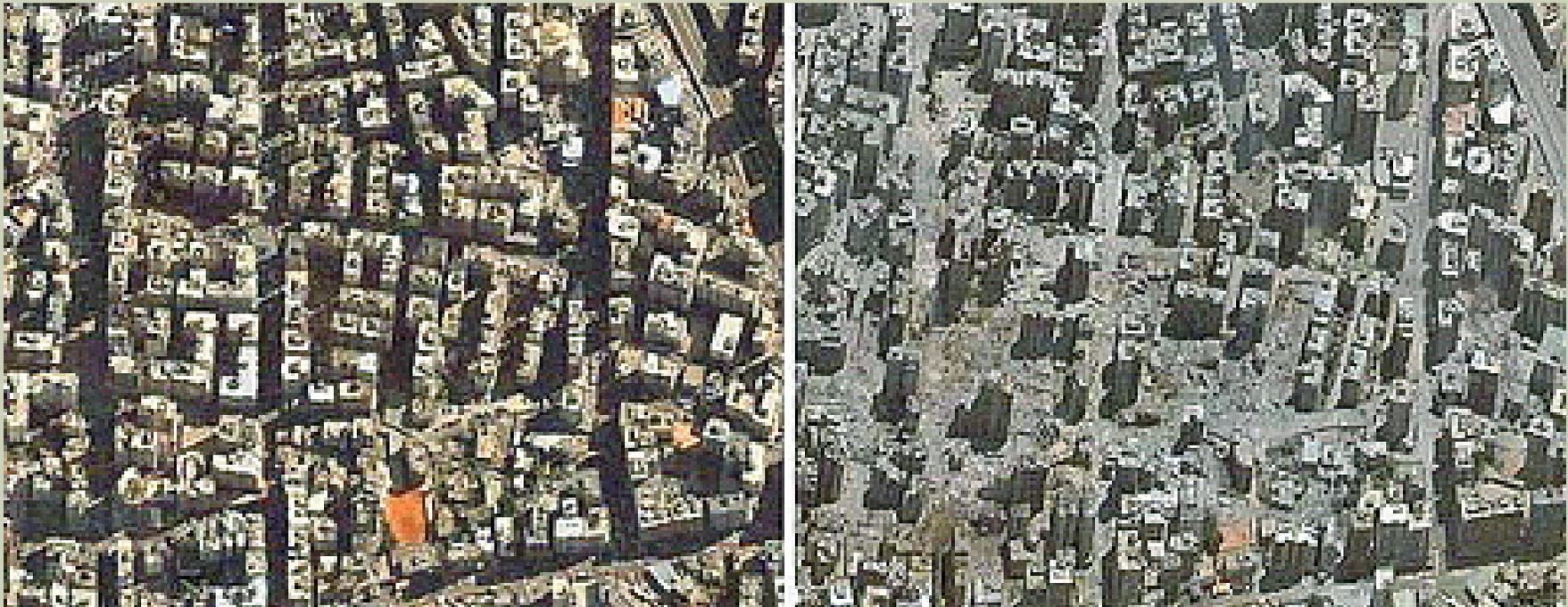
# SESSION ONE

# AN INTRODUCTION TO HLP

# THE EFFECTS OF CONFLICT



# THE EFFECTS OF CONFLICT





# WHAT IS HLP?

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



# WHAT ARE HOUSING RIGHTS?

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



# WHAT ARE LAND RIGHTS?

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



# WHAT ARE PROPERTY RIGHTS?

- Property: any external thing over which the rights of possession, use and enjoyment are exercised
- There are two kinds of property:
  - Real property (land or anything attached to it - immovable)
  - Personal property (anything else - moveable)
- Possessory rights: rights that accrue or build up from physically occupying a land parcel or a house
  - Adverse possession

# 1 Why is it important to address HLP in conflict and post-conflict situations?



PLENARY  
DISCUSSION



# WHY IS IT IMPORTANT TO ADDRESS HLP?

- Centrality of land in many humanitarian crises
- Humanitarian responses have an impact on land tenure
- Emergency response
- Human rights
- Achievement of durable solutions
- Peace-building and conflict prevention
- Poverty reduction and development
- Economic stability and growth



# WHY IS IT IMPORTANT TO ADDRESS HLP?

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



# LEGAL PLURALISM IN LAND TENURE SYSTEMS

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



# STATUTORY LAND TENURE SYSTEMS

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



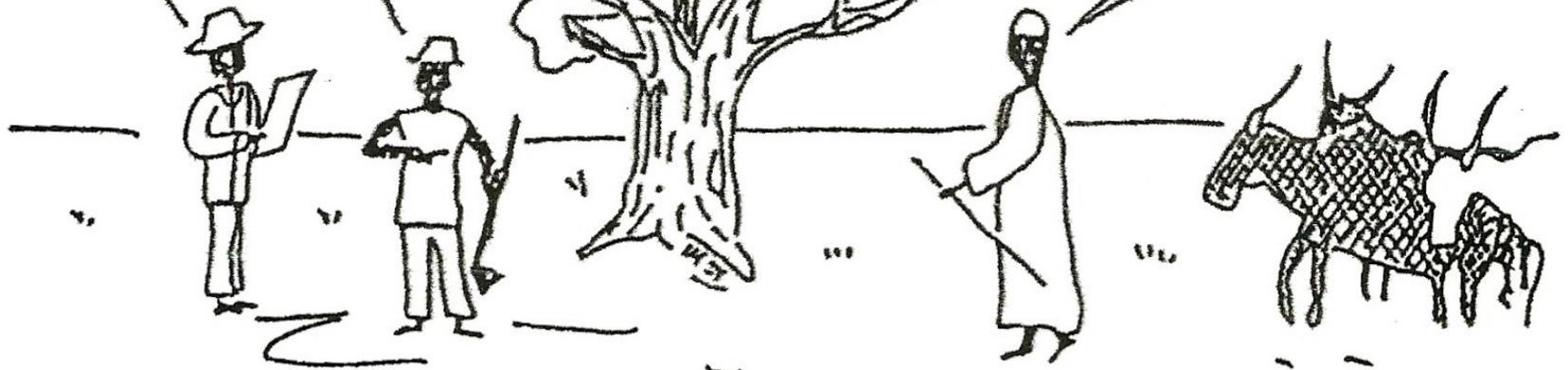
# CUSTOMARY LAND TENURE SYSTEMS

- Regulate people's right to enjoy the use of land arising from customary practice
- Derive from authorities such as a community, ethnic group or family – no concept of private ownership
- Often unwritten rules
- Often include forms of community land rights, pastoralist rights, resource access, and use rights
- Land disputes are addressed by leaders

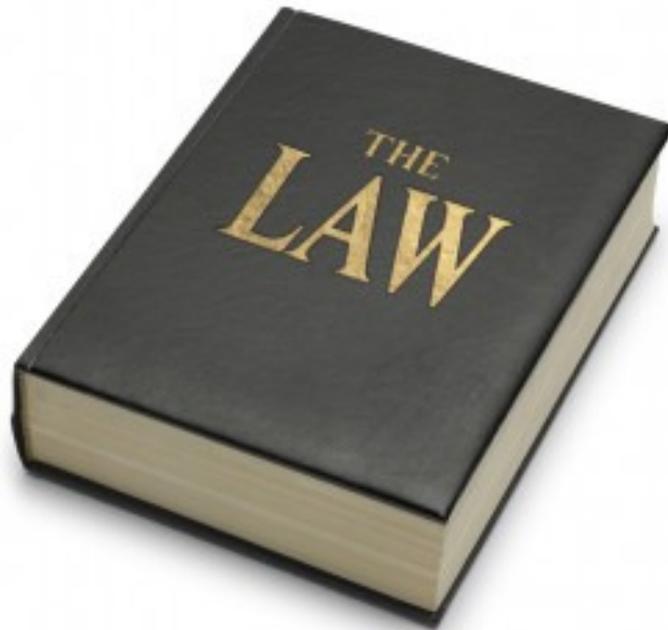
I have bought this piece of land. Here is the contract.

This tree was planted by my Grandfather!

This is the path we always take to the water hole!



# QUESTIONS?



# THE HLP INTERNATIONAL LEGAL FRAMEWORK

EUROPEAN COMMISSION



Humanitarian Aid and Civil Protection

## SESSION TWO



# HLP INTERNATIONAL LEGAL FRAMEWORK

- Housing rights
  - Land rights
  - Property rights
  - Women's HLP rights (session 4)
- 
- ➔ International instruments (IHL/IHRL)
  - ➔ Regional instruments
  - ➔ National laws (strongest instruments)



# INTERNATIONAL HUMANITARIAN LAW (IHL)

- IHL = internationally accepted norms that determine limitations on how warfare can be conducted
- Main instruments are the four Geneva Conventions and their two additional protocols
- Fourth Geneva Convention (protection of civilians); Art. 3 protection of victims of internal conflicts; Additional Protocol II (protection against forced displacement and provision of shelter)
- Prohibition of the destruction and seizure of property



# INTERNATIONAL HUMAN RIGHTS LAW

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



## HOUSING RIGHTS

# 1

- **Universal Declaration on Human Rights (UDHR) – art 25**  
“Everyone has the **right to a standard of living adequate** for the health and well-being of himself and his family, including food, clothing, **housing...**”
  - Adopted in 1948 by UN
- **International Covenant on Economic, Social and Cultural Rights (ICESCR) – art 11(1)**  
“recognise the right of everyone to an **adequate standard of living** for himself and his family, including adequate food, clothing and **housing...**”

- **ICESCR General Comment 4: adequate housing**

Do you know the 7 components of the right to adequate housing?

EUROPEAN COMMISSION



Humanitarian Aid and Civil Protection

**HOUSING  
RIGHTS**

**Plenary**

## ■ ICESCR General Comment 4: right to adequate housing

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





## HOUSING RIGHTS

# 3

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

- **1951 REFUGEE CONVENTION Article 21** states that the Contracting States have to guarantee to refugees lawfully staying in their territory with regard to housing treatment as favourable as possible (and in any event, not less favourable than that granted to aliens)
- **International Covenant on Civil and Political Rights (ICCPR:1996) – art 17** protects persons from arbitrary interference with their home

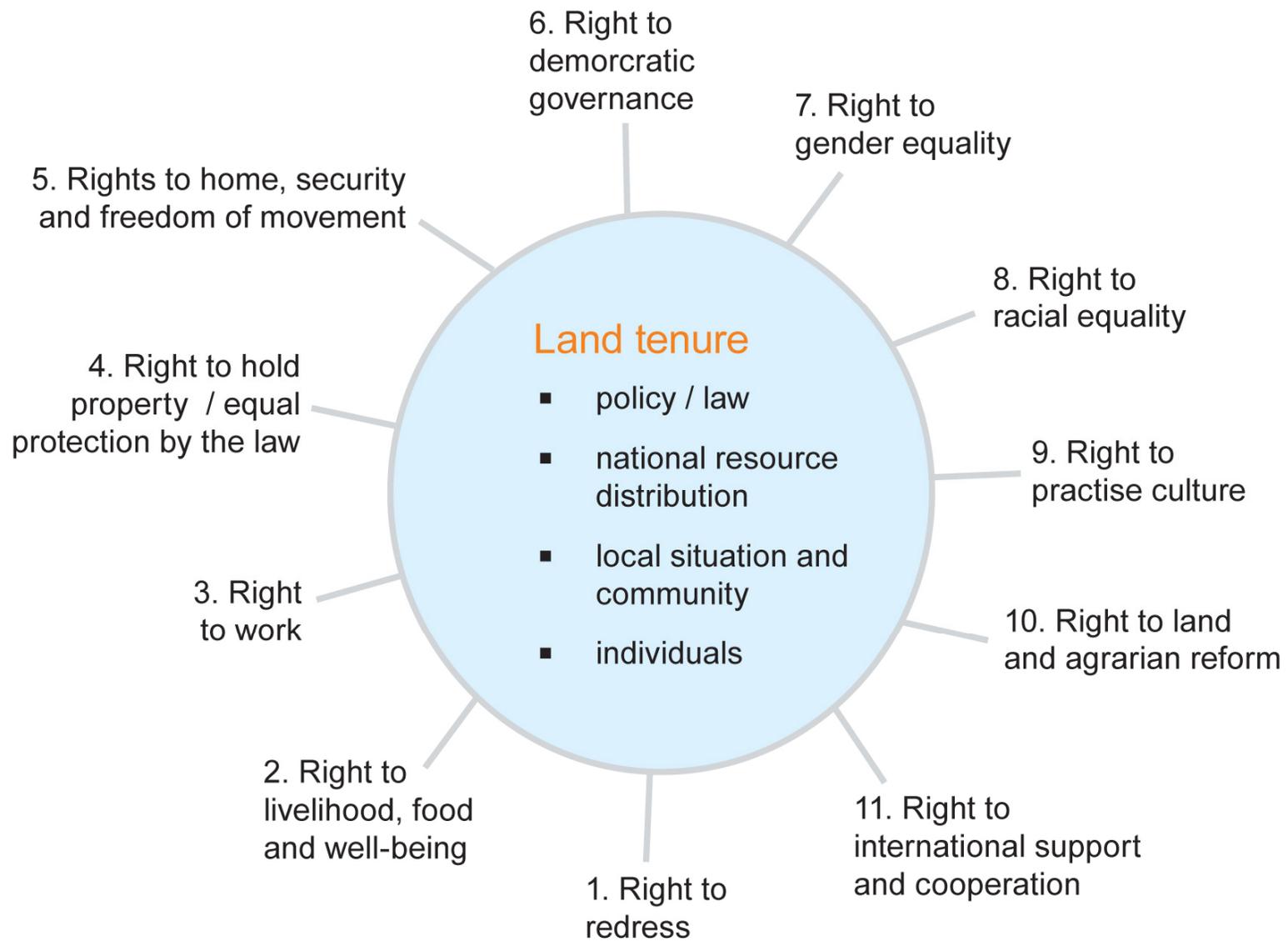
- **The right to adequate housing does not imply:**
    - That the State is required to build houses for the entire population free of charge
    - That housing rights will manifest themselves in the same way in all locations.
- however, the State has the duty to create conditions so that all residents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



## LAND RIGHTS

# 1

- There is no explicit international legal framework on land rights (except related to women and indigenous people)
- Land rights can be derived from many human rights





## LAND RIGHTS

# 3

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



## PROPERTY RIGHTS

# 1

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



## PROPERTY RIGHTS

# 2

### ■ **Controversies:**

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



## PROPERTY RIGHTS

# 3

## ■ 1951 Refugee Convention

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



# Ratification Status in the countries where we work?

- Four Geneva Conventions
- 1951 Refugee Convention
- ICESCR
- ICCPR
- ILO Convention 169
- CEDAW

PLENARY

Ratification  
status

# QUESTIONS?





# WOMEN'S HLP RIGHTS

EUROPEAN COMMISSION



Humanitarian Aid and Civil Protection

## SESSION FOUR



## WOMEN'S RIGHTS

# 1

- Generally women have less access to HLP than men
- In various countries women face discrimination in statutory and customary systems of land tenure
- Lower levels of education mean that women are less likely to know about their HLP rights
- Female headed households typically represent high proportions of the poorest living in informal settlements.

# Marital property and inheritance rights

- Marital property refers to property acquired by either spouse during marriage
- Inheritance is the transmission of the right to property such as land and housing, from one generation to the next



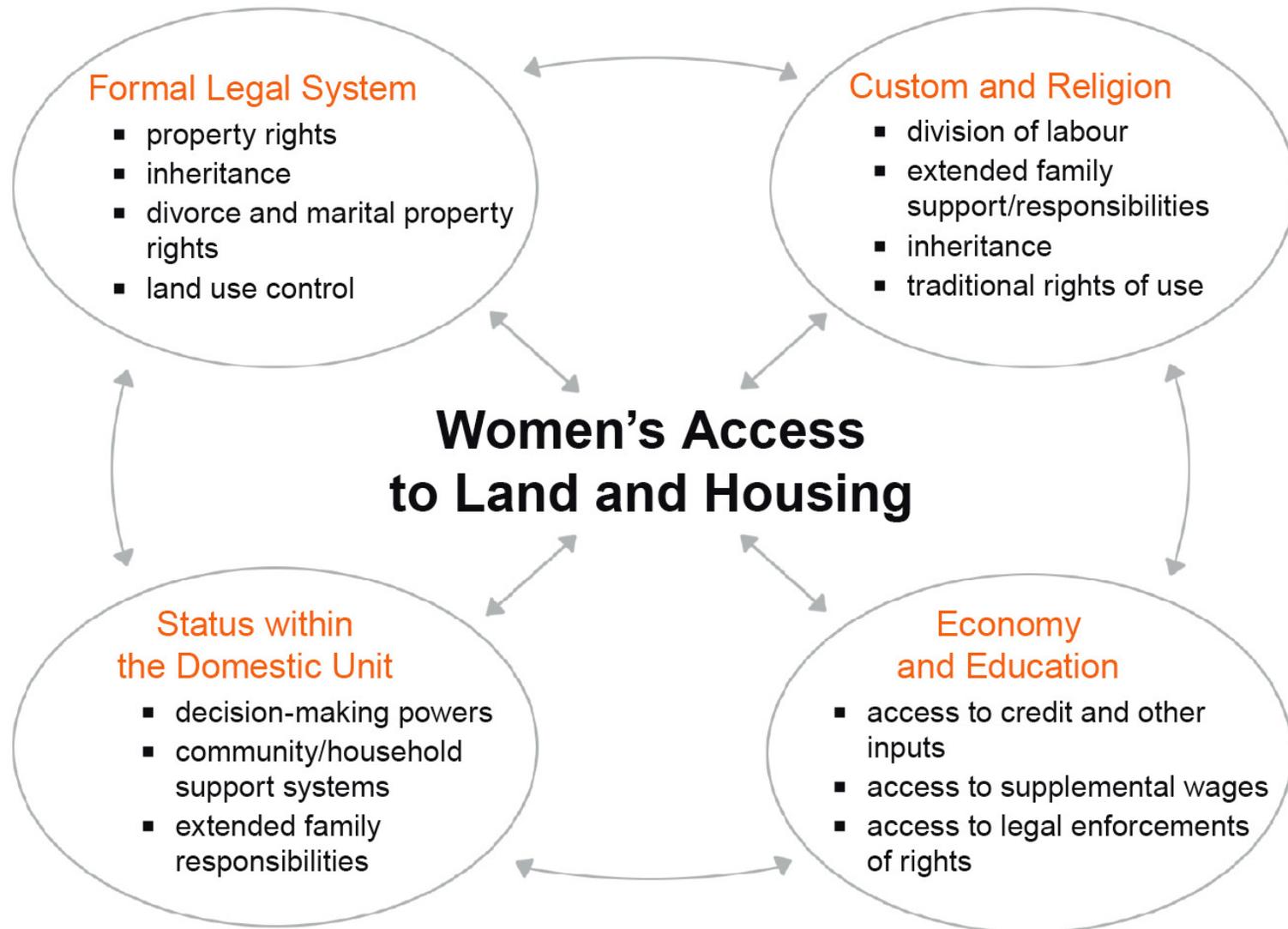
## WOMEN'S RIGHTS

# 3

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

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

- **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):** *explicitly* protects women from discrimination with respect to matters relating to HLP
  - Same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment/disposition of property
  - States Parties should take appropriate measures to eliminate discrimination against women
  - Recognition of livelihood needs of rural women



# QUESTIONS?

Suggest various practical ways to promote women's HLP rights in your specific programme



**GROUP  
EXERCISE**



EUROPEAN COMMISSION



Humanitarian Aid and Civil Protection

## SESSION FIVE

# HLP IN URBAN CONTEXTS



**SOITM**

Scale: 1:5,000





# REFUGEES AND IDPS IN URBAN AREAS

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



# REFUGEES AND IDPS IN URBAN AREAS

- **Slum/informal settlement:** residential formation characterised to some extent by:
    - Lack of basic infrastructure
    - Inadequate access to water and sanitation
    - Poor structural quality of housing
    - Overcrowding
    - Insecure residential status
- Slums are not homogeneous



# REFUGEES AND IDPS IN URBAN AREAS

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



# REFUGEES AND IDPS IN URBAN AREAS

- **Forced eviction:** temporary or permanent removal against their will of persons from the homes or lands they occupy without the provision of / access to legal protection
- Evictions are often carried out by the State as a result of development projects, slum up-grading, city-beautification projects, prestigious events (Olympic Games).

# Questions:

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

# Groups:

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



# REFUGEES AND IDPS IN URBAN AREAS

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



## SESSION SEVEN

# ADDRESSING HLP DISPUTES



# HLP DISPUTES

- HLP disputes can be a cause and a consequence of conflict
- HLP disputes usually are:
  - Multifaceted and multidimensional
  - Linked to historical, social, environmental, economic and political contexts
  - Frequently nested within larger conflicts



# TYPES OF HLP DISPUTES

- HLP disputes can be categorised by factors:
  - The **type of land involved**: private, public or community
  - The **parties involved**: individuals, families, communities, Government (ethnicity and religion)
  - The **scale of the dispute**
  - The **issues in the dispute**
    - Boundary disputes
    - Ownership disputes
    - Occupant disputes
    - Access and use disputes
    - Inheritance disputes



# DISPUTE RESOLUTION APPROACHES

There are 3 main types of dispute resolution:

- **Adversarial** (non- consensual)
- **Collaborative** (consensual): Alternative Dispute Resolution (ADR)
- **A mix of the above:** Customary or traditional dispute resolution, which includes also faith-based dispute resolution



# ADVERSARIAL, FORMAL PROCESSES

- Typically
  - formal justice systems
  - administrative hearings
- Judge makes a binding decision on the merit
- Advantages: procedural rules are usually designed to ensure a fair trial
- Disadvantages: complex, rigid, lengthy and costly, can damage the relationship between parties



# ADJUDICATION

- Most formal and adversarial process
- Parties receive a binding decision by judge or State representative (“wins all” “loses all” decision)
- Decision is immediately enforceable or appealable at higher court



# ADMINISTRATIVE (QUASI J. SYSTEMS) SYSTEMS

- Useful when dealing with a high number of HLP-related claims
- Land/property commission
- Facilitated claim procedures
  - Admissibility of claims
  - Issues of merit



# COLLABORATIVE, ADR PROCEDURES

- Non-adversarial procedures
- Include consensus-building processes
- Advantages: “win-win solution”, promotes peace and social-reconciliation, flexible
- Disadvantages: no deterrent to others from engaging in unlawful behaviour; “settlement” does not necessarily mean “justice”;
- Enforcement
- The three most common types: mediation, negotiation and arbitration



# MEDIATION

- **Impartial and neutral third party** (“mediator”) facilitates a negotiation between the disputants
- The mediator has no decision-making authority (but in some process can suggest substantive options)
- Flexible and easily adaptable to all types of cases
- Mediation is not formalised in many countries



# NEGOTIATION

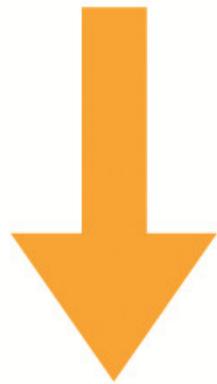
- Any form of communication and problem solving between two or more people for the purpose of arriving at a mutually agreeable solution
- Disputants may represent themselves or use agent, lawyer or family member
- Decision-making authority lies directly with the parties



# ARBITRATION

- Private and voluntary dispute resolution process
- A neutral and impartial third party (arbitrator) renders a decision (“award”) based on the merits of the case
- Parties have some control over the process
- Binding arbitration (very close to adjudication)
- Non-binding arbitration (advisory)

**NON-CONSENSUAL  
METHODS**



**CONFLICT**

*THIRD PARTY  
DECISION MAKING*

**CONSENSUAL  
METHODS**



*JOINT  
DECISION MAKING*

- Variety of forms; more common in rural areas
- Process is embedded in community's culture
- Decision-making process varies: elements of litigation and ADR
- Advantages: credited with legitimacy by community, accessible, cost-effective, inclusive, process-oriented
- Disadvantages: non-compliance with international standards, limited geographic coverage, lack of transparency and corruption, and lack of consistency of decisions

## CUSTOMARY OR TRADITIONAL RESOLUTION

# 1

- Faith-based dispute resolution
  - Some societies make reference to religious principles (e.g. reconciliation and forgiveness)
  - In some societies religiously-based values are directly included in customary/statutory law (e.g. family law)
  - Religious law is the state law: (e.g. in some Muslim-majority countries, dispute resolution significantly based on *shari'a* law)

# QUESTIONS?



EUROPEAN COMMISSION



Humanitarian Aid and Civil Protection

## SESSION SEVEN

# HLP AND DURABLE SOLUTIONS



# WHAT ARE DURABLE SOLUTIONS? 1

- A durable solution for **IDPs** is achieved when IDPs no longer have assistance/protection needs that are linked to their displacement and can enjoy their human rights without discrimination resulting from their displacement. 3 potential durable solutions:
  - Return to place of former residence
  - Local integration at site of displacement
  - Resettlement to third location within the country
- **Enjoyment of HLP rights** is key to the achievement of durable solutions.



# WHAT ARE DURABLE SOLUTIONS? 2

- Durable solutions for **refugees** are lasting solutions through:
  - Local integration in the country of asylum
  - Voluntary repatriation to the country of origin
  - Resettlement to a third country.
- **Enjoyment of HLP rights** is key to the achievement of durable solutions.



# GUIDING PRINCIPLE 28

- Responsibility for authorities to **establish conditions** and provide means for durable solutions
- Guarantees a **voluntary choice** between the durable solutions of:
  - **Return** to the place of former residence
  - **Local integration** at the site of displacement
  - **Resettlement** to a third location within the country



# IASC FRAMEWORK ON DURABLE SOLUTIONS

## Criteria to determine achievement of DS:

- Long-term safety and security
- Enjoyment of an adequate standard of living without discrimination
- Access to livelihoods and employment
- Effective and accessible mechanisms to restore housing, land and property



## GUIDING PRINCIPLE 29

- No discrimination against IDPs who return home or resettle
- Authorities have the responsibility to assist returned/resettled IDPs to recover the property/possessions they left behind. If not possible, authorities shall provide compensation or another form of reparation
- The preferred legal remedy for displacement is **restitution**



# BASIC PRINCIPLES

- Reparation can take a number of different forms:
  - Restitution or restoration of possession
  - Compensation
  - Rehabilitation that address the physical or psychosocial effects if the violation
  - Satisfaction (symbolic redress)
  - Guarantees of non-repetition



# PINHEIRO PRINCIPLES

- Pinheiro Principles include:
  - Right to privacy and respect for home
  - Right to peaceful enjoyment of possession
  - Right to adequate housing
  - Right of tenants and other non-owners



# PINHEIRO PRINCIPLES, PRINCIPLE 2

- All refugees and IDPs have the right to have restored to them any HLP of which they were unlawfully deprived; or to be compensated when restitution is factually impossible.
  - broadened the scope of restitution as defined in the Guiding Principles from “property and possession” to “HLP”
  - protects tenancy rights
  - encompasses interests in land and housing not based on formal title
  - applies to IDPs and refugees



# RESTITUTION/COMPENSATION – PRACTICE 1

- **Restitution:** preferred remedy
  - Redresses the wrong done
  - Facilitates return and reintegration in the area of origin
- Restitution non appropriate when:
  - Land and property tenure before displacement was unfair or unsustainable
  - Displacement has accelerated demographic trends
  - Land is hold collectively
  - IDPs/refugees were homeless prior to displacement
  - Protracted displacement: restitution is impractical



# RESTITUTION/COMPENSATION – PRACTICE 2

- Compensation is appropriate when:
  - Restoration of housing, land or property is impracticable/impossible
  - Those possessing restitution rights prefer compensation
- Compensation calculated on the value of the property at the time of restitution
- Special attention to single mothers/widows



# IMPROVE TENURE SECURITY AND HOUSING CONDITIONS (1)

- In context of local integration and settlement elsewhere
- For landless, homeless or squatters
- For homeless secondary occupants
- For returnees



# IMPROVE TENURE SECURITY AND HOUSING CONDITIONS (2)

- Options:
  - Slum upgrade,
  - Regularisation of informal settlements
  - Upgrade and privatisation of collective centres
  - Social housing
  - Land titling (of customary rights, after dispute settlements)
  - Land reform
  - Land titling and improvement?

# QUESTIONS?



# THANK YOU!!

