



**Durable**

**Housing, Land and Property**

**Solutions for**

**Customary Displacement Contexts**

## **DURABLE HOUSING, LAND AND PROPERTY SOLUTIONS FOR CUSTOMARY DISPLACEMENT CONTEXTS**

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# DURABLE HOUSING, LAND AND PROPERTY SOLUTIONS FOR CUSTOMARY DISPLACEMENT CONTEXTS



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## DEFINITION OF KEY TERMS

**Customary land administration and management:** Customary land administration and management “is a flexible way of managing land relations for a specific community based on custom and prevailing traditions.”<sup>1</sup> Land is administered by community leaders on behalf of the community, and leaders should consult the community on major decisions such as alienation of land. Customary land administration usually provides secure tenure for its members and significantly reduces encroachment by outsiders.<sup>2</sup>

**Customary tenure and customary land rights:** Customary areas are those in which customary tenure prevails, i.e. where the “laws, rules and norms governing rights to land and natural resources are upheld by an authority other than the state and subscribed to by a collective defined by characteristics other than national citizenship.”<sup>3</sup> This is linked to the concept of traditional land rights, where land is managed according to local customs and cultural norms and is usually administered by tribal or community leaders. In these areas, “the concept of ownership – and related rights and obligations – generally differs from the statutory land administration system.”<sup>4</sup> Customary tenure is overlaid with complex secondary rights so that no community member is left landless.<sup>5</sup>

**Durable solutions:** Durable solutions “include any means by which a situation necessitating refugee status can be satisfactorily and permanently resolved in a manner that would enable those affected to lead normal lives without the need for protection or perpetual humanitarian assistance”. In the case of internal displacement, a “durable solution is achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement.”<sup>6</sup>

**Free, Prior and Informed Consent (FPIC):** FPIC is a principle protected by international human rights standards that states: ‘all peoples have the right to self-determination’ and ‘all peoples have the right to freely pursue their economic, social and cultural development’.<sup>7</sup> A Free, prior and informed consent (FPIC) strategy acknowledges the right of Indigenous communities to say yes or no to any proposal likely to affect their territory and social structure.

**Host communities:** Host communities are “the local, regional, and national governmental, social, and economic structures within which refugees and other displaced or migrant communities live, including specifically the local individuals and groups of people residing in close physical and social proximity who are often the most directly impacted by any influx or arrival of refugees, migrants, and internally displaced persons (IDPs.)”<sup>8</sup>

**Indigenous land rights:** In international law, some groups of people are recognized as Indigenous. Their property rights are protected within the framework of communal property. Possession of the land “should suffice for indigenous communities lacking real title to obtain official recognition of that property.”<sup>9</sup> Customary rights include those of Indigenous people; in other words, Indigenous land rights are one form of customary rights.

1 Akrofi, 2013.

2 Ibid.

3 Knox, 2010 cited in UN-Habitat, 2019.

4 UN-Habitat, 2024.

5 Wily, 2008.

6 IOM, UNHCR, cited in UN-Habitat, 2024.

7 FAO, 2016.

8 UNHCR, cited in UN-Habitat, 2024.

9 UN-Habitat, 2011.



Internally Displaced Person(s) (IDPs): IDPs are “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>10</sup>

**Land administration:** Land administration means “the processes of recording and disseminating information about the ownership, value, and use of land and its associated resources. Such processes include the determination, survey, description, and detailed documentation of land rights; the detailing of other attributes of the land; and the provision of relevant information in support of land markets and land use management.”<sup>11</sup>

**Land recordation:** This involves recording different types of land rights along the continuum of land rights.<sup>12</sup>

**Land registration:** This can be defined as “the process of recording and registering land rights either in deed or title form. The aim of registration is to guarantee the security of property transactions, to protect the owner from encroachment by third parties, and to enhance land tenure security as a whole.”<sup>13</sup>

**Land tenure:** Land tenure is “the way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land.”<sup>14</sup> Land tenure describes who has which rights to do what on which parcel of land, and for how long.

**Legal pluralism:** This refers to the coexistence, interaction and overlap of a combination of different legal systems, such as customary, statutory, religious laws, norms and regulations. Legal pluralism acknowledges that individuals and groups may be subject to, or may choose to adhere to, different sets of rules and norms depending on various factors like context, culture and social relationships. “The relationship among statutory, customary and religious laws usually depends on the level of recognition and domestication of traditional and religious laws and practices in the formal legal system. This can range from full or partial recognition to non-recognition of religious and customary laws.”<sup>15</sup>

**Migrant:** A migrant is “a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. The term includes several well-defined legal categories of people and types of movement, such as migrant workers and smuggled migrants, as well as those whose status or means of movement are not specifically defined under international law, such as international students.”<sup>16</sup>

**Parcel sweep (barrido predial in Spanish):** This refers to a comprehensive and systematic process to collect and update information on all land parcels within a specific area. This aims to create a detailed and accurate record of land ownership, usage and boundaries. The primary goals of a parcel sweep include improving land administration, resolving land disputes and ensuring proper land management. The parcel sweep method is government led and

10 UNOCHA, cited in UN-Habitat, 2024.

11 World Resources Institute, 2016, cited in UNCCD, 2017.

12 UN-Habitat, 2019.

13 UNCCD, 2017.

14 UN-Habitat, 2008 cited in UNCCD, 2017.

15 UN-Habitat, 2024.

16 IOM, cited in UN-Habitat, 2024.

involves widespread participation, including the municipality, community leaders and community members. The first step entails adopting a free, prior and informed consent (FPIC) strategy which acknowledges the right of Indigenous communities to say yes or no to any proposal likely to affect their territory and social structure. Community members work with professionals to survey the land.

**Refugee:** A refugee is a person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”<sup>17</sup>

**Registered land rights:** See land registration above.

**Resilience:** “The ability of a system, community, or society exposed to hazards to resist, absorb, accommodate, adapt to, transform, and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions through risk management.”<sup>18</sup>

**Relocation:** This refers to the planned transfer of people from one area to another.

**Returnee:** A returnee is a person who was a refugee or an IDP and has recently returned to his/her country and place of origin with the intention of settling there.<sup>19</sup>

**Spatial planning:** This refers to decision-making processes aimed at realizing economic, social, cultural and environmental goals in an area through physical and spatial visions, strategies and plans and the implementation of these by applying a set of policy principles, tools, institutional and participatory mechanisms and regulatory procedures.<sup>20</sup>

**Voluntary return:** Voluntary return is the assisted or independent return of a migrant, a refugee, or a forcibly displaced person to their area of origin or habitual residence based on their own free will and informed decision-making.

**Vulnerability:** Vulnerability describes the conditions (physical, social, economic and environmental) which increase the susceptibility of an individual, a community, assets, or systems to hazards, shocks and stressors.<sup>21</sup>

**Vulnerable group(s):** Vulnerable groups include “any identity group, community, or segment of society that is at higher risk of being subjected to discrimination, violence, natural or environmental disasters, or economic hardship, than other groups. Such groups may include women, children, the elderly, persons with disabilities, indigenous peoples, or migrants and often experience higher risk in periods of conflict and crisis.”<sup>22</sup>

17 1951 Geneva Convention Relating to the Status of Refugees, cited in UN-Habitat, 2024.

18 UNDRR, cited in UN-Habitat, 2024.

19 OHCHR, cited in UN-Habitat, 2024.

20 UN-Habitat, cited in UN-Habitat, 2024.

21 UNDRR cited in UN-Habitat, 2024.

22 IOM, cited in UN-Habitat, 2024.

# ACRONYMS

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## A

**ANGOC** Asian NGO Coalition for Agrarian Reform and Rural Development

## C

**CACO** Cadre de Concertation des Organisations de la Société Civile Congolaise et des Peuples Autochtones

**CAD** Computer aided design

**CAFI** Central African Forest Initiative

**CAHF** Centre for Affordable Housing Finance in Africa

**CAP** Community Action Plan

**CAS** Civil Affairs Section

**CBO** Community-based organization

**CCJ** Colombian Commission of Jurists

**CDR** Community Dispute Resolution

**CINEP** Centre for Research and Popular Education/Peace Program

**CONAREF** National Commission for Land Reform, DRC

**CRD** Centre for Rural Development

**CSO** Civil Society Organisation

## D

**DDPD** Doha Document for Peace in Darfur

**DPA** Darfur Peace Agreement

**DRC** Democratic Republic of the Congo

## E

**ETI** Indigenous Territorial Entities

## F

**FAO** Food and Agriculture Organization of the United Nations

**FARC-EP** Revolutionary Armed Forces of Colombia

**FPIC** Free, prior and informed consent

## G

**GLTN** Global Land Tool Network

## H

**HDX** Humanitarian Data Exchange

**HLP** Housing, land and property

**HRPFMB** Huong River Protection Forest Management Board

**HUAF** Hue University of Agriculture and Forestry

## I

**IDP** Internally displaced person

**IDMC** Internal Displacement Monitoring Centre

**IOM** International Organization for Migration

**IWGIA** International Work Group for Indigenous Affairs

## J

**JBIC** Japan Bank for International Cooperation

**K**

<b>KAD</b>	Kawthoolei Agriculture Department
<b>KCLC</b>	Kawthoolei Central Land Committee
<b>KESAN</b>	Karen Environmental and Social Action Network
<b>KNU</b>	Karen National Union
<b>KNDO</b>	Karen National Defence Organization

**L**

<b>LURC</b>	Land Use Rights Certificate
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**M**

<b>MLO</b>	Municipal Land Office
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**N**

<b>NGO</b>	Non-governmental organization
<b>NRC</b>	Norwegian Refugee Council

**O**

<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
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**P**

<b>PPHPZ</b>	People's Process on Housing and Poverty in Zambia
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**R**

<b>RSPSD</b>	Regional Spatial Planning Strategy of Darfur
<b>RUTDA</b>	Unique Registration System for Dispossessed Lands

**S**

<b>SDI</b>	Shack Dwellers International
<b>SNR</b>	Superintendents of Notaries and Registers
<b>STDM</b>	Social Tenure Domain Model

**U**

<b>UN</b>	United Nations
<b>UNAMID</b>	United Nations Hybrid Operation in Darfur
<b>UNDRR</b>	United Nations Office for Disaster Risk Reduction
<b>UNDP</b>	United Nations Development Programme
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UN-Habitat</b>	United Nations Human Settlements Programme
<b>UNICEF</b>	United Nations International Children's Emergency Fund
<b>URT</b>	Unit for Land Restitution
<b>USAID</b>	United States Agency for International Development

**W**

<b>WB3</b>	Vietnam Water Resources Assistance Project
<b>WFP</b>	World Food Programme

**Z**

<b>ZLDC</b>	Zambia Law Development Commission
<b>ZHPPF</b>	Zambia Homeless and Poor People's Federation



# EXECUTIVE SUMMARY

## Introduction

Each year increasing numbers of people are forcibly displaced from their homes because of conflict, violence, human rights abuses, natural disasters, climate change and socio-economic transformations that marginalize local communities. Many remain within their country of origin but lose access to their homes and income. At the end of 2023, nearly 76 million people were living in internal displacement worldwide.<sup>23</sup> Displacement often occurs from or to customary and communal lands, where housing, land and property rights are outside the formal land registration system and rules regulating land allocation and management are unwritten.

This paper analyses case studies and provides evidence-based recommendations on how to prevent or provide durable solutions to displacement in customary contexts through housing, land and property rights' interventions. The cases include voluntary return, local integration and relocation in other locations, and also describe measures to prevent internal displacement.

## Displacement and HLP in customary contexts

Housing, Land and Property (HLP) issues underlie all aspects of displacement and need to be resolved to prevent it, mitigate its impact and ensure durable solutions.<sup>24</sup> HLP rights mean having a home that offers secure shelter, protection and dignity. They entail the ability to secure a livelihood, rebuild a life and no longer have specific assistance and protection needs linked to displacement.

HLP rights range from registered rights held according to statutory, customary or religious law or informal practices. They can pertain to individuals, groups or

families who can be owners, tenants and users for different time durations.

About 70 per cent of land rights in developing countries are not recorded and are managed by communities according to customary practices or informal mechanisms.<sup>25</sup> Many countries have large areas of customary land, sometimes referred to as traditional, Indigenous, tribal, community, collective, pastoral or informal land. These areas operate under customary, informal or religious laws and practices alongside statutory, formal legal systems. Land is usually administered by community leaders based on long-standing traditions that include community-based decision making.

A wide range of context-specific tenure arrangements and land governance practices exist within and between countries. Customary land rights and the role of customary or community land administrator is often not formally recognized or well regulated, particularly in crisis and displacement-affected contexts. People living in these areas may therefore have precarious security of tenure and can be vulnerable to eviction and displacement, particularly when customary tenure arrangements are not formally codified.<sup>26</sup> Women's representation is often limited.<sup>27</sup>

On the other hand, although customary laws are different from one local context to another and can be open to abuse, they are generally adhered to by community members.<sup>28</sup> Customary approaches to resolving disputes are often preferred as they are quicker and simpler than formal justice mechanisms. Customary land governance is dynamic and constantly adapts to new circumstances. Therefore, a good understanding

23 IDMC, 2023.

24 United Nations General Assembly.

25 Land Links, n.d.

26 Freudenberger, 2013.

27 S. Sait & H. Lim, *Land, Law and Islam*, 2006.

28 Ironside, 2017.

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of how to operate through customary governance mechanisms offers great opportunities to provide land tenure security and HLP solutions to displaced people and their host communities at scale.

### Key concepts and assumptions

To provide durable HLP solutions in customary displacement contexts, it is important to build on some concepts and underlining assumptions. These complement the knowledge of norms, concepts and practices derived from statutory laws and formal land administration systems which are prevalent in non-customary contexts and more widely known to national and international humanitarian, peace and development actors.

**Continuum of land rights** – In customary contexts, there is a wide range of legitimate land rights. These may be legally or customarily recognized or informally accepted, may or may not be formally registered or recorded and may be held by individual people, families, groups or communities. They include full ownership and many types of short- and long-term land use rights. There can be a host of overlapping and interwoven land tenure arrangements with varying degrees of security. Understanding land rights through the continuum approach helps build on existing practices to provide solutions that respond to the HLP needs of displaced and host communities.

**Ownership vs use rights** – The continuum of land rights concept recognizes several types of legitimate land rights. Full land ownership is just one type of right, which corresponds to the concept of freehold, applying to property ownership held in perpetuity, passed on to heirs, formally registered and that can be used as a financial asset. Humanitarian HLP rights' frameworks hinge heavily on the full land ownership concept, particularly when it comes to compensation and restitution of properties to displaced persons who

do not intend to return and re-occupy them (but rather sell them, rent them out or keep them vacant).<sup>29</sup> In customary systems, tenure rights are often conditional to the need and use of such lands, particularly in the case of unbuilt properties. Community lands are generally allocated to be used for a specific time duration. Once the land is no longer needed, it can be re-allocated, although customary ownership rights are retained by the lineage, extended family, group or tribe. The people displaced from their land do not necessarily retain the rights to a specific plot (or the right of compensation and restitution in case of non-return as defined by full ownership rights), but rather they retain the right to be re-allocated land on their return. This also affects secondary occupants, who have similar rights as the previous 'owners' if such lands were re-allocated to them after they had been vacated.

**Individual vs group rights** – Access to HLP in customary contexts is predominantly shaped by the needs, rights and responsibilities over the use of land and related natural resources. There is a very strong community dimension to the management of these resources, and therefore the nature, duration and characteristics of individuals' rights depend on their position and role within the community and the family, thus differing from one individual to another. Establishing durable HLP solutions on customary lands requires recognizing and embracing these features of the underlying governance system. This is essential for negotiating solutions that can resolve the immediate HLP needs of the displaced and that can be progressively upgraded to incrementally achieve durability and local integration.

**HLP solutions for host vs displaced** – Commonly, the type of land rights available to individuals belonging to the host community differ from those available to outsiders to the group, although they can both provide durable solutions. As an example, in Sudan, displaced

29 The Pinheiro Principles, 2005.

people hosted on other tribes' customary land can be assigned plots on which to live and practice their livelihoods for generations, but they do not acquire the right to sell or rent out the land (similarly to a leasehold/freehold distinction). This traditional and respected customary community-based mechanism of hosting IDPs in areas of displacement provides HLP solutions for millions of people without disrupting the local balance and the resilience of host communities, therefore providing durable HLP solutions at scale.

**Legal pluralism** – Several co-existing legal systems may operate in customary areas, usually customary and statutory, but sometimes also religious and informal. This plurality provides a wider range of solutions, but can also create confusion and uncertainty, negatively impacting the vulnerable<sup>30</sup> and women.<sup>31</sup> Statutory laws usually have some weight even if customary laws are present; however, if there is conflict between statutory and customary law, traditional communities are likely to resort to the latter, which is generally better known, easier and cheaper to administer. Systems that link customary and statutory rules and institutions, enabling them to function as a cohesive system and build on the respective strengths,<sup>32</sup> are the most effective. Customary and statutory systems need to continue evolving, become better regulated and more adequately administered to respond to the needs of both host and displaced communities. When intervening at the local level, it is important to map the provisions across various sources of laws and derived practices to identify the best entry points and most suitable durable HLP solutions.

**Recognition of customary law** – The degree to which customary law and customary land administration are recognized by national legislation varies from country

to country. Without constitutional or legal recognition of customary law, statutory law prevails in principle.<sup>33</sup> Even where customary law is recognized by statutory law, practices and associated land rights might not be well codified. In some countries, the legal recognition of customary land administration may not play out in practice, whereas the opposite may also be true. In some contexts, local authorities might turn a blind eye to customary land management practices, whether they are allowed for in law or not. The fact that customary land administration and practices are dynamic and constantly changing makes it difficult to ensure they are reflected in statutory law, and experiences of codification of customary land laws generally have not worked well. Nevertheless, for the protection of HLP rights of displaced and host communities and for the establishment of durable HLP solutions, it is crucial that customary law and the role of customary land administrators is recognized by statutory law.

**Customary land administrators** – Customary land is managed and administered by customary land administrators,<sup>34</sup> who differ from those in the formal land administration sector. The type and role of customary land administrators varies depending on the context and it is crucial to map them when planning HLP interventions in contexts of displacement.

**Area of origin** – Protracted crises lead to a complex process of cyclical movements, temporary return and different levels of integration.<sup>35</sup> The durable solutions approach adopts return to the area of origin as an option and, in customary contexts, return remains an important right. However, displaced people are often forced to move multiple times, and much will have changed in their area of origin since they were initially displaced. Returning could be as difficult as moving

30 Cuskelly, K., 2011.

31 UN-Habitat, 2024.

32 Cuskelly, 2011.

33 Cuskelly, 2011.

34 UN-Habitat, 2023.

35 Rudolf, M. and Schmitz-Pranghe, C., 2018.

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to a third location, and HLP solutions might be similar as well. It may be impractical to consider property restitution at the individual or household level as the main HLP solution, particularly given the widespread lack of HLP documentation and property registration in customary areas. It may be better to apply, more broadly, the principles and practices related to the right to adequate housing.

**Crisis-induced power shifts** – When a customary context experiences rapid change such as the arrival of large numbers of displaced people, customary practices and customary authorities are put under pressure. New actors may be more familiar with the statutory system which changes the power balance and relations

between customary and statutory practices, potentially leading to long-term changes in how land is used, distributed and managed.

**Urban and peri-urban areas** – Customary land management practices are not necessarily restricted to rural areas. In peri-urban areas, conflict may arise between traditional authorities trying to maintain customary practices, while government authorities implement formal land tenure and management.<sup>36</sup> Customary governance structures may dominate in some urban areas. Informal settlements can include customary rules, modern rules or a mix of both, which evolve as new residents adapt to urban life. Traditional authorities may still wield significant power.

### Summary of the case studies

Location & nature of displacement	Type of durable solution & approach	Key outcomes
<p><b>Locations:</b> Lomitas, Carceres, Tierralta, Ataco and Salaminita, Colombia</p> <p><b>Cause of displacement:</b> paramilitary violence</p>	<p>Promote return to the area of origin and facilitate local integration through restitution of dispossessed lands, regularization of informal settlements, and registration of land parcels in customary and informal areas</p>	<ul style="list-style-type: none"> <li>• Lomitas – over 700 land titles issued; mobilization of funds for housing for 400 vulnerable families; improvement of land administration; formal title allowed Santander municipality to mobilize public funding for infrastructure.</li> <li>• Caceres – 94 titles at no cost to IDPs; tenure security provided to displaced people who returned to their land reoccupied by new residents. Municipality now has 22 property titles for schools; having titled land means they can provide food and agriculture assistance through investments in agricultural and small infrastructure projects</li> <li>• Tierralta the informal settlement area of destination of IDPs was regularized and incorporated into masterplan. Since 2017, over 1,950 titles provided (largest delivery ever of land titles by a municipal administration in Colombia). Women registered as the landowner noted gain access to government programmes and subsidies and a mortgage and enables their children to inherit the property.</li> <li>• Ataco – 11,843 land parcels identified in parcel sweep, over an area of 100,000 hectares; 5,000 of them ready to be titled (Colombia's largest land formalization initiative). Protected reservations created for Pajiao ethnic minority group to ensure secure access to their ancestral land. 18 public parcels titled for clinics and schools which facilitates national funding.</li> <li>• Salaminita – Superior Court recognized the right to land restitution for 36 families and ordered landlords to return their land to original residents; judgement for municipal support in terms of prioritized housing, health and education not followed through.</li> </ul>

36 Freudenberger, 2013.



<p><b>Location:</b> North Kivu, Eastern Democratic Republic of Congo (DRC)</p> <p>Cause of displacement: violence</p>	<p>Facilitate return and integration through land conflict mediation and participatory land recordation</p>	<ul style="list-style-type: none"> <li>• In the DRC as a whole, resolution of land disputes has benefited 110,580 people (20,334 men, 23,331 women, 32,545 girls, 34,369 boys) and has seen significant drop in land conflicts, promoting more secure land tenure for all, including for the returning displaced people.<sup>37</sup></li> <li>• Locally agreed and legally recognized HLP documents were provided to 564 men and 97 women between June 2016 and August 2018 in the Eastern DRC.<sup>38</sup></li> <li>• Transparent land information system has been established that can facilitate smooth integration of returning and already resident IDPs. This includes digitized tenure information and the database and community-generated map which enable communities to manage their own tenure information.</li> <li>• Communication and coordination on land issues between national and provincial governments and civil society has been strengthened.</li> <li>• Leveraged support which contributed to development of national land policy and land reform programme; the National Land Policy was subsequently approved in 2022.</li> <li>• Data from this process is used to attract public investment services and infrastructure, and to encourage local development initiatives.</li> </ul>
<p><b>Location:</b> Baidoa, Somalia</p> <p><b>Multiple causes of displacement</b></p>	<p>Facilitate local integration through land tenure agreements to prevent eviction and secure land for housing</p>	<ul style="list-style-type: none"> <li>• Over 1,300 land-tenure documents provided to IDPs providing tenure security to over 70,000 people,<sup>39</sup> including through lease agreements (for 5–8 years), with over half being for women heads of households.</li> <li>• IDPs were able to use these land documents to prevent forced evictions and for dispute resolution when eviction was threatened (at household or settlement level)</li> <li>• Since 2019 2,009 households (about 12,000 people)<sup>40</sup> have been resettled on 300 hectares of newly developed public land (Barwaqo), 7 km north of Baidoa town centre. Relocated families are given cash assistance and a plot of land and receive their title two years after resettlement.<sup>41</sup></li> <li>• Technical and operational capacity at the Baidoa Municipality and Cadastral Services has increased.</li> <li>• Better relations with host communities and secure tenure means IDPs no longer at risk of eviction and have better opportunities for livelihoods and access to other rights. This promotes durable solutions for IDPs.</li> </ul>
<p><b>Location:</b> El Geneina, West Darfur, Sudan</p> <p><b>Multiple causes of displacement</b></p>	<p>Enable local integration through intercommunal reconciliation of land disputes and local peace agreement including land use rights</p>	<ul style="list-style-type: none"> <li>• The displaced communities enjoy greater land tenure security</li> <li>• Shared use and management of land and land-based resources (e.g. water) and improved food security</li> <li>• To strengthen reconciliation, two primary schools and a water point were built and are jointly managed.</li> <li>• Encouraged peaceful coexistence, enabled mutual consultation and strengthened traditional conflict resolution mechanisms.</li> <li>• Strengthened land-use zoning to address conflict between the nomadic communities and farmers.</li> <li>• Increased participation of women in decision making.</li> </ul>

37 UN-Habitat, n.d.

38 Ibid.

39 NRC, 2021.

40 Land Pulse, 2024.

41 UN-Habitat, 2018.

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<p><b>Location:</b> Abyei, Sudan</p> <p><b>Multiple causes of displacement</b></p>	<p>Enable local integration through rapid mapping and recognition of extended family land tenure rights</p>	<ul style="list-style-type: none"> <li>• Use of the traditional concept of <i>housh</i>, or extended family compound, with rapid planning and surveying meant that general boundaries were accepted, and no individual rights needed to be adjudicated. Land is under joint ownership.</li> <li>• People marked their plots on satellite images.</li> <li>• Using this technique, about 9,000 plots were mapped and planned in 18 days.</li> <li>• Internal family dynamics and land tenure relations were not disrupted.</li> </ul>
<p><b>Location:</b> Chamuka, Zambia</p> <p><b>Risk of displacement:</b> high demand for land in peri-urban agricultural areas</p>	<p>Prevention of displacement through the establishment of a customary land recordation system that increases tenure security, reduces conflicts and enhances local investments</p>	<ul style="list-style-type: none"> <li>• Strengthened land tenure security of local communities, due to recordation of customary land rights and the issuing of 4,752 certificates of customary</li> <li>• Reduction in disputes over land rights boundaries due to availability of land maps validated by the communities and the establishment of a reliable database generated using the GLTN innovative land tools and approaches.</li> <li>• Spatial and socio-economic data for future infrastructural and services planning</li> <li>• Strengthened women's and girls' land rights - policy introduced declaring that 50 percent of land should be reserved for women</li> <li>• Women's role as project leaders changed perceptions of women's participation in land matters</li> <li>• Overall reduction of key root causes of displacement: dispossession of local communities and poverty due to land tenure insecurity and consequent limited investments.</li> <li>• Successful mapping leveraged funding for road rehabilitation and attracted private sector investment.</li> <li>• Strengthened the capacity of community organizations, local youth volunteers and traditional chiefs.</li> </ul>
<p><b>Location:</b> Southern Kayin (Kawthoolei), Myanmar</p> <p><b>Cause of displacement: conflict</b></p>	<p>Prevention of displacement through community land recordation</p>	<ul style="list-style-type: none"> <li>• Villagers received land certificates that give sense of inheritance rights and protection from land grabs</li> <li>• Mapped ancestral lands in seven districts of the state</li> <li>• Demarcated 326 <i>kaws</i> (ancestral customary lands) over 842,820 hectares, including 107 reserved forests, 18 wildlife sanctuaries, 204 community forests and four herbal medicine forests, covering a total forest area of over 2.7 million hectares<sup>42</sup></li> <li>• Participatory process enabled remote rural communities with limited internet to use accessible technology to protect their land and resources.</li> <li>• Process enhanced community conservation efforts</li> </ul>
<p><b>Location:</b> Bo Hòn, Vietnam</p> <p><b>Cause of displacement:</b> infrastructure megaproject</p>	<p>Planned relocation in a new area</p>	<ul style="list-style-type: none"> <li>• 27 households were moved (although settlement subsequently grew), the village lost 87.3 per cent land, each household lost 30 per cent; initially not able to use protected forest, given permission to reclaim unused uplands to plant acacia forests in 2007</li> <li>• Initially those moved suffered a loss in land and income. However, recovered after three years due to adaptive strategies arising from support from local authorities and NGO (including access to acacia forests – source of income, and income generating possibilities due to location close to city)</li> <li>• Effect of resettlement unequal, negatively affecting women and the more marginalized, leading to greater inequalities and some distrust.</li> </ul>

42 Hyolmo, 2024.

## Findings and recommendations

The review of case studies, displacement trends, concepts and assumptions lead to a set of recommendations on how to prevent or to provide durable solutions to displacement in customary contexts through housing, land and property rights' (HLP) interventions.

**Legitimate customary land rights and the role of customary land administrators.** It is necessary to recognize all legitimate customary land rights, acknowledging and strengthening individual, household and group rights. This may require revised policies and laws. It also entails recognizing the role and progressively strengthening the capacities of customary land administrators.

**Legal pluralism.** Legal pluralism prevails in most customary contexts, where customary, statutory, religious and informal laws and norms coexist, creating a range of local practices that vary across communities and can change rapidly during crises. To achieve durable HLP solutions in customary contexts it is important to work with local actors who have a good understanding of the customary, religious and statutory laws at play. Solutions should consider drawing upon the different legal frameworks. With a longer-term perspective, it is important to progressively reform laws and norms to increase their alignment, harmonize and better define how they and their implementation mechanisms relate to one another and when each applies. A better regulated plurality of laws and practices means a better functioning and more cohesive system to manage customary areas and achieve the HLP rights of people living in them.

**Influencing national policies through local approaches.** The case studies analysed prove that local initiatives to secure the HLP rights of displaced people can successfully feed into policy making at the national level, leading to better policies and laws.

**Land tenure security and adequate housing.** To provide durable HLP solutions to displacement in

customary areas, 'land tenure security' and 'adequate housing' are useful guiding principles that can provide better entry points than restitution and compensation approaches, particularly in rural settings and contexts affected by multiple displacements where HLP rights are unregistered. This means identifying suitable land and housing options for all people living in a particular area, whether they are returning there, displaced there or moved there as their choice of a third location. The type of HLP rights accessible to individuals from displaced and host communities may vary from ownership and long-term use rights to short-term use rights, but all these options have the potential to provide durable HLP solutions. On the other hand, HLP restitution and compensation mechanisms are useful HLP solutions for people returning to areas where HLP rights are registered and documented, as well as for built-up properties.

**Recordation of customary land rights.** All successful case studies analysed describe solutions for the recordation of renegotiated and adjudicated land rights through innovative participatory, fit-for-purpose, community-led processes. Customary land management systems must continue to evolve to protect people from displacement and improve resilience to causes of displacement. Communities with stronger land tenure security invest more in climate resilience and environmental conservation which results in improved livelihoods and reduced vulnerability to displacement. Recording customary rights helps customary land administration systems become more transparent, gender responsive and better able to accommodate newcomers, and helps customary land administrators to be more accountable. Recordation of customary land rights can lead to their formalization, though they can also remain at the local or community level. The recordation process must clarify what these rights mean.

Rapid participatory mapping of group rights using customary land tenure types proved to be a cost-effective short-term solution to record land rights

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and lay the ground for local integration and durable solutions. These work best when built on pre-existing, locally acceptable customary mechanisms and when further institutionalized in law. Written short-term land use agreements and lease agreements also proved effective in strengthening land tenure security and facilitating recourse to formal or traditional dispute mechanisms.

The involvement of a neutral broker (e.g. an NGO or the UN) is often pivotal in supporting the recognition of HLP rights, providing tools for participatory mapping and recordation, developing the capacities of stakeholders and mediating disputes.

**Women's HLP rights.** Displaced women's safe access to HLP is crucial to protect them from violence, to improve their and their families' standard of living and to move towards recovery and self-reliance.<sup>43</sup> Yet, displaced women in customary contexts face layers of discrimination regarding HLP rights: as women, as displaced and as subject to customary norms which are generally gender discriminatory. To make advancements, it is essential to understand the communal dimension of customary land management, where the nature, duration and characteristics of individuals' rights depend on their position and role within society, community and family.

HLP provisions in customary law are often not the same for men and women. However, customary land administration practices are an important avenue to provide HLP solutions, including for women, because they are well known and accepted by the communities, which increases their chances of being enforced. The acceptance of customary norms and practices largely draws from the perception of them being rooted in long-standing traditions and as non-threatening to society and family values. Hence, HLP solutions perceived to

be in line with traditions are more likely to be durable, and they can always be incrementally upgraded and strengthened over time. HLP solutions that require a fundamental change in the way communal and customary lands are managed, on the other hand, are unlikely to lead to a sustainable positive outcome in the short and medium term.

While introducing more gender responsive ownership patterns, women's use rights over the houses, land and properties of their male relatives, families and communities should be strengthened. This is often the most impactful and durable HLP solution for women. This includes usufruct rights of widows, longer agreements for the use of agricultural land, and the use of written agreements that more clearly define rights and responsibilities.

The recordation of customary land and the issuing of joint documentation also proved successful in making customary land management practices more gender responsive, with positive effects on the prevention of displacement. The progressive inclusion of women in all aspects of the land sector needs to be pursued, accompanied by capacity development. Customary and community-based dispute resolution mechanisms are more likely to be used by women as they are more accepted by the community and less confrontational. These should be further strengthened and rendered more gender responsive.

**Due diligence.** Due diligence should be conducted on land where displaced people are to be accommodated, securing solid consensual agreements with land administrators and ensuring that these are recorded in writing, or at least witnessed by reliable parties, including terms, conditions, rights and responsibilities. Negotiations should involve all stakeholders including traditional leaders.

<sup>43</sup> UN-Habitat, 2024.



**Relocation.** Relocation should be avoided whenever possible. When unavoidable, adequate compensation for the loss of customary rights and alternative equivalent HLP solutions should be provided. Communities need to be consulted at all stages, ensuring a thorough understanding of the community's land use and income generating activities, and their livelihoods should be monitored after the move to ensure that the community is not worse off than before.

**Similarity among durable HLP solutions.** The movements of displaced people are complex. In most cases people have experienced multiple displacements over decades. In customary areas, particularly if affected by protracted displacement, there are significant similarities among the durable HLP solutions applicable to the three categories (return to the area of origin, local integration and integration in a third location).

**Alternative and collaborative dispute resolution mechanisms.** A well-functioning justice sector is crucial for enabling durable HLP solutions. Alternative collaborative dispute resolution mechanisms proved effective to resolve conflicts over customary land ownership and land use and emerged as a constant feature in case studies. Agreements can be reached more easily when facilitated by a neutral external party.

**Inclusive negotiated area-based approaches.** The HLP needs of the displaced compete with those with the same purchasing power within local communities. Such convergence should be factored in from the onset to avoid the sparking of new conflicts that aggravate existing vulnerabilities. The customary land rights of host communities and the land-related agreements they have with the displaced should be strengthened.<sup>44</sup> Overstretched host communities should be supported, including by working with local community-based structures to build additional houses and new rooms, upgrade services and upgrade sub-standard settlements

to accommodate the newcomers. The process of defining and agreeing on the sharing of communal resources must be inclusive and gender responsive. Different groups should be represented in negotiating agreements, jointly monitoring implementation. Early warning mechanisms and effective dispute resolution mechanisms need to be established to mitigate and diffuse tensions that may arise from sharing communal land rights. Participation of all affected people at all stages of durable solutions, particularly affected communities, traditional authorities and local leaders, is critical.

**Resilience and reduced risk of displacement.** Taking measures to prevent displacement from occurring is the most effective and long-lasting durable solution. This requires investments in resilience-building measures to protect livelihoods.

**Climate and displacement.** Local, national and international development, humanitarian and peace actors need to better understand the correlation between displacement and climate dynamics for preparedness, mitigation and response programming, particularly in customary contexts. Positive climate interventions must protect and strengthen the HLP rights of local communities to be effective and to avoid dispossession and mass displacement. Climate-motivated mass relocations must be carefully planned and include compensation for the loss of HLP of displaced people, including in customary areas. Strengthening HLP rights and land governance in customary areas promotes housing and agri-food resilience, effective land restoration and biodiversity conservation interventions.

**Capacity development.** The capacities of all stakeholders involved in land administration, land governance and land allocation in customary areas need to be strengthened. Developing local capacities,

<sup>44</sup> Personal communication, Wala Abdelmuati and Salah Abukashawa, 1 July 2024.

including of customary actors, is particularly effective. This can inform national legislation, as displacement solutions need to be nationally owned, locally led and incorporated into national and local development plans.

**Beyond HLP.** A longer-term perspective is needed to assess the durability of solutions in terms of livelihood. Secure access to HLP alone does not always lead to durable solutions. Complementary infrastructure, services, peace and security must accompany HLP solutions. Livelihood opportunities are key. Access to productive land is critical to the integration of displaced people in terms of their ability to reconstruct their livelihoods. Measures to foster socio-economic integration and provide IDPs with access to housing, land, health, education, livelihoods, decent jobs and social protection are important, particularly those that are gender responsive.

## Conclusion

All actors dealing with displacement in customary contexts need to understand displacement trends and drivers and related HLP issues.

**Development actors** should work with local stakeholders and communities to develop context-specific HLP solutions that consider the statutory, customary, religious and informal laws shaping local practices. The tenure security of host communities and displaced people should be strengthened, as should women's land rights whenever possible. Tools to record legitimate land rights should be implemented, prioritizing communities that are at risk of being displaced or of receiving those who have been displaced. Where appropriate, actors should consider formally registering the land rights of host, returnee and relocated communities. Where displacement can reasonably be anticipated, preparedness plans for the arrival of IDPs should be made. This includes identifying

land and services required, conducting due diligence, securing consensus and negotiating agreements with the host communities. Capacity development of all stakeholders involved in managing displacement and administering customary areas is important and improves the resilience and self-reliance of communities.

**Humanitarian actors** need to map HLP needs and prioritize HLP programming for IDPs' protection, shelter and livelihood. In customary contexts, they can build on suitable customary approaches for the rapid allocation and recordation of land use rights, to be implemented with local communities and customary actors. Local mechanisms for hosting displaced people need to be supported. Conducting due diligence and securing solid consensual agreements with the local communities and the customary land administrators of the areas where the displaced will be accommodated is crucial. Such agreements should be recorded or witnessed by reliable parties. This is important for establishing emergency shelters and securing land for livelihood activities. Humanitarian actors need to familiarize themselves with the implications of legal pluralism and the differences between individual and group rights and ownership and land use rights in customary contexts. In customary contexts, particularly in rural areas, the provision of land tenure security and adequate housing are likely to be more time- and cost-effective solutions than restitution and compensation.

**Peace actors** need to include HLP issues in conflict analyses, peace agreements, mediation efforts and rule of law and peacebuilding interventions.<sup>45</sup> Control over land and land-based resources are root causes of conflict. Understanding the key concepts and assumptions that inform the allocation of rights, the functioning of customary land administration and the resolution of land-related disputes in customary areas is important. Alternative and collaborative

45 United Nations, 2019.

dispute resolution mechanisms that use customary approaches can be valuable in solving conflict and negotiating agreements. Customary dispute resolution mechanisms are usually cheaper, quicker and accepted by the community and may work better for women. Ensuring that agreements are recognized by all parties and recorded is essential. Early warning mechanisms and effective dispute resolution mechanisms should be established to monitor and address any tensions.

**Climate actors.** Understanding the correlation between displacement and climate dynamics is important for preparedness, mitigation and resilience. Land restoration, conservation and green infrastructure interventions must protect and strengthen local communities' HLP rights to be effective and sustainable,

and to avoid dispossession and mass displacement. Climate actors should understand the role of customary communities and customary land administration to protect the environment and prevent climate- and conflict-induced displacement. If communities in customary areas must be relocated for climate-related reasons, this should be carefully planned, with adequate compensation for the loss of HLP even when land rights are not formally registered, including compensation for the loss of communal land. The case studies present tools and approaches that proved successful for managing HLP rights in customary areas. These can be useful to advance the implementation land-related decisions relevant to the three Rio Conventions in customary areas of high environmental value, such as forests and wetlands.

# PART ONE

## 1. INTRODUCTION

### 1.1 OBJECTIVE AND METHODOLOGY

Each year an increasing number of people across the world are forced to leave their homes because of conflict, violence, natural disasters and the negative impacts of climate change, human rights abuses, change of land uses, macro socio-economic trends and other factors. Most forcibly displaced people remain within their country of origin but lose access to their homes and sources of income. In many cases, displacement occurs from or to customary and communal land, where land rights are outside the formal land registration system and the rules regulating the allocation and management of land rights are unwritten.

The customary nature of a context influences the success criteria of housing, land and property (HLP) interventions in support of displaced people. However, international norms and standards guiding the HLP interventions of humanitarian, development and peace actors in customary displacement contexts are heavily influenced by concepts, practices and lessons learned from operations in areas governed by formal land administration practices.

This paper complements the body of knowledge on durable HLP solutions with lessons learned from customary contexts affected by displacement. The paper consists of two parts. Part One reflects on underlying concepts and misconceptions that, if left unaddressed, may affect the analysis and programming of humanitarian, peace and development actors when intervening in customary contexts. It then provides an overview of the case studies, and outlines key findings

and lessons learned. Part Two provides a more in-depth description of the case studies.

The paper is based on desk research using online materials and readings recommended by UN-Habitat officials and experts in the field. The available documentation mainly addresses processes managed or co-managed by international organizations, as locally led durable HLP solution interventions for displaced people are less often documented and more difficult to source. The materials used often report on events that occurred several years ago. In areas beset by ongoing conflict, such as some of those studied here, the situation can change rapidly. Figures have been updated to the extent possible, but some are outdated. This does not affect the validity of the findings.

### 1.2 THE CONTEXT

#### Internal displacement

At the end of 2023, 75.9 million people were living in internal displacement worldwide.<sup>46</sup> This is the highest number ever recorded, with a 60 per cent increase from 2021 to 2022.<sup>47</sup> Many of these people live in situations of protracted displacement, and most (at least 59 per cent<sup>48</sup>) settle in cities, competing with other migrants, the poor and urban dwellers for scarce resources including housing, jobs and services, which strains local resources and can exacerbate conflict or violence. It is forecast that, by 2050, climate change could force more than 216 million people to move within their own countries.<sup>49</sup> Although there is no consolidated data, it is believed that a considerable proportion of IDPs are displaced from and/or to customary areas.

46 IDMC, 2023.

47 IDMC, 2023.

48 UN, 2021.

49 World Bank, cited in UNDP, 2022.

## Durable solutions

Internal displacement constitutes a humanitarian crisis but is often the result of underlying protracted shortcomings related to governance, development, human rights, peace and stability. Quick fixes are seldom sufficient on their own to resolve displacement challenges and a rich menu of durable solutions field-tested in customary areas is needed.

Durable solutions are “achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement”.<sup>50</sup> Durable solutions focus on creating sustainable outcomes, emphasizing one of three options until the vulnerabilities related to displacement no longer exist: voluntary, safe and dignified return to the area of origin; local integration; or settling in another part of the country. In addition, investing in measures to prevent internal displacement or to limit its scale and impact is crucial.

## Housing, land and property (HLP) rights in situations of displacement

HLP issues underlie all aspects of displacement. They can be a cause of displacement or arise as a result of it. HLP challenges need to be resolved to prevent displacement, mitigate its impact and ensure that durable solutions prevail.<sup>51</sup>

The Report of the UN Secretary-General’s High-Level Panel on Internal Displacement notes that durable solutions must address the following core areas: 1. safety and security; 2. jobs, livelihoods and access to

income and social protection; 3. housing, land and property; 4. education; and 5. infrastructure and services.<sup>52</sup> While HLP is an area of focus in its own right, it also underpins safety, security, access to livelihood and social protection.

Within the humanitarian response, HLP rights are commonly understood as having a home free from the fear of forced eviction and a place that offers shelter, safety and the ability to secure a livelihood. HLP rights include the full spectrum from registered rights held according to statutory law, to customary or informal rights of individuals, families or groups (e.g. rural farming communities, pastoralists, nomads or Indigenous people). HLP rights pertain to owners, tenants, customary land tenure owners and users and informal settlement occupants.

When providing solutions to displacement is part of governments’ priorities, IDPs are seen not only as beneficiaries, but as citizens with rights and agency, entitled to civic and political participation and access to a safe environment, who can in turn “contribute to their economies and societies if provided the opportunity”.<sup>53</sup> For IDPs to feel safe and be able to rebuild their lives, truly ending their displacement requires: (1) renewing the social contract between displaced citizens and the state; (2) restoring human security and dignity; and (3) (re)building equity and prosperity.<sup>54</sup> This needs investment in inclusive and equitable land-management legal frameworks, policies and capacities at all levels of government and restoring HLP rights and sustainable and equitable land-management policies.<sup>55</sup> Developing and reviewing land-related legal frameworks and policies

50 UN, 2023.

51 United Nations General Assembly.

52 UN, 2021.

53 UNDP, 2022.

54 UNDP, 2022.

55 UNDP, 2022.

can take time.<sup>56</sup> It is therefore important to work – in parallel – on a range of durable HLP solutions that can prevent, address and resolve displacement in the short and medium term, while the process of review of the legal framework is ongoing.

### Customary areas and customary land rights

About 70 per cent of land rights in developing countries are not recorded and are managed by communities according to customary practices or informal mechanisms.<sup>57</sup> Many countries have large areas of customary land, sometimes referred to as traditional, Indigenous, tribal, community, collective, pastoral or informal land. These areas operate under customary, informal or religious laws and practices alongside statutory, formal legal systems. A very wide range of variations and characteristics exist among these systems; this paper draws general patterns and lessons from common features, but localized knowledge is indispensable for any local application.

In customary areas, customary land tenure prevails, where the “laws, rules and norms governing rights to land and natural resources are upheld by an authority other than the state and subscribed to by a collective defined by characteristics other than national citizenship”.<sup>58</sup> This is linked to the concept of traditional land rights, where land is managed according to local customs and cultural norms and is usually administered by tribal or community leaders. In these areas, “the concept of ownership – and related rights and

obligations – generally differs from the statutory land administration system”.<sup>59</sup>

There are often localized and community-specific systems of land allocation and land tenure in such areas, based on long-standing traditions, practices and lineage. Customary land rights are generally not registered and therefore people living in these areas can face tenure insecurity, particularly when the pressure over customary land increases (e.g. in areas with rich natural and mineral resources or in expanding peri-urban areas) or where customary land tenure arrangements are not recognized by the state.<sup>60</sup> A frequent weakness of customary land administration is limited women’s representation and gender-unequal practices, although positive practices also exist.<sup>61</sup>

Although customary laws are generally not codified and can be – like other forms of law – open to abuse, they generally have social legitimacy, have become embedded in the fabric of a society and are adhered to by community members.<sup>62</sup> Customary land tenure rights can be held by individuals, households, groups, clans, tribes and communities.<sup>63</sup>

A wide range of context-specific customary tenure arrangements and land governance practices exist. Numerous different customary practices may apply in any one country. For example, in Uganda, around 80 per cent of land is held under customary tenure, and it is “guided by rules and norms that differ from region to region and from tribe to tribe”.<sup>64</sup>

56 It can take a decade for a country to change its land laws, including conflict-affected countries. In Uganda, for example, the 1998 Land Act that introduced equitable land management took over 15 years to be implemented. In Namibia, the act meant to address informality after colonisation took 20 years.

57 Land Links, n.d.

58 Knox, 2010 cited in UN-Habitat, 2019.

59 UN-Habitat, 2024.

60 Freudenberger, 2013.

61 S. Sait & H. Lim, 2006.

62 Ironside, 2017.

63 Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), UN-Habitat and GLTN, 2021.

64 Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), UN-Habitat and GLTN, 2021.



Customary tenure, and the rights it bestows, also varies between countries. In most Pacific islands and the Philippines, for example, the laws recognize Indigenous collective tenure providing strong rights equivalent to ownership. In Indonesia and Malaysia, the laws grant more limited usufructuary or possessory rights, significantly weaker than full ownership.<sup>65</sup> Most collective tenures in Asia allow land sales and transfers of rights. In Mexico, communal tenure (*ejido*) covers over half the country, is registered and allows for sale.<sup>66</sup> Selling land to outsiders not bound by customary laws raises the need for legal clarity as to who has the right to enter into such contracts. This has led to “the emergence of entrepreneurial indigenous elites who have profited at the expense of the wider group,” exacerbating poverty in Indigenous areas.<sup>67</sup>

As communal or customary land is seldom registered, the challenges in identifying the rightful administrators and the other duty bearers and rights holders on these lands can be more complex than for registered land. At the same time, there is the opportunity to advance land tenure security and recording of the land rights of host and displaced communities. Customary land and customary governance are dynamic, constantly changing and adapting to new circumstances. While the dynamic nature of customary law can be challenging, the fact that it is able to change and adapt can, under the right circumstances, be extremely beneficial in addressing HLP solutions for IDPs. Customary approaches to resolving disputes are often preferred as they are quicker and simpler than more formal approaches, and often more accepted by the community.

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65 Colchester, n.d.

66 UN-Habitat, 2015.

67 Colchester, n.d.

## 2. KEY CONCEPTS AND ASSUMPTIONS

To provide durable HLP solutions in customary displacement contexts, it is important to build on the set of concepts and underlining assumptions described in this section, based on desk research and on the findings from the case studies. These complement the knowledge of norms, concepts and practices derived from statutory laws and formal land administration systems which are prevalent in non-customary contexts and more widely known to national and international humanitarian, peace, and development actors.

### 2.1 CONTINUUM OF LAND RIGHTS

Legitimate land rights exist in a range of shapes and forms, some documented, others not. They may be legally or customarily recognized or informally accepted. They may or may not be formally registered or recorded. They may be held by individual people, families, groups or communities. They include full ownership, but also other types of short- and long-term land use rights. Land rights may be held by people in formal urban areas or informal settlements, by farmers or by pastoralists, by government institutions, and by communities. Land rights may overlap, and do not extend in a simple straight line from formal to informal, secure to insecure, or legal to illegal or extra-legal. There is often a host of complex, overlapping and interwoven land tenure arrangements with varying degrees of security. Understanding land rights through the continuum approach facilitates working with existing practices, incorporating them into a land management system that is able to deal with formal, informal and customary rights. The most appropriate form of tenure depends on the specific point in time and the context. It is important to note that freehold tenure is not

necessarily the best, most appropriate or most secure form of tenure. In some contexts, customary rights and community rights may work better.<sup>68</sup> This is, for example, the case of Indigenous land rights increasingly recognized as the best avenue to protect forests and other areas of environmental value. Understanding the continuum of land rights concept and how it plays out in the specific areas of intervention is crucial for durable HLP solutions to displacement in customary contexts.

### 2.2 INDIVIDUAL VS GROUP RIGHTS

Access to housing and land in customary contexts is predominantly shaped by the needs, rights and responsibilities over the use of land and land-related natural resources (e.g. water, pasture and forests). The management of these rights and responsibilities has a very strong community dimension and therefore the nature, duration and characteristics of individuals' rights depend on their position and role within society, community and family.

These features highlight the key differences in the way HLP rights are conceptualized and legislated in most statutory national legislation and in international law. These same legal traditions influence the way HLP rights are described and protected in humanitarian contexts. From this fundamental conceptual difference derive, for example, the gender inequalities in accessing, using and controlling land and its resources and the different treatment provided to people such as newcomers or minorities who have different affiliations from those of the group (tribe, clan, family, ethnic or religious group, etc.) or from the head of the group (chief, *mokhtar*, etc.).

68 Du Plessis, 2014.

When identifying durable HLP solutions for IDPs on customarily administered land, it is important to be conscious of such factors. Challenging the assumptions on which the management of customary land is based equates to challenging the very power base and power structure of the communities and therefore is very unlikely to lead to durable solutions. The establishment of durable HLP solutions on customary lands requires recognizing and embracing the underlying governance system. It therefore entails negotiating, on this basis, solutions that can resolve the immediate HLP needs of the displaced (e.g. temporary shelter and temporary land use rights to vegetable gardens to grow food) while providing the opportunity to be progressively upgraded (upon meeting certain conditions) to incrementally achieve durable solutions and local integration.

### 2.3 OWNERSHIP VS USE RIGHTS

The continuum of land rights concept recognizes the existence of many types of legitimate land rights. At one end of the continuum are generally represented 'full land ownership' rights, corresponding to the (originally western) concept of freehold that usually applies to individual property ownership held in perpetuity and passed on to heirs. This form of tenure gives the highest power to the owner, who can use it, mortgage it, sell it, invest in it, speculate on it or leave it unused. Land ownership is recognized under statutory legislation, formally registered in the land office.

Registered full ownership rights are often considered the most secure type of land tenure, the one that unlocks the highest private investments and the one that best stores personal wealth. Such registered land rights are held in perpetuity (even when restricted to a certain extent by the legal framework and land use planning), bar exceptional circumstances such as legal

expropriation. The lands, houses and properties held under these full ownership arrangements become 'assets', the value of which increases with time and under growing competition for land.<sup>69</sup> The tension between 'land as an asset' – mostly pertinent to formal registered land – as opposed to the 'social value of land' has been extensively debated within the land community.<sup>70</sup>

Land ownership is tightly linked to the concept of private property, recognized and protected by most national laws and recognized in international law. Humanitarian HLP rights' frameworks borrow heavily from this legal tradition. This is particularly evident when it comes to the right of compensation and restitution of properties to displaced persons who do not intend to return and re-occupy their properties (but rather to sell them, rent them out or keep them vacant). The Principles on Housing and Property Restitution for Refugees and Displaced Persons (known as the Pinheiro Principles) state that:

*"All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.*

*States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution."<sup>71</sup>*

69 Derived from population growth, urbanization, increasing demand of agricultural production of minerals, land degradation and climate change, as well as other factors.

70 Gnedenko, 2020.

71 The Pinheiro Principles, 2005.

In customary areas, land tenure rights are often conditional to the need of community members to use such lands, particularly in the case of unbuilt properties, and on the position and role of the individuals within the society, community and family (as described in section 2.2). Community lands are generally allocated for use by chiefs, traditional leaders, *mokhtars* or prominent community members<sup>72</sup> for a limited duration, depending on the envisaged use. If the plot of land is no longer needed or used by those to whom it was allocated, it can be re-allocated, although customary ownership rights are retained by the lineage, extended family, group or tribe. For example, in Darfur, Sudan, “under customary tenure, rights to land lapse if the land is not used for a certain period”.<sup>73</sup> When someone leaves or is displaced, their land is returned to the Native Administration who then re-distribute it to other groups or individuals.<sup>74</sup>

This substantially changes the type of rights retained by people displaced from their customary lands; they do not necessarily retain the rights to a specific plot, but they retain the right to be re-allocated a plot of land upon their return, as members of the group or tribe. This therefore also changes the meaning of the right to restitution and compensation as defined for full ownership rights (i.e. as owners are not able to sell or rent out the land). This particularly applies to use rights to land in rural areas (e.g. agricultural or grazing lands), while it may vary for buildings and other major capital investments on the land (apartment blocks, etc.).

This also affects the concept of ‘secondary occupants’, who would have the same use rights on customary and communal lands as the previous owners, if such lands were re-allocated to them after they had been vacated (and if they belonged to the same lineage, group or

### **Box 1. HLP solutions for people displaced to their customary areas vs the customary areas of other groups: the case of Sudan**

Often, displaced people are hosted by families in their areas of origin (e.g. through *housh* tenure arrangements in Sudan). The conflict that erupted in Sudan in April 2023 led to the displacement of 6.8 million IDPs.<sup>75</sup> Only 5 per cent of these ended up in IDP camps,<sup>76</sup> while the others are mostly hosted by their extended families in urban and rural areas. The hosting of IDPs by extended families is a valuable approach that needs to be better researched, understood and supported by the humanitarian community, more used to deal with ‘visible’ displacement to camps or temporary settlements.

On the other hand, when displaced people move to and are hosted on land of other tribes, they become part of that tribe’s administrative structure but with different HLP rights compared to those of the hosting tribe. They will be assigned land to live on and practice their livelihoods on by the tribal leader. The IDP will have the right of use of the land, which can extend for generations, but “not the right to claim the political aspect of land ownership: the leadership”.<sup>77</sup>

72 The role of territorial leaders is often critical in land allocation and for land use change of any kind (e.g. the introduction of cash crops, protection of forests or management of informal settlements). These patron-client relationship and hierarchical arrangements between community land users and territorial leaders are critical for the allocation of land and HLP rights.

73 UN-Habitat, 2020.

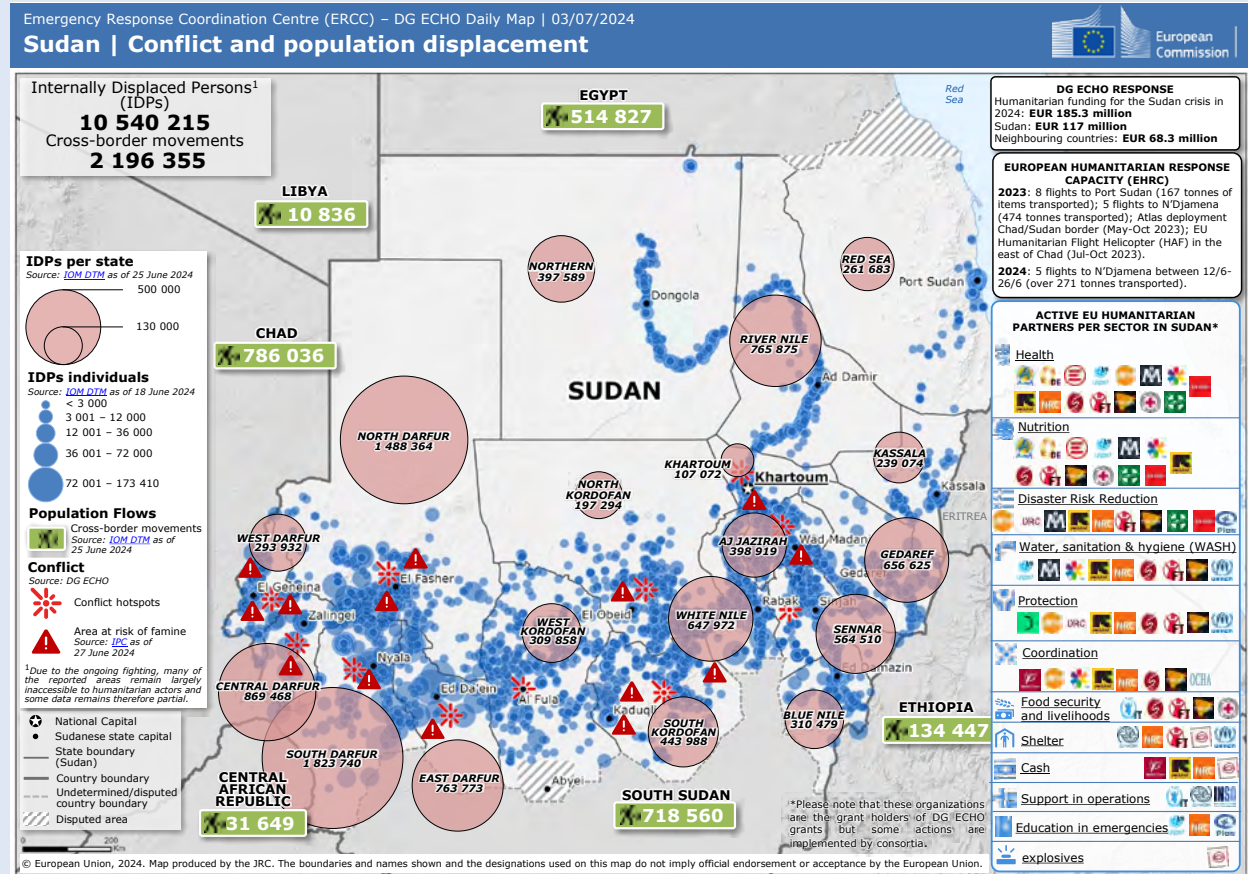
74 Ibid.

75 Sudan Monthly Displacement Overview, Displacement Tracking Matrix, April 2024, IOM.

76 IOM, 2024.

77 Personal communication, Wala Abdelmuati, 1 July, 2024.

This is similar to a leasehold vs freehold distinction, with the IDP having land use rights (similar to the concept of leasehold) and the host community having full “customary ownership” of the land (similar to freehold) through the leader or chief.<sup>78</sup> The roles and responsibilities of the IDPs are also different from the ones of the host (customary) communities.



**Figure 1. Sudan: Conflict and population displacement, 3 July 2024.**

Source: Emergency Response Coordination Centre (ERCC) – DG ECHO Daily Map

Such mechanisms have provided durable HLP solutions over the many waves of conflict that ravaged Sudan in the past decades. There is a fine balance in these traditional and respected customary community-based mechanisms to host IDPs in areas of displacement. To ensure their functioning, it is crucial to understand and support these traditional mechanisms. Giving equal HLP rights to the two categories would disrupt the balance and resilience of the Sudan’s customary systems, ultimately undermining their capacity to provide durable HLP solutions at scale.

78 Personal communication, Salah Abukashawa, 1 July, 2024.

extended family of the tribe). This is, of course, in a context where the customary and communal land administration system would have remained intact, a less likely scenario in case of conflict than of disaster, considering that conflicts generally re-shape the power dynamics and the patterns of control over the territory. To complicate issues further, most customary contexts are legally pluralistic contexts, without one single source of law and system to administer land decisions on the ground (see section 2.4).

## 2.4 LEGAL PLURALISM

Several co-existing legal systems may operate in customary areas: customary and statutory, but sometimes also religious and informal. A web of norms, power dynamics and types of actors interact in complex systems and land administration processes. This can lead to confusion and uncertainty, and powerful people may be able to manipulate this to their advantage, negatively impacting the more vulnerable,<sup>79</sup> particularly women.<sup>80</sup> On the other hand, in many situations the customary system might be the only functioning set of rules that can be relied on to “deliver at-scale access to land and land tenure security” particularly to IDPs.<sup>81</sup>

In most cases, statutory laws will have some weight even if customary laws are present. However, where there is conflict between statutory law and customary law, traditional communities are likely to see customary law as having more legitimacy, and therefore to use it. Statutory processes are generally more expensive and more difficult to access for people living in customary areas. The most effective systems are those that build on the respective strengths and link customary institutions and rules with statutory ones,<sup>82</sup> noting that both systems need to continue evolving, become

better regulated and more adequately administered to function together.

Refugees or foreign migrants may be victims of explicit discrimination in laws. IDPs, however, are more often affected by discriminatory practices external to statutory laws, such as practices derived from religious or customary law or informal practices. In fragile, conflict-affected and developing contexts, this type of legal pluralism commonly determines how people access and use their houses, land and properties. When looking at the legal and institutional frameworks that inform HLP issues, provisions should be mapped across this legally pluralistic system, including the practices involved and to identify all opportunities that exist within the regulatory framework such as demonstrated in Darfur, Sudan.<sup>83</sup> Religious, customary and community-based practices can provide sources for solutions to address HLP needs of displaced people. Positive examples can be reviewed, adapted (when required) and reinforced by statutory laws.<sup>84</sup>

## 2.5 RECOGNITION OF CUSTOMARY LAW

The degree to which customary law and customary land administration are recognized by national legislation varies from country to country. Without constitutional or legal recognition of customary law, statutory law in principle prevails.<sup>85</sup> However, even where customary law is recognized by statutory law, practices and associated land rights might not be well codified. In some countries, the legal recognition of customary land administration might not play out in practice, whereas the opposite may also be true. In some contexts, local authorities might turn a blind eye to customary land management practices, whether they are allowed for in law or not. The fact that customary land administration

79 Cuskelly, 2011.

80 UN-Habitat, 2024.

81 Ibid.

82 Cuskelly, 2011.

83 UN-Habitat, 2020.

84 UN-Habitat, 2024.

85 Cuskelly, 2011.



and practices are dynamic and constantly changing makes it difficult for them to be reflected in statutory law, and experiences of codification of customary land laws generally has not worked well.

As a region, Africa has the highest number of countries (33 of 52 countries) that recognize customary law in their constitution. This includes recognizing traditional and customary institutions, and broad recognition of customary law in the courts and relating to land.<sup>86</sup> As examples, Kenya vests community land, including ancestral lands and lands occupied by hunter-gatherer communities, in the community, and has established a National Land Commission to encourage traditional dispute resolution mechanisms in land conflicts. The 2005 Constitution of the Democratic Republic of the Congo (DRC) recognizes provinces and the decentralized territorial entities – cities, communes, sectors and chiefdoms (*les chefferies*) – all of which have administrative freedom and managerial autonomy with regard to their economic, human, financial and technical resources. The State guarantees the right to individual or collective property in accordance with law or custom. The civil and military courts and tribunals apply the duly ratified international treaties, laws and regulatory measures, provided that they are in conformity with the laws, as well as customary law unless the latter is contrary to public order or morality.

Zambia's Constitution (1996) makes provision for the House of Chiefs which advises government on traditional, customary and other matters.<sup>87</sup> The Common Law and the doctrines of equity relating to or affecting the interest in or rights over land (or any other interests or right enjoyed by Chiefs and persons claiming through and under them), apply with substantial uniformity throughout the country. The

Zambia National Land Policy of 2021 recognizes Chiefs (and Chieftainesses) as the authority over customary lands with the discretion to allocate land to individuals, families, and investors for use in line with customary land area integrated development plans. The policy also states that the Chiefs should collaborate with government in the identification of land for investment, document all land rights and maintain a land register to communal land and carry out dispute resolution in their chiefdoms.

Colombia, Peru and Venezuela recognize the authorities of Indigenous peoples.<sup>88</sup> Colombia's Constitution (1991) states that property in public use, natural parks, *communal lands of ethnic groups*, security zones, the archaeological resources of the nation and other property determined by law are inalienable, imprescriptible and unseizable. Indigenous authorities may exercise their jurisdictional functions within their territorial jurisdiction in line with their own laws and procedures provided these are not contrary to the Constitution and the laws of the Republic. The reservations constitute collective property and are inalienable. Indigenous territories are governed by councils in accordance with community customs. They supervise the application of legal regulations concerning land use and settlement in their territories, design the policies, plans and programs of economic and social development within their territory, in accordance with the National Development Plan and supervise the conservation of natural resources.<sup>89</sup>

### 2.6 CUSTOMARY LAND ADMINISTRATORS<sup>90</sup>

Formal land professionals include land lawyers, notaries, employees of land departments (government and public sector), land surveyors, urban planners, land assessors and valuers, land brokers and mediators, international

86 Ibid.

87 Ibid.

88 Ibid.

89 Cuskelly, 2011.

90 UN-Habitat, 2023.



**Table 1: Non-formal land professionals and their roles**

		Primary contribution in the land functions		Secondary contribution in the land functions		
Type of non-formal professionals	Definition and their current roles in land governance	Land Tenure	Land Value	Land Use	Land Development	Disputes resolution
Tribal village leaders (sultan, sheikh, mukhtar)	<ul style="list-style-type: none"> <li>- Negotiations and mediations of land disputes</li> <li>- Adjudication, determining and confirming boundaries</li> <li>- Allocation of land to individuals and other users</li> <li>- Engaging with government bodies</li> </ul>	Primary	Primary	Primary	Primary	Primary
Religious leaders	<ul style="list-style-type: none"> <li>- Negotiations and mediations of land disputes</li> <li>- Determining land cases</li> <li>- Role in waqf (endowment) land</li> <li>- Dividing inheritance</li> <li>- Engaging governments</li> </ul>	Primary	Secondary	Primary	Primary	Primary
Indigenous people organizations	<ul style="list-style-type: none"> <li>- Determine land use and participate in land development specifications</li> <li>- Conduct community land mapping</li> <li>- Advocacy</li> <li>- Sourcing and negotiating for investors</li> <li>- Public litigation</li> <li>- Play a professional role in land governance</li> </ul>	Primary	Primary	Primary	Primary	Primary
Community forest users' associations	<ul style="list-style-type: none"> <li>- Participatory forest management</li> <li>- Forest resource mapping</li> </ul>	Secondary	Primary	Primary	Primary	Primary
Artisanal miners	<ul style="list-style-type: none"> <li>- Sourcing and negotiating for mining investors</li> <li>- Land leasing for individuals and corporations</li> </ul>	Secondary	Secondary	Primary	Primary	Primary
Women's associations	<ul style="list-style-type: none"> <li>- Inclusive land governance advocacy</li> </ul>		Secondary	Primary	Primary	Secondary
Youth associations	<ul style="list-style-type: none"> <li>- Inclusive land governance advocacy</li> </ul>			Secondary	Secondary	
Civil society	<ul style="list-style-type: none"> <li>- Policy advocacy</li> <li>- Frameworks, guidelines and treaty development</li> <li>- Public litigation</li> </ul>				Secondary	Secondary
Business and private sectors associations	<ul style="list-style-type: none"> <li>- Negotiating on behalf of investors</li> <li>- Land acquisition</li> <li>- Policy formulation and objection</li> <li>- Lobbying and funding politicians</li> <li>- Corporate Social Responsibility</li> </ul>				Secondary	Secondary
Pastoralist associations	<ul style="list-style-type: none"> <li>- Land planning, zoning and use</li> <li>- Land reclamation</li> </ul>	Primary	Secondary	Primary	Primary	Primary
Farmers' federation	<ul style="list-style-type: none"> <li>- Land use and development</li> <li>- Land renewal</li> </ul>	Secondary	Primary	Primary	Primary	Secondary

Source: UN-Habitat, 2023.

organizations working in the land sector, land developers and investors and land registration officers. The type and role of customary land administrators varies depending on the contexts. The management and administration of customary land is conducted by ‘customary land administrators’, which differ from those operating in the formal land administration sector. The table below represents, as an example, the non-formal land professionals in the Arab region, including those operating in customary contexts. It may be useful to conduct a similar analysis when intervening in a new displacement-affected customary context.

## 2.7 AREA OF ORIGIN

The notion of durable solutions adopts the idea of an area of origin, with one of the three possible durable solutions being successful return of the IDP to their area of origin. While some communities might have stronger ties to an area (e.g. Indigenous groups’ ties to their ancestral land), in an increasingly mobile world the concept of an area of origin is difficult to define. Not dissimilarly to the rest of human history, in present times people are on the move for many reasons: seeking better livelihoods and better quality of life, climate change, human rights violations and conflicts, etc. People might move multiple times during a lifetime. Families are increasingly composed of people who come from different places. Displaced people, particularly in protracted crises, tend to be displaced multiple times over the years, while their children might be born and live all their life in a ‘displacement’ that feels like home to them, but not to their parents.

In developing a durable solution to displacement it is important to recognize that the notion of origin varies, and that the extent to which it is relevant (or not) depends on the context. It is also important to consider the fact that much will have changed since displaced people left an area – the area itself will be different, as will their needs and desires (e.g. the case of Salaminita, Colombia).

Returning to the area of origin is not necessarily the easiest option and may be as difficult as moving to a third location or integration at the area of destination. Further, the notion is often politicized and instrumentalized by political parties for their own agenda.

In customary contexts, HLP rights are generally not registered and are allocated on the base of needs and use (see section 2.3). However, the right to return to areas of origin remains an important right. In such cases, the specific approaches and tools to be put in place to facilitate such a return might be very similar to the approaches used for settlement in another location. It may be impractical to use the concept of restitution at the individual or household level, particularly considering the lack of HLP documentation. A common feature of HLP rights in customary settings or informal areas is the lack of evidence as generally conceived in statutory systems: written documents or legal documents. People displaced from customary areas often lack HLP documents that can prove their residence, or their land rights. It may be better to apply the concepts and practices related to the right to adequate housing as an enabler.

The three durable solutions options – return to area of origin, local integration at area of destination and voluntarily resettlement in a different area – are not necessarily definitive or mutually exclusive. Multiple displacement and protracted conflict often leads to a complex process of “cyclical movements, temporary return, *de jure* local integration and different levels and stages of *de facto* local integration”.<sup>91</sup> Displaced people’s survival strategies are very flexible and adaptive, and usually encompass diversification of livelihoods (farming, gardening, day labour, etc.), income sources (work, aid, remittances, etc.) and location of residency (rural, peri-urban or urban), poly-local households (splitting up of family members), establishment of transnational networks and development of self-established

91 Rudolf and Schmitz-Pranghe, 2018.

infrastructure.<sup>92</sup> This is even more the case in customary contexts. The durable solutions approach needs to recognize that return, local integration and resettlement are options on a continuum of strategies adopted by IDPs, ones that are constantly changing and adapting.<sup>93</sup> To address protracted displacement, any long-term and coherent strategy needs to include these micro realities.<sup>94</sup>

## 2.8 CRISIS-INDUCED POWER SHIFTS

Displacement influences and is shaped by customary land management in different ways. When a predominantly customary context experiences rapid change such as the arrival of large numbers of displaced people, customary practices and the responsible customary authorities are put under tremendous pressure. New actors, such as statutory institutions or the international community, might increase their presence in the area to address the crisis. They are often more knowledgeable and more familiar with the statutory system. This changes the power balance between actors, and the relations between customary and statutory practices, potentially leading to conflicts and a differently shaped legal pluralism, leading to long-term changes in the way land is used, distributed and managed for the whole community.

The main reason why displaced people often cannot return home is that the conflict that caused their displacement brings about significant changes in the

area – in the security situation on the ground, the local power dynamics, the patterns of control over land and housing, the way the economy works and the availability of income generating activities. In most cases there are neither credible institutions to enforce their return or implement restitution, nor the funds and political capital to invest in it.

## 2.9 URBAN AND PERI-URBAN AREAS

Customary land management practices are not necessarily restricted to rural areas. In peri-urban areas, where the urban meets the rural, greater conflict may arise, with traditional authorities trying to maintain long-standing customary practices, while government authorities try to implement formal requirements of land tenure and management.<sup>95</sup> Customary governance structures may even dominate in some towns and cities at certain stages of their development (e.g. in Mozambique in 2009, 15 per cent of urban land and 19 per cent of informal settlement land fell under customary governance).<sup>96</sup> In informal settlements the rules and standards in operation can include customary rules, modern rules and a mix of both, which evolve as newly arrived residents adapt to urban life. Traditional authorities may often still wield significant power, sometimes in conjunction with statutory authorities; this is particularly the case where the state system has broken down, as is often found in conflict contexts.

92 Horstmann and Schmitz-Pranghe, 2019.

93 Ibid.

94 Rudolf and Schmitz-Pranghe, 2018.

95 Freudenberger, 2013.

96 Negrão, 2004, cited in World Bank, 2009.

### 3. SUMMARY OF THE CASE STUDIES

Nine case studies featuring IDPs living in customary contexts were selected for analysis. These cover the three durable solutions (return to area of origin, local integration at area of destination and resettlement in a new area), adding an additional solution – implementing measures to prevent displacement from occurring.

used to identify properties and register them with formal titles.

**Lomitas** is a small rural community in Santander de Quilichao municipality, southern Colombia, occupied mainly by people of African descent. Paramilitary

**Table 2. Summary of the case studies.**

#	Location	Type of durable solution	Approach
1	Lomitas, Carceres, Tierralta, Ataco and Salaminita, Colombia	Return to the area of origin and local integration	Restitution of dispossessed lands and regularization of settlements and registration of individual land parcels in customary and informal areas
2	Eastern Democratic Republic of Congo (DRC)	Return and local integration	Land conflict mediation and participatory land recordation
3	Baidoa, Somalia	Local integration	Land tenure agreements to prevent eviction and secure land for housing
4	El Geneina, West Darfur, Sudan	Local integration	Intercommunal reconciliation of land disputes and local peace agreement including land use rights
5	Abyei, Sudan	Local integration	Rapid mapping and recognition of extended family land tenure rights
6	Chamuka, Zambia	Prevention of displacement	Establishment of a customary land recordation system that increased tenure security, reduced conflicts and enhanced local investments
7	Southern Kayin state (Kawthoolei), Myanmar	Prevention of displacement	Community land recordation
8	Bo Hòn, Vietnam	Relocation to a new location	Displacement and relocation in a new area due to infrastructure megaproject

#### 3.1 LOMITAS, CARCERES, TIERRALTA, ATACO AND SALAMINITA IN COLOMBIA

##### Return to the area of origin and local integration through the restitution of dispossessed lands, regularization of settlements and registration of land parcels in customary and informal areas

The first case study examines five Colombian locations (Lomitas, Carceres Antioquia, Tierralta, Ataco and Salaminita) where the parcel sweep method<sup>97</sup> was

operations in the early 2000s displaced hundreds of residents, some several times. When they returned, their land was occupied by sugar cane companies. The Land Restitution Unit has made many rulings in favour of the town, one requiring that the national government titles their properties. Following a parcel sweep, over 700 land titles were granted.<sup>98</sup>

97 See 'Terms' at the beginning of the paper.

98 Land Links, 2024, 14 February 2024 blog.

**Caceres** is a small rural municipality in Antioquia, northern Colombia. Following paramilitary and drug-related violence, between 2019 and 2022 over 1,500 families fled their homes. When they returned, many were occupied by new residents who did not recognize their ownership as they had no documentation to prove it. Approximately 80 per cent of properties were informally owned<sup>99</sup> and lacked a registered land title. In total, 94 titles were provided at no cost to the returning displaced person.<sup>100</sup>

Tierralta is a town in Córdoba Department, northern Colombia. In 2010 over 3,000 people displaced by violence settled overnight on the edge of the town on open land that belonged to the local power company.<sup>101</sup> This informal settlement grew rapidly. In 2017 the power company traded the land to the municipality, and local leaders provided services to over 4,000 parcels of land.<sup>102</sup> The neighbourhood was regularized and incorporated into the city's masterplan. Since 2017, over 1,950 titles have been provided.<sup>103</sup>

Ataco is a small town in the Tolima mountains, the ancestral area of Pijao people, many of whom fled the area due to paramilitary violence. A total of 11,843 land parcels were identified in the parcel sweep, over 100,000 ha; 5,000 of them were ready to be titled.<sup>104</sup> Protected reservations were created for the Pajajo ethnic minority group to ensure that they have secure access to their ancestral land.

Salaminita is a small village in Pivijay municipality, northern Colombia, established on non-registered vacant land by rural landless people involved in farming.

In 1986 it consisted of 49 houses, a health centre and a school.<sup>105</sup> In 1999, paramilitary forces invaded the village, murdered several residents and destroyed the village. Wealthy landowners then took over the land.<sup>106</sup> In 2016, the Superior Court of the Judicial District of Antioquia (Civil Chamber Specialized in Land Restitution) recognized the right to land restitution to 36 families from the town, ordered the landlords who had bought or occupied the land to return it to its previous owners, and ordered the government to issue the residents formal land-ownership titles. By 2018, the government had granted the claimants titles to the plots and their land had been returned. However, several aspects of the judgement relating to providing decent housing, health and education have not yet been fully implemented and have led to community protests.<sup>107</sup>

## 3.2 EASTERN DRC

### Return and local integration through land conflict mediation and participatory land recordation

Beni and Goma municipalities in North Kivu province in the eastern DRC are rural farming areas managed under customary law. IDPs returning to land in the eastern provinces have often found their land occupied, and land conflicts are common. In the Masiani neighbourhood of Beni municipality, tenure conflicts affected 40 per cent of the 16,300 households, leading to land grabbing, physical violence, kidnapping, assassinations and unresolved disappearances.<sup>108</sup> Following local mediation and conflict resolution efforts, locally agreed and legally recognized HLP documents were provided to 564 men and 97 women between June 2016 and

99 USAID, 2020.

100 Land Portal, 2022 20 April, 2022.

101 Land Links, 2023, 3 November, 2023 blog.

102 Ibid.

103 Land Links, 2023 20 September, 2023 blog

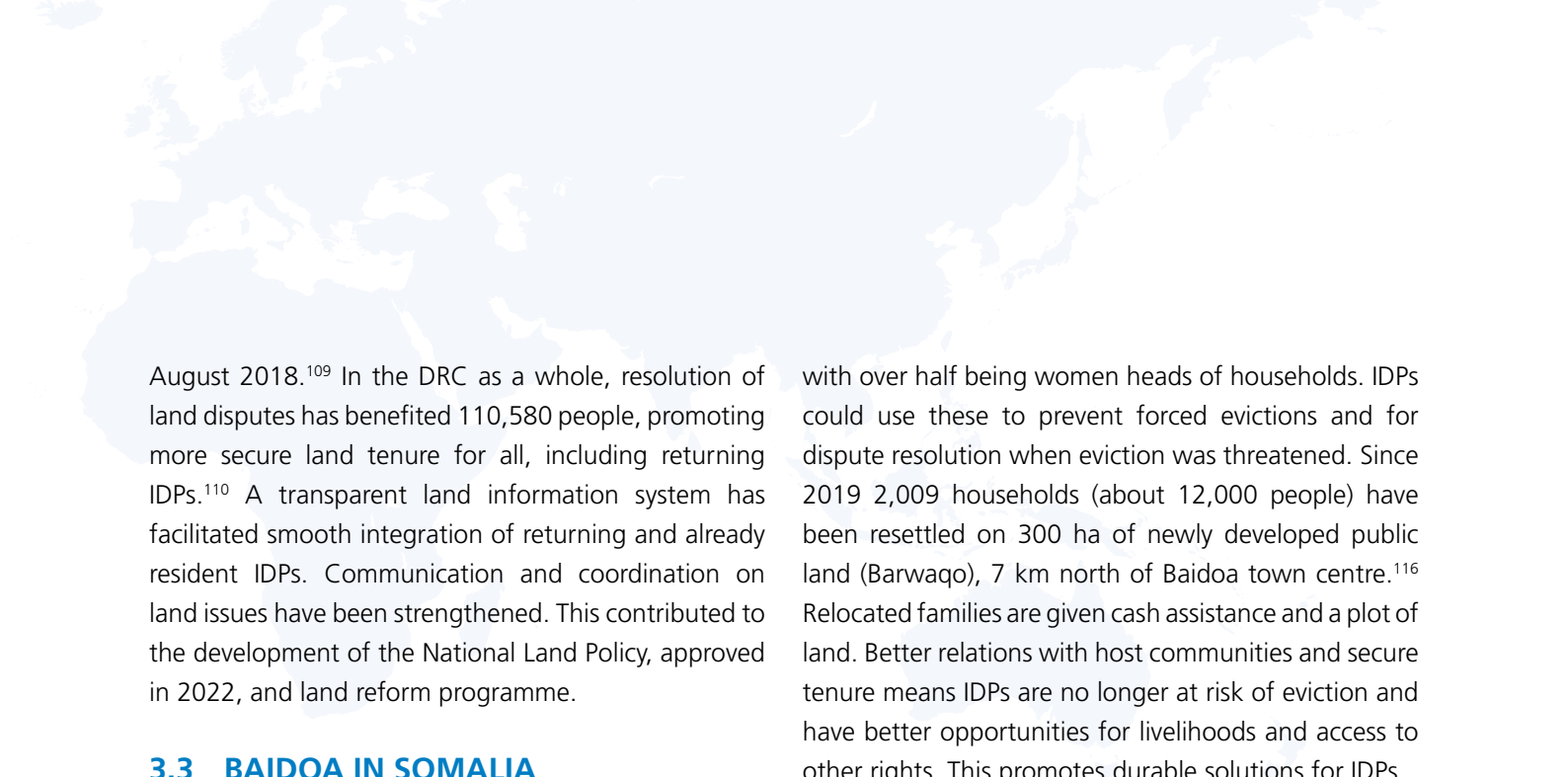
104 Land Links, 2023 15 May, 2023 blog

105 Llinas-Pizarro, 2019

106 GLTN, 2018

107 W Radio, 18 January, 2023

108 UN-Habitat, 2019



August 2018.<sup>109</sup> In the DRC as a whole, resolution of land disputes has benefited 110,580 people, promoting more secure land tenure for all, including returning IDPs.<sup>110</sup> A transparent land information system has facilitated smooth integration of returning and already resident IDPs. Communication and coordination on land issues have been strengthened. This contributed to the development of the National Land Policy, approved in 2022, and land reform programme.

### 3.3 BAIDOA IN SOMALIA

#### Local integration through land tenure agreements to prevent eviction and secure land for housing

In 1992 conflict in the Bay region of South West State of Somalia disrupted farming and thousands of residents fled to relief camps in the town of Baidoa. By 2023 the city hosted over 600,000 IDPs living in approximately 90,000 households in 498 IDP sites, far outnumbering the host population estimated to be 75,000 in 2020.<sup>111,112</sup> Most moved to the town in 2017 because of drought, with the city growing over five times in size from 2018 to 2023. Most IDPs lived in precarious situations in terms of tenure security. In the first three months of 2019 over 11,900 people were evicted without adequate notice.<sup>113</sup> From 2017 until mid-2021, 124,271 eviction incidents were recorded, with many evicted IDPs moving to the periphery.<sup>114</sup> Women were at greater risk as most women do not hold title to their land. Land agreements were brokered resulting in land certificates or lease agreements. Over 1,300 land-tenure documents were provided to IDPs, providing tenure security to over 70,000 people,<sup>115</sup> including through lease agreements (for 5 to 8 years),

with over half being women heads of households. IDPs could use these to prevent forced evictions and for dispute resolution when eviction was threatened. Since 2019 2,009 households (about 12,000 people) have been resettled on 300 ha of newly developed public land (Barwaqo), 7 km north of Baidoa town centre.<sup>116</sup> Relocated families are given cash assistance and a plot of land. Better relations with host communities and secure tenure means IDPs are no longer at risk of eviction and have better opportunities for livelihoods and access to other rights. This promotes durable solutions for IDPs.

Recognition of land rights in Baidoa recognizes the continuum of land rights, starting with the issuing of individual occupancy certificates for shelters by NRC, which allowed for the municipality to issue a land certificate for the plot, which was notarized. Lease agreements for privately-owned land record the tenant's rights and reduce the probability of eviction. Training the Association of Somali Women's Lawyers on land documentation has promoted sustainability of the approach.

### 3.4 EL GENEINA, WEST DARFUR, SUDAN

#### Local integration through intercommunal reconciliation and local peace agreement including land use rights

Dourti is a village in the Ardamata outlying district of El Geneina city in West Darfur. Residents include the local host community and IDPs who fled their villages north of El Geneina town, due to successive conflicts. The underlying reasons for the conflict were competition over land aggravated by pre-existing ethnic friction between the displaced and the host communities. This led to

109 UN-Habitat, n.d.

110 Ibid.

111 UN-Habitat's Baidoa Urban Profile 2020, cited in Baidoa City Strategy, 2023.

112 However, estimates of the number of IDPs in the town differ, with Laser Pulse suggesting that it reached as many as 750,000 in August 2023.

113 IOM, 2019.

114 NRC, 2021.

115 Ibid.

116 Land Pulse, 2024.



displacements through armed insurgency, competition between the host community and displaced people over scarce land-based resources and competition over land use between pastoralists and farmers. The intervention involved promoting intercommunal mediation and reconciliation of parties competing over land and land-based resources, local peace agreements and land-use zoning, agreements to share land and resources peacefully, and capacity development. Following this, the displaced communities enjoy greater land tenure security. Shared use and management of land and land-based resources (e.g. water) has also led to improved food security.

### 3.5 ABYEI, SUDAN

#### Local integration through the rapid provision of customary extended family land tenure rights

The Abyei region is a politically disputed area on the southern border of Sudan, with both Sudan and South Sudan claiming it as part of their territory. It was given special administrative status in 2005.<sup>117</sup> It is a resource-rich, fertile area, of strategic significance as a key transport and trading hub. Abyei town is the region's capital which had an estimated population of 20,000 in 2011, prior to many of the displacements.<sup>118</sup> It is an area of severe poverty, with long-standing and ongoing historical conflict between the largely pastoralist Misseriya and predominantly farming Ngok Dinka communities driven by competition over land and natural resources. Before 2006 there were 23 functioning village councils in Abyei district. However, conflict destroyed their villages and led to people moving into Abyei town or to northern areas.<sup>119</sup> The predominant form of land ownership in their areas of origin was ancestral land and chiefs are still central

to resolving disputes administering customary law, assigning rights to using land and water, and resolving conflicts.

By 2023 a total of 46,696 IDPs in Abyei were mapped, of whom 90 per cent were internally displaced within Abyei. Abyei Town hosted 9,869 IDPs,<sup>120</sup> many of whom live in informal settlements without secure tenure. Use of the traditional concept of *housh*, or extended family compound, with rapid planning and surveying, meant that general boundaries were accepted, and no individual rights needed to be adjudicated. Using this technique, about 9,000 plots were mapped and planned in just 18 days. The case of Abyei demonstrates the potential of using customary concepts, such as the *housh*, to provide land tenure security to IDPs through a fit-for-purpose rapid surveying exercise that allows the recording of a large number of plots in a very limited time. A strong and continuously active tribal system in the city which is actively involved in land administration can fast-track the provision of HLP solutions for displaced people, keeping land disputes to a minimum.<sup>121</sup>

### 3.6 CHAMUKA, ZAMBIA

#### Prevention of displacement through customary land recordation for increased tenure security, reduced conflicts and enhanced local investments

Chamuka chiefdom covers 207 villages, over 300,000 ha, in the Chisamba District of Central Zambia. It is a peri-urban fringe area, lying between two rapidly growing urban areas, Kabwe in the north and Lusaka in the south.<sup>122</sup> As people look for land to invest in agriculture, mining, tourism and peri-urban and urban development, large areas of land are being converted to leasehold title, displacing local customary landholders

117 The Conversation, 2024.

118 Laessing, 2011.

119 IDMC, 2006.

120 IOM, 2023.

121 Abukashawa and de Meijere, 2011.

122 UN-Habitat, 2018.

who do not have documentary proof of their right to land. This leaves those affected with very little ability to negotiate their land rights or receive adequate compensation or resettlement assistance.

The solution applied in Chamuka includes capacity development, participatory enumeration and the use of a pro-poor open-source land recordation tool, the Social Tenure Domain Model (STDM). This has strengthened land tenure security, thanks to the recordation of customary land rights which involved 6,761 land parcels and about 29,216 beneficiaries. It resulted in the issuing of 4,752 certificates of customary occupation, with the conscious promotion of women's land rights by issuing 1,518 certificates to women. In addition, a policy has been introduced in Chamuka declaring that fifty per cent of land should be reserved for women in all 207 villages.<sup>123</sup>

The approach benefitted from enabling legislation that recognizes the role of customary land authorities and contributed to the passing of a suitable national land policy that streamlines land administration and strengthens land tenure security to statutory and customary lands.

### 3.7 SOUTHERN KAYIN STATE (KAWTHOOLEI), MYANMAR

#### Recordation of communal customary land rights to prevent displacement

Myanmar contains over 100 different ethnic groups. The Karen ethnic group, estimated to be 7 million people, lives mainly on ancestral or customary land in the hilly and forested eastern areas and are predominantly small-scale farmers. Since 1947 they have been fighting for autonomy, forming the Karen National Union (KNU). A total of 717,626 civilians have

been internally displaced in KNU districts.<sup>124</sup> Some ethnic group administrations, including the Karen and the Kachin, run their own autonomous land ministries and issue land certificates to improve governance, which also serves as protection from land seizures. Community land recordation has led to villagers receiving land certificates to protect their inheritance rights, reduce the risks of land grabbing and conserve the environment and its biodiversity. Ancestral lands in seven districts of the state were mapped, and 326 *kaws* (ancestral customary lands) were demarcated over 842,820 ha, including 107 reserved forests, 18 wildlife sanctuaries, 204 community forests and four herbal medicine forests, covering a total forest area of over 2.7 million ha.<sup>125</sup> New customary land policies were issued to protect land rights of internally displaced people.

### 3.8 BÔ HÒN, VIETNAM

#### Relocation in new area due to infrastructure megaproject

Bô Hòn was a small hamlet 40 km from Hue city in Thua Thien Hue province, Central Vietnam. Originally from the Humon Nguyen commune, inhabitants had already relocated first to Lác River in the mid-1980s and then again to Bô Hòn in 1995 due to floods. Most inhabitants of the village belong to the Kinh ethnic group, and access to land and resources was traditionally governed by customary law. In 2003, residents were informed that they would need to move to make way for the Binh Dien hydropower dam, which involved the acquisition of 616 ha of land. The entire village was relocated to a new site in 2006 closer to Hue city, just 2 km from Binh Thanh commune. As compensation, each household received 0.3 ha of land with a house, garden, electricity, water supply and an area for crop production in the relocation site. Most households also received cash compensation for the

<sup>123</sup> UN-Habitat, 2020.

<sup>124</sup> Mathieson, 2024.

<sup>125</sup> Hyolmo, 2024.

loss of their customary rights. However, some rights to land that had been appropriated – specifically those on which residents of Bô Hòn had practised traditional ‘slash and burn’ cultivation methods under customary rights – were not officially recognized as they did not have communal forest land use right certificates (LURCs), known as red books. No compensation was provided for these areas, including 61 ha of bamboo forest land along the riverbanks.

Beginning in 2007, authorities allowed the relocated residents to plant acacia forest on unallocated land. Subsequently, the Japan Bank for International

Cooperation (JBIC) and the Vietnam Water Resources Assistance Project (WB3) assisted the resettled community with technical trainings and low-interest loans to help them invest in the acacia forest plantations. In 2013, JBIC and WB3 assisted local authorities in allocating red books to all households for a total of 75.8 ha of acacia forest, averaging 1.65 ha per household. Sales from acacia forest products became the second largest source of income for households after wage labour. However, forest land was unequally distributed within the community, negatively affecting women and more marginalized people, which led to increased inequalities and some distrust in the institutions.<sup>126</sup>

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126 Ty, 2023.

## 4. FINDINGS AND RECOMMENDATIONS

The review of displacement trends, analysis of key concepts and underlying assumptions and review of case studies lead to a set of recommendations on how to prevent or to provide durable HLP solutions to displacement in customary contexts through policy and programming by local, national and international actors.

### 4.1 RECOGNITION OF ALL LEGITIMATE CUSTOMARY LAND RIGHTS

The recognition of all legitimate customary land rights is necessary, regardless of the presence of formal registration documents. This clearly emerges from all case studies as a precondition for successful interventions.

Acknowledging and strengthening individual, household and group rights is important. Some case studies demonstrate successful approaches to formally register individuals' and households' HLP rights (as in Colombia) while in other cases the solutions to displacement arose from collective customary rights (as in Abyei). In the case of relocation in Vietnam, having secure tenure of individual land was not sufficient for displaced families to regain their previous income levels. Only once they had succeeded in restoring communal rights to productive land, several years after their move, were they able to restore previous levels of household income.

Recognizing customary land rights may need revised policies and laws, and entails acknowledging and recognizing the role of customary land actors, clarifying and potentially formalising their roles, and investing in developing their capacities and their processes.

### 4.2 RECOGNITION OF CUSTOMARY LAND GOVERNANCE AND ITS ACTORS

The extent to which customary land governance and land tenure are recognized by national government and in national legislation varies across the case studies. For example, Zambia allows for customary governance and recognizes the importance of traditional leaders in land management. In Sudan, the role of customary land administrators is not legally recognized. Colombia recognizes Indigenous Territorial Entities as political entities with the same autonomy as districts and municipalities, governed by councils according to the uses and customs of their communities. In Myanmar, many people living in conflict-affected areas follow customary land governance systems that are not recognized by government. The lack of recognition poses a challenge as it usually means that existing customary land administration practices are undermined and the role of traditional land administrators is downplayed, creating grey areas that further undermine effective land management.

The analysis of the case studies demonstrates that the acknowledgement and recognition of customary land governance and of the role of customary land actors is an important prerequisite for durable solutions to displacement in customary contexts. It provides a good range of practical tools and operational approaches on which to build (as in Abyei), and to incrementally develop, refine and institutionalize. It also offers a range of actors (customary, religious, local, community-based) with good field knowledge and practical expertise, whose capacities can be further developed. While it is important to identify opportunities in the law that

facilitate HLP rights recognition, this may well require a revision of policies and laws.

### 4.3 LEGAL PLURALISM

The case studies clearly demonstrate that there is often no clearcut distinction between an area under customary governance and an area under statutory law. Further, there may be more than one customary law in operation in a particular area, as each ethnic group or tribe has its own laws. In addition, there may be religious norms that also regulate specific aspects of the management of land, housing and properties (e.g. inheritance). In practice, these different sources of laws and practices overlap, interweave and create a range of local practices that varies from a local community to another. Legal pluralism is a dominant feature in most customary areas.<sup>127</sup> In addition, the predominance of one or some of the components over the others is heavily influenced by the power dynamics among the actors present in the areas, which may change rapidly in times of conflict.

Somalia, for example, experiences a blend of statutory legislation, religious law (Sharia law) and customary law (*Xeer* law). The case of Abeyi town in Sudan highlights the complexity of legal pluralism, resulting in competing ownership claims. In DRC, as statutory land management systems did not develop fast and wide enough to manage the vast national territory, customary land management continues to co-exist and prevail in rural areas and is mixed with informal practices in informal settlements in urban and peri-urban areas.<sup>128</sup> The Vietnam case highlights the fact that there is not a clearcut dichotomy between customary and statutory land governance systems, but that there are multiple ethnic and religious groups who have different systems, and that local officials may be more sympathetic to customary laws (as in Vietnam).


To achieve durable HLP solutions in customary contexts it is therefore very important to work with local actors that have a good understanding of the customary, religious and statutory laws at play in contexts where displacement and integration are taking place. This enables identification of the most effective entry points for transformative interventions to protect the HLP rights of IDPs, balancing factors such as time, cost and long-term impact on tenure security.<sup>129</sup> It is also important to consider existing legal frameworks, as well as implementation practices and prevailing enforcement mechanisms. In some areas, for example, local officials might turn a blind eye to customary practices, and in others statutory law may be used to overrule customary practices. Using customary practices may be quicker and more cost effective than statutory laws, but care needs to be taken to ensure that women, minorities and vulnerable people are accorded the same rights as others.

Further, customary land governance is not necessarily confined to rural areas but can be found and successfully used in many urban and peri-urban contexts to provide durable housing and land solutions for displaced communities. The Zambia case study highlights the tenure insecurity faced by residents of customary areas in rapidly growing peri-urban locations. The DRC case study also shows customary land management practices present in peri-urban and informal areas. The case of Dourti in Sudan illustrates the complexities that arise around land governance when towns have grown and extended into customary areas, with the resulting tenure insecurity in urbanizing contexts. The case of Abeyi, Sudan demonstrates the potential of using customary concepts, such as the *housh*, in urban areas to facilitate a relatively speedy process to improved tenure security for IDPs.

127 Swenson, 2018.

128 Land Links, 2010.

129 UN-Habitat, 2024.



Lastly, customary (or blended) land management systems are valuable mechanisms to respond to present needs, including during crisis and displacement, and can still emerge and develop to respond to current circumstances. The Myanmar case study illustrates the ability of a marginalized ethnic group to recognize the need for a functioning land governance system that records people's rights to land, and thereby enhances their land tenure security as much as possible given the prevailing political uncertainty at national level. This has prompted them to develop a participatory and sophisticated system of land recordation to inform land management and promote vitally needed environmental conservation.

As a vision for the medium- to long-term, it is important to progressively reform the various sources of law and norms to increase their alignment, harmonize and better define how they and their implementation mechanisms (including in land administration, registration of land rights, resolution of disputes, regulation of inheritance, etc.) relate to one another and when each applies. In this way, through a better regulated plurality of laws and practices, a better functioning and more cohesive system to manage customary areas and the HLP rights of the people living on them will be achieved. This would significantly contribute to scale up durable HLP solutions to address displacement in customary areas.

#### **4.4 INFLUENCE NATIONAL POLICIES THROUGH LOCAL APPROACHES**

While several countries recognize customary land governance in their policies and legislation, only a few have effective and scalable mechanisms to manage customary lands well, including for protecting the HLP rights and allocating parcels of land to local communities and displaced people. The process of developing suitable policies, laws and administrative

mechanisms for improved customary land management is currently drawing increasing attention. It is important to ensure that the reforms introduced are not blind to the need of preventing and finding durable solutions to displacement. Case studies demonstrate that local processes to secure HLP rights of displaced people can successfully feed into policy making at the national level.

This is clear in the DRC, which launched its National Land Policy in 2022. Similarly, in Zambia, lessons from customary land recordation project informed the land policy process and the institutionalization of approaches to improve land tenure security and expand the land records' coverage with the contribution of customary land administrations. This was emphasized by Zambia's Surveyor General who advocated the use of STDM in implementing mainstream land policies.<sup>130</sup> Development of the National Land Policy followed a participatory and inclusive process. It streamlines land administration and promotes equitable access to both statutory and customary land for improved land tenure security. It directs all local authorities to ensure that half of available land is reserved for women and a quarter for youth and persons with disabilities. To accomplish this, the government has embarked on a land titling programme and customary chiefs are encouraged to abide by these quotas when allocating customary lands in their chiefdoms to promote inclusivity.

#### **4.5 LAND TENURE SECURITY AND ADEQUATE HOUSING**

To provide durable HLP solutions to displacement in customary areas, 'land tenure security' and 'adequate housing' are useful guiding principles that can provide better entry points than restitution and compensation approaches, particularly in rural settings and contexts affected by multiple displacements where HLP rights are unregistered.

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130 UN-Habitat/GLTN, 2019.



This means identifying suitable land and housing options for all the people living in a particular area, whether they are returning there, displaced there or moved there as their choice of a third location. The type of HLP rights available to persons from the host community (e.g. ownership and long-term use rights) might be different from those available to displaced persons who often do not get access to ownership, but only to (renewable) short- or medium-term use rights (as described for Sudan, in Box 1). However, all these options have the potential to provide durable HLP solutions, if adequately managed.

On the other hand, HLP restitution and compensation concepts, which focus on returning a specific property to the rightful owners dispossessed and forcibly displaced, are better suited to the provision of durable HLP solutions for people returning to areas subject to formal land administration, with HLP rights that are registered and legally documented (not applicable to most customary areas) and for built-up properties.

#### 4.6 RECORDATION OF CUSTOMARY LAND RIGHTS

Although in all case studies unregistered legitimate land rights over customary areas are – to a certain extent – recognized, all solutions involve an improved recordation of the (re-negotiated and adjudicated) land rights through innovative participatory fit-for-purpose, community-led participatory processes.

Customary land administration systems play an extremely important role in land management and in allocating land for residential, agricultural and other livelihood activities. However, in a global context that puts increasing pressure on the land,<sup>131</sup> customary land management systems need to evolve and modernize to be able to protect people living on customary lands from displacement and evictions in both the area of

origin and the area of destination (including caused by market forces, etc.) and to continue responding to the evolving needs of the communities.

Customary land administration systems must evolve to improve the resilience of communities to the causes of displacement. Communities with stronger land tenure security invest more in climate resilience and environmental conservation and scale up their local investments which results in improved livelihoods and reduced poverty (as in Zambia). Further, customary land administration systems need to become more transparent, gender responsive and better able to accommodate newcomers. Customary land administrators must become more accountable for their decisions. The recordation of customary land rights is an important element of all these positive improvements.

In some case studies, the recordation of customary land rights led to their formalization, or registration in the formal system as individual or household rights (such as in Colombia). Other case studies show that the recordation of community rights is possible and can be effective to provide durable solutions to displacement (such as in Vietnam and Sudan).

Such recordation interventions can be localized. In Myanmar, in the absence of an effective national approach and to promote autonomy, several groups, such as the Karen people, have established their own land ministries and conducted extensive land recordation as part of this process. Residents receive land certificates, which improves governance, protects them from land grabs and promotes environmentally sound practices.

Further, the rapid participatory mapping of customary group rights using approaches that build on traditional land tenure security mechanisms proved an effective

<sup>131</sup> Because of increasing global population and related needs of food and other resources, land degradation and desertification reducing the productivity of agricultural and rangelands, etc.

short-term solution to pave the ground to local integration and durable solutions in the location of displacement (as in Abyei, Sudan). Such approaches work best when built on pre-existing and locally acceptable customary mechanisms to provide tenure security (e.g. the extended family compound, *housh*, in Sudan) and when they are further defined and institutionalized in the legal and policy frameworks.

The risk of forced eviction is one of the biggest concerns of displaced communities. Forced evictions have a significant negative impact on affected families and the fear of eviction severely hinders their ability to stabilize and rebuild their lives after displacement. Written short term land use agreements (for individuals, families or groups) prove to be a valuable tool to strengthen land tenure security and protect the displaced from new waves of forced evictions. Written lease agreements also facilitate the recourse to dispute mechanisms through formal courts or traditional authorities (as in the case of Baidoa, Somalia).

When recording land rights on customary land, it is important to agree with all concerned what these rights entail and to spell out and record what these rights mean in terms of how the rights holder interacts with the land (use, access, exchange, occupation, lease, sale, inheritance, etc.). This is important in contexts where people or groups may have temporary rights, such as grazing or water rights (see the case of Dourti in El Geneina, West Darfur), and when it is necessary to ensure that the rights of the host community are not threatened by those of IDPs (as in Sudan).

In many of the case studies, the involvement of an NGO or the UN has been pivotal in supporting the recognition of HLP rights, providing the tools for participatory mapping and recordation, developing the capacities of stakeholders, and mediating disputes (or providing mechanisms to do so). This is important in

the initial phases, before local people and organizations become capacitated and independent (as in Zambia). However, as indicated in section 1.1, the authors of the paper heavily relied on information regarding processes managed or co-managed by international organizations, as locally led interventions are less often documented, hence the role of UN and NGOs might be over-emphasized.

## 4.7 WOMEN'S LAND RIGHTS

Displaced women's safe access to HLP is crucial to protect them from violence, to improve their and their families' standard of living and overall to contribute to the ability of their community to move from humanitarian vulnerability towards recovery and self-reliance.<sup>132</sup> Yet, displaced women living in customary contexts are at a great disadvantage when it comes to housing, land and properties. They face several layers of discrimination: as women, as displaced and as subject to customary norms which are generally discriminatory towards women (although local variations exist).

To make advancements, it is essential to understand the communal dimension of customary land management, where the nature, duration and characteristics of individuals' rights depend on their position and role within society, community and family.

HLP provisions in customary law are often not the same for men and women. However, customary land administration practices are an important avenue to provide HLP solutions, including for women, because they are well known and accepted by the communities, which increases their chances of being enforced. The acceptance of customary norms and practices largely draws from the perception of them being rooted in long-standing traditions and as non-threatening to society and family values. Hence, HLP solutions that are perceived to be in line with traditions are more likely to be durable, and they can always be incrementally upgraded

132 UN-Habitat, 2021.

and further strengthened over time. HLP solutions that require a fundamental change in the way communal and customary lands are managed, on the other hand, are unlikely to lead to a sustainable positive outcome in the short and medium term (see section 2.2).

Similarly, customary and community-based dispute resolution is an important asset for women. Customary, religious and community-based dispute resolution mechanisms are more likely to be resorted to by women, even if their provisions are generally less gender equal than those in statutory laws. This is because they are more accepted by the community and the families and less confrontational. Attempts by women to defend their HLP rights in courts is perceived as shameful, and can result in abandonment by their families or to physical and psychological violence, or death in extreme cases.<sup>133</sup> Displaced women already suffer from the disruption of ties with their families and communities, which constitute their most valuable protection and livelihood support systems, and they cannot afford to further weaken them to protect their HLP rights, unless as a last resort. Therefore, customary and community-based dispute resolution mechanisms constitute an important element for the protection of displaced women's HLP rights and should be further strengthened and rendered more gender responsive (see also section 4.11).

Revising and reforming gender discriminatory customary practices (and statutory laws) is important and has proven successful in several customary contexts, although it requires time. In parallel, there are several actions that prove effective to improve women's HLP rights within the current set-up of customary and legally pluralistic contexts<sup>134</sup> (such as Zambia).

Harmonizing, reconciling and aligning the provisions that protect women's HLP rights across the different legal

systems and clarifying how they interface and interact with each other is crucial. It is necessary to clarify which set of norms applies to which situation, which norms prevail in case there is a difference between the different systems and when it is possible to appeal to a different legal system (e.g. national statutory laws, which can be more gender-responsive, progressive and aligned with international frameworks). This would minimize "forum shopping", jurisdictional confusion and grey areas which negatively affect women and the most vulnerable people. Although women sometimes take advantage of the flexibility in applying different sources of law, they are generally penalized when there is little clarity on the existing norms and their application. Uncertainty resulting from legal pluralism tends to favour society's most powerful groups, the dominant ethnic or religious groups and the defenders of a patriarchal model of society.<sup>135</sup> An improved knowledge of laws and norms and an increased capacity of women, youth, civil society groups and traditional and customary leaders on how to apply them to achieve durable HLP solutions for displaced women and men is crucial.


Customary land laws are more restrictive when it comes to women's ownership. While introducing more gender responsive ownership patterns, women's use rights over the houses, land and properties of their male relatives, families and communities should be strengthened. This includes, for example, usufruct rights of widows, longer agreements for the use of agricultural land (allowing them to invest in the land) and the use of written agreements that more clearly define rights and responsibilities.

The recordation of customary land and the issuing of joint documentation prove successful to improve gender responsiveness of customary land management practices, with positive effects on the prevention of displacement (as in the Zambia case).

<sup>133</sup> Ibid.

<sup>134</sup> UN-Habitat and GLTN, 2024.

<sup>135</sup> Ibid.



Women not only lose out because of gender discriminatory laws and customary norms, but the management of HLP rights is also often perceived as a ‘man’s issue’, and women are excluded from such discussions. Their inclusion and active participation would ensure that their needs are reflected in the decisions taken. Further, formal, informal, customary and religious land administration practices are overwhelmingly carried out by men. This contributes to the perception that land and property management is ‘men’s business’ and discourages women from engaging in them. The progressive inclusion of women in all aspects of the land sector needs to be pursued. Capacity development needs to accompany these efforts.

#### **4.8 DUE DILIGENCE**

Due diligence needs to be conducted on land where displaced people are to be accommodated (emergency shelters and essential livelihood activities, such as subsistence farming or keeping domestic animals). Solid consensual agreements with the host communities and the customary land administrators should be secured and such agreements should be recorded, if possible, or at least witnessed by reliable parties (as in Baidoa, Somalia). Terms and conditions, rights and responsibilities, duration, etc. need to be incorporated. The involvement of many stakeholders in this process (including customary, religious and community leaders, and statutory authorities responsible for the area) is important and strengthens the durability of the negotiated solutions.

#### **4.9 RELOCATION**

Although it should be avoided whenever possible, in some cases the relocation of people from customary areas might be necessary (for example, when communities are exposed to natural disasters, unmitigable effects of climate change, mega infrastructure projects, mining, commercial agriculture, etc.). Relocation is generally driven by governments, and the full participation of the displaced communities and other affected actors should

be ensured so that the land rights and needs of the people to be relocated are understood and addressed. Adequate compensation for the loss of customary rights and alternative equivalent HLP solutions should be provided. The nature of the land use and income generating activities of the communities should be understood before the relocation is planned, and the impact on livelihoods and other essential durable solutions elements should be monitored for several years after the move to ensure that the community is not worse off than before.

#### **4.10 SIMILARITY OF DURABLE HLP SOLUTIONS**

Communities are not static, monolithic or homogeneous in terms of needs and preferences. The case studies highlight the complexity of movements of displaced people once they have been forced out of their lands and homes. In most cases (e.g. in Lomitas in Colombia, Myanmar, Somalia and Sudan) people have experienced multiple displacements. These can have occurred over decades, affecting different people differently, according to their age, generation, stage of life, etc. Administrative borders might have changed, can be unknown or be disputed among local actors. In the Bô Hòn (Vietnam) case, even before their forced relocation due to the hydropower plant, villagers moved several times, in one case due to floods.

The durable solutions framework refers to ‘return to the area of origin’, ‘local integration’ and ‘integration in a third location’ as the three durable solution categories. In customary areas, particularly if affected by protracted displacement and multiple waves of population movement, there are significant similarities, if not a full convergence, among the durable HLP solutions applicable to the three categories of displaced people from the legal, administrative and implementation perspective, although outcomes vary depending on the local governance and decision-making dynamics (see also section 2.7).

#### 4.11 ALTERNATIVE AND COLLABORATIVE DISPUTE RESOLUTION MECHANISMS

A well-functioning justice sector is crucial to enable durable solutions that satisfy the needs of both displaced and host communities. Yet the displaced often face difficulties in accessing justice and are discriminated against by formal and customary dispute resolution processes, particularly in matters related to HLP rights where the stakes are high. Displaced women often face an additional layer of discrimination, and hence need particular attention. Alternative collaborative dispute resolution mechanisms such as mediation and negotiation prove effective to protect HLP rights of displaced people in both customary area of origin and of displacement (North Kivu in the DRC and Baidoa, Somalia).

Several case studies show the value of mediation in reducing conflict and the risk of conflict, thereby laying the ground for greater security of tenure. For example, the DRC case study shows the value of land mediation and participatory land recordation, supported by the STDM, a participatory and inclusive process to record people's relation to the land. The Dourti case study in Sudan shows the benefits of outside mediation in conflicts over land and land-based resources. Having an external party seen as neutral by both sides of the conflict facilitated discussion between both groups. This resulted in a local peace agreement based on land-use zoning and agreements related to shared use and management of land and land-based resources (e.g. water) and thus improved food security.

The importance of participatory alternative dispute resolution mechanisms over customary land ownership and land use contexts emerges from several case studies. The importance of recording such negotiated agreements also emerges as a constant feature, in line

with the need to improve the recordation of customary land rights described above.

#### 4.12 INCLUSIVE, PARTICIPATORY AND NEGOTIATED AREA-BASED APPROACHES

Case studies show that the HLP needs of the displaced inevitably compete with those of local communities and other vulnerable groups with the same purchasing power. If such converging needs are not factored in from the onset, the solutions put in place for IDPs might not benefit them in the long-term, might spark conflicts that aggravate their vulnerabilities or might disadvantage other groups. When possible, it is important to build on suitable customary arrangements that proved effective in providing different but durable HLP solutions for host and displaced communities (as described in Box 1 for Sudan).

Care needs to be taken to support overstretched host communities where IDPs have either been accommodated in family compounds (the *housh*) or have been allocated the use of land in customary areas, as is common in Sudan (see section 2.3). Failure to do this by concentrating only on the HLP rights of the displaced community could provoke tension between the hosts and their guests and may disrupt and endanger traditional practices that can work. This support could include supporting people to build additional rooms, upgrading services, supporting construction of housing using traditional materials and stabilizing the settlement. This needs to be done by working with and supporting local community-based structures (such as Peace for Sudan Platform<sup>136</sup>). In such situations, it is recommended that both the customary land rights of host communities and the land-related agreements they have with the displaced are strengthened.<sup>137</sup>

<sup>136</sup> See, for example, this online article for information on the Peace for Sudan Platform.

<sup>137</sup> Personal communication, Wala Abdelmuati and Salah Abukashawa, 1 July, 2024.



In communal lands, HLP rights and resources need to be shared with host communities and other users (as in El Geneina in West Darfur, Sudan) where measures were taken to facilitate sharing of critical water resources. The process of defining and agreeing on the sharing of such communal resources must be inclusive and gender responsive. Different groups need to be represented in negotiating agreements, jointly monitoring their implementation. Early warning mechanisms and effective dispute resolution mechanisms need to be established to mitigate and diffuse tensions that may arise from sharing communal land rights.

The participation of affected communities in land-related processes is a key element of successful interventions that adequately recognize and respect people's rights to their lands. Participation is an enabler of 'Free, Prior and Informed Consent' (FPIC), ensuring that affected Indigenous peoples are involved in assessing the land and addressing people's rights to the land (as in Colombia).

The case studies show that participation of all affected people at all stages of the implementation of durable solutions is critical. The case of Baidoa in Somalia highlights the importance of broad consultation and dialogue at all levels. This includes not only the displaced communities, but also the host communities, local officials, NGOs and aid agencies. Given the importance of traditional authorities and local leaders in land governance and land allocation in customary areas, it is imperative that they are involved in all stages of developing and implementing a durable solution to IDPs, whether it be their return to their area of origin,

integration at their area of destination or integration into a new area.

#### **4.13 RESILIENCE AND REDUCED RISK OF DISPLACEMENT**

Taking measures to prevent displacement from occurring is probably the most effective and long-lasting durable solution (as in the Zambia case). This requires investments in "resilience-building measures [...] to help populations to better cope with the adverse effects of climate change and protect their livelihoods and [giving] particular attention to the needs of indigenous persons, pastoralists, and others with a special attachment to their lands"<sup>138</sup> such as those living in customary areas. Section 4.6 describes the importance of the recordation of customary land rights. Better understanding and addressing the correlation between climate and displacement is also essential.

#### **4.14 CLIMATE AND DISPLACEMENT**

Displacement and climate are deeply interlinked. Climate change manifestations often result in displacement and violations of HLP rights (as seen in Baidoa, Somalia). At the same time, displacement may hinder climate action, reducing investments in climate mitigation and resilience. Displacement often disrupts traditional systems of sustainable land management or conservation successes (e.g. Myanmar and Vietnam). Further, positive climate action or conventional conservation responses can cause displacement, forced evictions and dispossession in contexts where the HLP rights of people and communities are not adequately recognized, recorded and protected.<sup>139</sup>

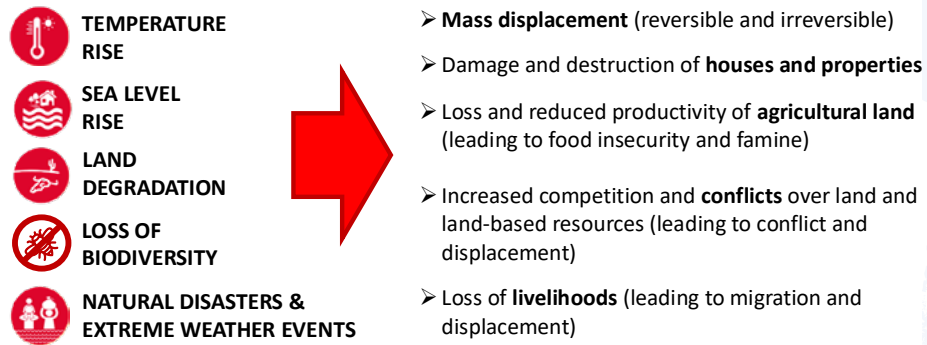
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138 UN, 2021.

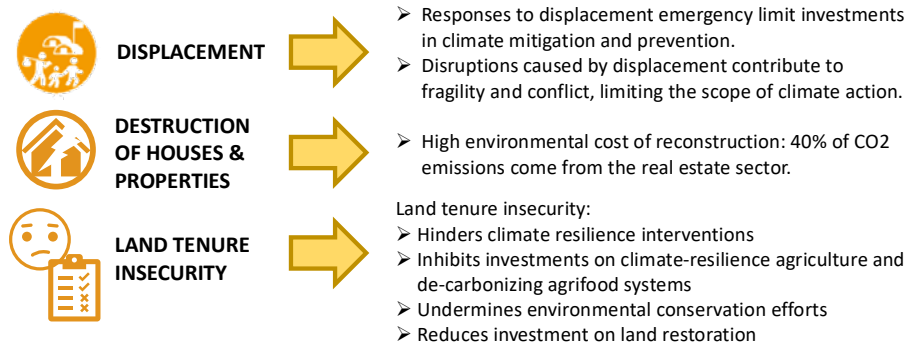
139 Hsiao et al, 2024.



# 1. Impact of climate change manifestations on people and planet



# 2. Impact of displacement & violations of housing, land and property rights on climate action



# 3. Negative impact of positive climate action on displacement and housing, land & property rights

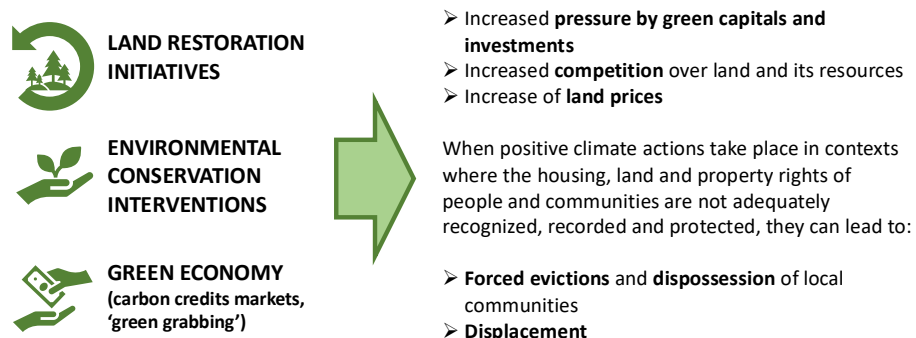


Figure 2. Linkages between climate change, displacement and HLP.

Source: UN-Habitat, 2024 (unpublished).



Local, national and international development, humanitarian and peace actors need to better understand the correlation between displacement and climate dynamics for preparedness, mitigation and response programming. This is particularly relevant for customary contexts, where the HLP rights of communities are often unrecorded and governance mechanisms are sometimes weak.

Positive climate interventions such as land restoration, conservation and 'green economy' interventions must take into consideration, protect and strengthen the HLP rights of local communities to be effective and sustainable, and to avoid resulting in dispossession and mass displacement. This is evident in Myanmar.

When unavoidable, climate-motivated mass relocations must be carefully planned and include compensation for the loss of houses, lands and properties of displaced people, even if their area of origin was customarily administered and their rights were not formally and legally registered. Adequate access to individual, household and communal lands and tenure security must be provided in the area of relocation (as in the case of Bô Hòn, Vietnam).

Further, the protection and the strengthening of HLP rights and the improvement of land governance in customary areas are effective enablers of housing and agri-food resilience<sup>140</sup> and key preconditions for effective land restoration<sup>141</sup> and biodiversity conservation interventions.

#### 4.15 CAPACITY DEVELOPMENT

All case studies indicate the importance of developing the capacities of all stakeholders involved in land administration, land governance and land allocation in

customary areas. The development of the capacities of local actors, including customary actors, is particularly effective.

In Colombia, increasing capacity at local level, especially through Municipal Land Offices (MLO), has improved the overall land administration system and promoted more durable HLP solutions. Having land administration professionals embedded in the local municipalities has been particularly effective, contributing to the success of parcel sweeps and ensuring the inclusiveness of the process.

As with the support to MLOs in Colombia, in Baidoa, Somalia, capacity building at local level has been important, including providing direct HLP support in the mayor's office (through the HLP focal point). Training for all parties included not only municipal officials, but also traditional leaders, the IDPs themselves and host communities. The development of the 2023 Baidoa City Strategy represents a significant step in inclusive local level planning which provides a vision for the city and integrates peripheral areas and IDPs.

Building local capacity is needed to facilitate appropriate measures to address HLP issues for displaced communities at local and national level, including national and local officials, members of the community, traditional leadership, the displaced people themselves and civil society. At local level this can lead to improved communication and collaboration with regional and national government, and more efficient and effective processes. This can further inform positive changes in policy and legislation at national level (as in Zambia and DRC), as displacement solutions need to be nationally owned, locally led<sup>142</sup> and ultimately incorporated into national and local development plans.<sup>143</sup>

140 See: 'Land tenure and climate vulnerability', UN-Habitat, GLTN, RMIT, 2019.

141 See: 'Land degradation and conflict: Case studies from Sudan, Jordan and Niger', UN-Habitat and GLTN, 2022.

142 UN, 2021.

143 UNDP, 2022.

#### 4.16 BEYOND HLP

The Vietnam case shows that a longer-term perspective is needed to accurately assess the durability of the solutions provided in terms of livelihood, adaptation to the new context and resilience.<sup>144</sup> In the first three years following their resettlement, villagers' livelihoods suffered and they were worse off than before the move. However, three years after the initial disruption they had adapted their survival strategies, increased their resilience and regained access to productive communal land. Success should be monitored over a longer period, and adequate monitoring mechanisms should be put in place from the onset.

Several case studies also illustrate that secure access to housing, land and properties alone does not always lead to durable solutions. Complementary livelihood, infrastructure, services and education interventions and peace and security must accompany HLP solutions. Salaminita's experience shows that while the land restitution process was successful, returning IDPs struggled due to the lack of infrastructure and services. The persistence of the armed conflict and pressures to liberalize the use of land and underground mineral resources also negatively affected the enjoyment of the tenure security provided.<sup>145</sup>

Livelihood opportunities are key. In Zambia, successful mapping of the area through the STDM process led to an enhanced ability to attract investment for development with direct and indirect benefits to residents. For example, in Bulemu village, seven families who together

occupied a 103-hectare piece of land were able to negotiate a 25-year lease for use of their land for a solar project, which is envisioned to provide free electricity to residents for the foreseeable future and provides them with a share of the profits. In addition, the fish farm established in Ndililwa village on a seven-hectare piece of land following the land recordation process provides jobs for local young people. In Vietnam, although most displaced households lost land initially, with the support of local authorities and NGOs, they increased their access to forest land, which boosted their income and enabled them to expand their livelihood opportunities.

Access to productive land is critical to the integration of displaced people in terms of their ability to reconstruct their livelihoods. In Vietnam, the location of the resettled village in a peri-urban area close to Hue city enhanced people's resilience by broadening livelihood opportunities and enabling the displaced people to adapt their traditional livelihood strategies by accessing jobs either in the city or in the surrounding agricultural areas, increasing the options previously available to them.<sup>146</sup> The support proffered by local authorities and NGOs enabled them to reclaim unused uplands for acacia forest plantation. Thus, displaced people were able to adopt a combination of land-based and market-oriented strategies to greatly improve their livelihood outcomes.<sup>147</sup> Measures to foster socio-economic integration and provide IDPs with access to housing, land, health, education, livelihoods, decent jobs and social protection are important, particularly those that are gender responsive.<sup>148</sup>

144 Ty, 2023.

145 Peña-Huertas et al., 2021.

146 Ty, 2023.

147 Ibid.

148 UNDP, 2022.

## 5. CONCLUSION

All local, national and international actors dealing with displacement in customary contexts need to have an overall understanding of displacement trends and drivers and related HLP issues (see Section 1.2). Appreciating the key concepts and underlying assumptions to customary land administration is an important precondition for effective interventions (see Section 2). While the findings and lessons learned described in Section 4 are relevant to all, the specific takeaways for development, humanitarian, peace and climate actors are highlighted below.

### 5.1 DEVELOPMENT ACTORS

Development actors should work with local stakeholders and affected communities to develop context-specific HLP solutions that adequately consider the statutory, customary, religious and informal laws that shape the local practices.

The tenure security of host communities and displaced people should be strengthened. This requires recognizing the complexity of laws and customs operating in any one area and working with this pluralism to resolve any conflict or contradictions. The provisions that protect women's land rights should be identified and, whenever possible, strengthened.

Appropriate tools for the recordation of legitimate land rights should be adapted and implemented, prioritizing communities in areas that are more prone to displacement or receiving those impacted by displacement caused by climate, conflict or socio-economic pressure. Consider formally registering the land rights of host, returnee and relocated communities, where such an approach is appropriate and does not lead to increased tensions and conflicts. This comes with an important disclaimer: formally registered land rights may not be the best

option, and customary or communal land rights may work better in both the short and long term.

In areas where displacement can reasonably be anticipated, it is important to take steps to plan for the arrival of IDPs: identify suitable land and services required; conduct due diligence; secure consensus; and negotiate the necessary agreements with the host communities. These steps should also be applied to relocation of communities, which should only be considered as a last resort and should follow a due process.

Capacity development of all stakeholders involved in managing displacement and administering customary areas is important in the short-term and improves the resilience and self-reliance of the communities in the long term. This includes government officials, customary land administrators, traditional and local leaders, civil society, women and youth groups.

### 5.2 HUMANITARIAN ACTORS

Humanitarian actors need to map HLP needs and prioritize HLP programming for protection, shelter and livelihood.

When dealing with displacement in customary contexts, humanitarian actors can build on suitable customary approaches for the rapid allocation and recordation of land use rights (as in the Abyei case study), to be implemented in collaboration with local communities and customary actors.

Local mechanisms for the hosting of displaced people by their extended families need to be better understood and supported, to facilitate upscaling and replication (as described in Box 1 for Sudan) and to avoid disrupting

a delicate balance. The ability of host communities to absorb displacement should be enhanced through different interventions in the short, medium and long term (e.g. distribution of food to the extended families hosting households, cash support, supporting the construction of additional rooms or units).

Conducting due diligence and securing solid consensual agreements with the local communities and the customary land administrators of the areas where the displaced will be accommodated is crucial. Such agreements should be recorded or witnessed by reliable parties (as in Baidoa, Somalia). This is important in areas identified for emergency shelters, but also for lands allocated for livelihood activities (e.g. subsistence farming).

Humanitarian actors need to familiarize themselves with the implications of legal pluralism and the differences between individual and group rights and ownership and land use rights in customary contexts (Sections 2.2 and 2.3). In customary contexts, particularly in rural areas, the provision of land tenure security and adequate housing are more time- and cost-effective solutions compared to restitution and compensation.

### 5.3 PEACE ACTORS

Peace actors need to include HLP issues in conflict analyses, peace agreements, mediation efforts and rule of law and peacebuilding interventions.<sup>149</sup> Access, use and control over land and land-based resources are key root causes of conflict that need to be understood and addressed, with the specificities of customary areas carefully considered. The case studies present a rich menu of correlations between causes of displacement, derived HLP challenges and solutions (see the tables summarizing each case study in Part 2). Peace actors need to take these correlations into account in their interventions.

Understanding of the key concepts and underlying assumptions that inform the allocation of rights, the functioning of customary land administration and the resolution of land related disputes in customary areas is important. Alternative and collaborative dispute resolution mechanisms that recognize customary land rights and use customary approaches can be valuable in solving conflict and negotiating agreements. Customary dispute resolution mechanisms are often preferred as they are usually cheaper, quicker and accepted and recognized by the community. This is particularly crucial for communal lands and shared land-based resources. Customary dispute resolution mechanisms may well work better for women as they are better known and often less confrontational than more formal legal approaches. Ensuring that agreements reached are recognized by all parties and recorded is essential. Early warning mechanisms and effective dispute resolution mechanisms to monitor and address tensions that may arise should be established.

### 5.4 CLIMATE ACTORS

Understanding the correlation between displacement and climate dynamics is important for preparedness, mitigation and developing responses, particularly considering the relevance of customary and Indigenous lands for environmental conservation and the worrying trends highlighted in Section 4.14.

Conservation practices can both contribute to displacement and conflict and, alternatively, can contribute to their mitigation and foster peace, depending on the context.<sup>150</sup> Land restoration, conservation and green infrastructure interventions must consider, protect and strengthen the HLP rights of local communities to be effective and sustainable, and to avoid resulting in dispossession and mass displacement.

149 UN SG, 2019.

150 Hsiao, 2024.

Climate actors need to better understand the role of customary communities and the way of operating of customary land administration to protect the environment and prevent climate- and conflict-induced displacement in customary areas. Displacement of communities from their customary land can have significant environmental consequences, while negative impacts of climate change can, in turn, bring about conflict and displacement (e.g. floods or drought).

If communities in customary areas must be relocated for climate-related reasons, such relocation should be

carefully planned, with adequate compensation for the loss of HLP even when their land rights were not formally registered. This should include compensation for the loss of communal land.

Lastly, the case studies present a range of tools and approaches that prove successful for the management of HLP rights in customary areas. These can be useful to advance the implementation land-related decisions relevant to the three Rio Conventions in customary areas of high environmental value (forests, wetlands, etc).

# PART TWO

## 6. CASE STUDIES

Part Two presents an in-depth examination of the case studies summarized in Part One, highlighting various durable housing, land and property solutions for addressing internal displacement in customary contexts. The cases in this section provide the evidence base for the analysis, conclusions and recommendations identified in Part One, offering a detailed look the applications and outcomes of durable solutions across a range of geographic and socio-economic settings. The cases outlined here also provide an overview of the relevant national legislations and frameworks applicable to each case. By exploring diverse contexts from South America to Southeast Asia, this section provides valuable insights into how different approaches to displacement and land management can be adapted to fit local customs and legal frameworks.

The featured case studies offer multiple perspectives on how displacement challenges are met through tailored solutions. In Colombia, land recordation and settlement regularization were used as a step toward rectifying historical injustices and facilitating reintegration of displaced populations into their original communities. Examples from Eastern DRC and Baidoa, Somalia emphasize mediation and tenure agreements as mechanisms to resolve land conflicts and secure housing, highlighting the role of participatory approaches and local agreements in achieving stability and preventing further displacement.

Similarly, the experiences documented in Sudan, Zambia, Myanmar and Vietnam reveal different dimensions of displacement and integration. In Sudan, efforts to reconcile land use rights and provide customary land tenure highlight the importance of intercommunal dialogue and legal recognition of traditional land rights. In Zambia, customary land recordation efforts are aimed at preventing displacement and fostering local investments, showing how documentation can enhance tenure security and reduce conflicts. Myanmar's approach to recording communal land rights reflects a preventive strategy against displacement, while Vietnam's case illustrates the challenges and strategies involved in relocating communities due to infrastructure projects. These case studies collectively underscore the diverse methods and outcomes associated with addressing displacement and land issues in customary contexts, providing crucial lessons for future application.

### A. COLOMBIA

#### A.1 Context

Colombia has a history of internal armed conflict involving guerrilla groups, paramilitary groups, drug cartels, state forces, social, political and economic elites and some public officials. This occurred mainly in rural areas<sup>151</sup> and led to wide-spread displacement of millions of rural residents, Indigenous groups

151 GLTN, 2018.

152 Unidad para las víctimas 2017, cited in GLTN, 2018.

and people of African descent. From 1985 to 2016, over 7,250,000 people were forcibly displaced.<sup>152</sup> Over half of them had land and 94 per cent of them were forced to abandon it.<sup>153</sup> Ownership, control and exploitation of land has been a key feature in the conflict, leading to displacement, forced land abandonment and dispossession, land grabbing and increased marginalization in access to land of historically discriminated groups (women, Indigenous communities, Afro descendants).<sup>154</sup> Over 50 years of armed conflict has led to the dispossession and forced abandonment of over 8 million ha of land and further concentration of land in the hands of a few. Since the signing of the peace agreement in 2016, efforts to distribute vacant land and to register land parcels were scaled up. Land restitution was considered a key component of the peace agreement, to be achieved through mass formalization of small- and medium-sized rural properties to protect the rights of legitimate landowners, preventing further land dispossession. This is not easy due to the weak land registration system. Although most of the land in Colombia is occupied or

used, only 15 per cent is registered<sup>155</sup> and widespread irregularities were reported in land registration during the conflict.<sup>156</sup> The remainder of Colombia's land is unregistered and held through a continuum of land rights (informal, customary, etc.).

It is estimated that 60 per cent of rural landowners have no formal proof of ownership, and the property does not appear in the land cadastre.<sup>157</sup> Further, large tracts of the country are customary, or areas where collective land rights are prevalent. The Constitution defines 'Indigenous Territorial Entities (ETI)' and 'Reservations'. ETIs are recognized political entities with the same autonomy as districts and municipalities, governed by councils according to the uses and customs of their communities. Reservations are areas that are legally recognized through a title which gives collective ownership to a certain Indigenous group,<sup>158</sup> these rights cannot be alienated. Nearly 60 per cent of the Indigenous population lives in 717 reservations<sup>159</sup> and a total of 770 reservations occupy over a quarter of the national territory.<sup>160</sup> Land registration of these areas is lagging.

153 GLTN, 2018.

154 Ibid.

155 International Crisis Group, 2021.

156 National Center of Historical Memory, 2016.

157 Land Links, 2021 14 May, 2021 blog.

158 Organisation of American States, n.d.

159 IWGIA, 2022.

160 Bejarano, 2020.



## A.2 Lomitas, Carceres, Tierralta and Ataco case studies

### Return to the area of origin and local integration through the regularization of settlements and the registration of land parcels in customary and informal areas

**Table 3. Overview of Lomitas, Carceres, Tierralta and Ataco case studies, Colombia.**

Town	Lomitas	Caceres	Tierralta	Ataco
<b>Location</b>	Lomitas is a very small town in Santander de Quilichao municipality Southern Colombia	Caceres, Antioquia, is a town of almost 40,000 in the Bajo Cauca subregion, northern Colombia	Tierralta is a town of about 110,000 in the Córdoba Department, northern Colombia	Ataco is a small town of just over 13,000 people, located in the Tolima mountains
<b>Characteristics of area</b>	Very small rural town	Small rural municipality	Informal settlement on urban periphery	Rural, mountainous area
<b>Nature of displacement</b>	Paramilitary violence and dispossession by sugar plantations	Paramilitary and drug-related violence	Paramilitary violence	Paramilitary violence
<b>Type of durable solution</b>	Return to area of origin	Return to area of origin	Local integration at area of destination	Return to Indigenous area of origin
<b>HLP challenges faced</b>	IDPs who were evicted from their (untitled) farmland and returned to find it occupied by sugar cane companies	<ul style="list-style-type: none"> <li>Returning IDPs found land occupied by new residents</li> <li>80% of properties in municipality informally owned;<sup>161</sup> lacked a registered land title</li> <li>High costs of formalization for marginalized poor residents</li> </ul>	Displaced people established an informal settlement on vacant peripheral land belonging to power company	<ul style="list-style-type: none"> <li>Challenges around land administration and property formalization which undermined public service delivery</li> </ul>
<b>Type of approach, tools, solution to HLP issues</b>	<ul style="list-style-type: none"> <li>Tenure security provided to IDPs who were evicted from their (untitled) farmland</li> <li>Support to municipal land offices (MLO), increasing administrative and processing capacity</li> <li>Land experts embedded in local municipal administration</li> <li>Creation of Localized Land Restitution Committees</li> <li>Parcel sweep</li> <li>Assist government to meet the 2016 Peace Accord Commitments<sup>162</sup></li> </ul>	<ul style="list-style-type: none"> <li>Titles delivered at no cost to IDPs who returned</li> <li>Support to MLO, increasing administrative and processing capacity</li> <li>Land experts embedded in local municipality administration</li> <li>Parcel sweep</li> <li>Raise awareness to nurture culture of formal land ownership</li> <li>3T programme: Titles, Transition, Transformation</li> </ul>	<ul style="list-style-type: none"> <li>Tenure security provided to displaced people who settled on vacant peripheral land.</li> <li>Support to MLO, increasing administrative and processing capacity</li> <li>Land experts embedded in local municipality administration</li> </ul>	<ul style="list-style-type: none"> <li>Establishment of MLO</li> <li>Educational workshops about MLO</li> <li>Parcel sweep</li> <li>Creation of protected reservations for ethnic minority group</li> <li>Assist in meeting the 2016 Peace Accord Commitments</li> </ul>

161 USAID, 2020.

162 The peace agreement included land restitution as a key component, to be achieved through the mass formalization of small and medium-sized rural properties that would protect the rights of legitimate landowners, preventing further land dispossession.

Town	Lomitas	Caceres	Tierralta	Ataco
<b>Outcomes</b>	<ul style="list-style-type: none"> <li>• Over 700 land titles issued<sup>163</sup></li> <li>• Mobilization of funds for housing for 400 vulnerable families<sup>164</sup></li> <li>• Rural Property &amp; Land Admin Plan (POSPR) being implemented to formalize thousands of rural properties</li> <li>• Overall improvement of land administration</li> <li>• Formal title to municipal land allowed municipality to mobilize public funding for roads, hospitals, community spaces etc. leading to increased investments.</li> </ul>	<ul style="list-style-type: none"> <li>• 94 titles issued at no cost to the returning displaced person.<sup>165</sup></li> <li>• Caceres now has 22 property titles for schools and have implemented the 3T programme: Titles, Transition, Transformation.<sup>166</sup></li> <li>• Having titled land means they can provide food and agriculture assistance through investments in agricultural and small infrastructure projects to transform rural communities.</li> </ul>	<ul style="list-style-type: none"> <li>• Over 1,950 land titles delivered in total<sup>167</sup> (In July 2023 alone, 261 parcels of land were titled, almost 70% of them to women)</li> <li>• Formalization of the informal area by including the neighbourhood into the city's masterplan</li> <li>• Improvement of land management processes</li> <li>• Women registered as the legal landowner gain access to government programmes and subsidies, a mortgage and enables their children to inherit the property.<sup>168</sup></li> </ul>	<ul style="list-style-type: none"> <li>• 11,843 land parcels identified over 100,000 ha, including 5,000 ready to be titled,<sup>169</sup> Colombia's largest land formalization initiative.</li> <li>• Introduction of MLOs, regulations for delegation of land management functions and guaranteeing women's land ownership rights in Chaparral (Tolima)</li> <li>• Protected reservations created for Pajaio ethnic minority group to ensure secure access to their ancestral land.</li> <li>• Titles provided to 18 public parcels, including a health clinic and 10 rural schools, which facilitate funding from national government.<sup>170</sup></li> </ul>
<b>Key actors</b>	National Land Restitution Unit, municipality, MLO, localized Land Restitution Subcommittee, displaced communities, USAID	Municipality, displaced communities, MLO, National Land Agency, USAID	Local power company, municipality, MLO, displaced communities, USAID	Displaced communities, municipal land offices (MLO), National Land Agency, USAID

163 Land Links, 2024 14 February, 2024 blog.

164 Ibid.

165 Land Links, 2022 20 April, 2022.

166 Land Links, 2023 21 March, 2023 blog.

167 Since 2017. Land Links, 2023, 20 September, 2023 blog.

168 Land Links, 2023, Blog, September 15, 2023.

169 Land Links, 2023 15 May, 2023 blog.

170 USAID, 2020.

## Background

Colombia has focused on the regularization of informal settlements and the registration of land and properties as the key means to achieve durable solutions for IDPs in customary areas of return and for local integration. The resolution of land conflicts and the restitution of illegally misappropriated properties are prime elements of this approach. Local adaptations of this approach have been implemented in different contexts such as the municipalities outlined below.

Both Santander De Quilico and Caceres are rural areas from which IDPs fled (i.e. areas of origin) and to which they are returning. Tierralta is a destination area for IDPs, an area they fled to, and where they need to be integrated into the local community. Like Santander De Quilico and Caceres, Ataco is an area of origin, but is one from which the marginalized ethnic group, the Pijao, were displaced from their ancestral lands and to which they would like to return. In all cases, IDPs have been negatively impacted by insecure tenure, in terms of their ability to invest in their land and generate an income and of the municipalities' inability to attract public sector investment to untitled land, affecting public services.

*Lomitas* is a small rural community of less than 1,000 people<sup>171</sup> in the municipality of Santander de Quilichao, southern Colombia, occupied mainly by people of African descent. The area was plagued by paramilitary operations in the early 2000s, displacing hundreds of residents, some several times. When they returned, their land was occupied by sugar cane companies. The Land Restitution Unit has made many rulings in favour of the town, one requiring that the national government titles their properties.

*Caceres* is a small rural municipality of about 40,000 people in Antioquia in the Bajo Cauca subregion of northern Colombia. Approximately 80 per cent of properties were informally owned<sup>172</sup> and lacked a registered land title. The area has been plagued by violence such as paramilitary and drug-related incidents. Between 2019 and 2022 over 1,500 families fled their homes. When they returned, many were occupied by new residents who did not recognize their ownership as they had no documentation to prove this. The costs of formalization are high, further marginalizing poor residents.

*Tierralta* is a town of 110,000 people in Córdoba Department, northern Colombia. In 2010 over 3,000 people settled overnight on the edge of the town on 40 ha of open land that belonged to the local power company.<sup>173</sup> They had been displaced by violence in their hometown. Known as 9 de Agosto, this informal settlement grew rapidly to house over 5,000 people by the end of the year. In 2017 the power company traded the land to the municipality, and local leaders provided services to over 4,000 parcels of land.<sup>174</sup>

*Ataco* is a small town of just over 13,000 people, located in the Tolima mountains. It is the ancestral area of Pijao people, many of whom fled the area due to paramilitary violence. Before 2022, three of the 10 Pijao communities in the municipality were recognized by government, allowing them to live and farm on land protected by law.

## Solution

The two key approaches used to address the HLP issues in these customary areas were the registration of land parcels, conducted by strengthening municipal land

171 Global Atlas of Environmental Justice Sugarcane and Gold Mining in Lomitas, Colombia, 2022.

172 USAID, 2020.

173 Land Links, 2023, 3 November, 2023 blog.

174 Ibid.

offices (MLOs) and by conducting ‘parcel sweeps’, and the regularization of informal settlements. Support to MLOs involved an initial careful consideration of local needs and capacity, followed by steps to increase both administrative and processing capacity. Throughout the process, a formal land administration approach led by local actors and communities was chosen. A critical element of the approach was having land professionals embedded in the local municipality’s administration, working directly with officials and land issues at local level. The workflow and communication between the key land agencies (Superintendents of Notaries and Registers, SNR) and the national property registry authority was improved. MLOs now work directly with the regional SNR office. In addition, in Santander De Quilichao, a Localized Land Restitution Committee was created.

The parcel sweep method was developed by USAID with Colombia’s land administration authorities to implement massive land formalization.<sup>175</sup> Key to this approach is the fact that the high costs and time taken to formalize rural properties no longer accrue to the poor, rural landowner. The process has been government led and involved the participation of the MLO and community leaders. The first step of a ‘parcel sweep’ entailed adopting a Free, prior and informed consent (FPIC) strategy which ensured that the community agreed to participate. This approach is inclusive and participatory and stems from a successful intercultural dialogue around key HLP issues. It involves consultation with community leaders and widespread participation of community members. FPIC acknowledges the right of Indigenous communities to say yes or no to

any proposal likely to affect their territory and social structure. Local community mobilizers were identified, ensuring that women and youth were considered.<sup>176</sup> Community members were trained to work with professionals to survey the land. The approach includes promoting joint land titles with a specific application form for couples. Parcel sweep operators were asked to use inclusive language and an approach differentiated according to gender, ethnic origin and age.<sup>177</sup> The parcel sweep approach has been used in many areas of the country, with the objective of updating the rural cadastre to include the newly swept parcels, resolving land conflicts, and delivering land titles to rural landowners.<sup>178</sup>

The case of Tierralta provides an example of informal settlements regularisation whereby tenure security is provided to displaced people in their area of origin, in this case to people who settled on vacant land on the periphery of a town that belonged to a power company. The MLO processes urban land titles, including those of public facilities.<sup>179</sup> The titling process requires physical verification of the property and an examination of the property’s history, functions which are performed by the MLO.<sup>180</sup>

### Outcomes

In all four cases, the increased capacity of the MLO and subsequent improved cooperation between the relevant agencies such as the SNR greatly increased the speed with which MLOs could title urban properties.<sup>181</sup> This improved land administration, improved communication and workflow between the main land agencies, and reduced processing times. Following

175 USAID, 2022.

176 Ibid.

177 Ibid.

178 Land Links, 2023 May 15, 2023 blog.

179 Ibid.

180 Ibid.

181 Land Links, 2023 November 3, 2023 blog.

the peace accord in 2016, by 2022 a total of 18,000 properties were formalized, covering 23,474 ha, 50 per cent of them directly benefiting women.<sup>182</sup> The Ministry of Justice published a practical guide for rural women to access justice and land, including details of the steps to be followed to formalize the land, request land restitution and access vacant land.

In Santander de Quilichao over 700 land titles have been granted and the MLO has assisted with the purchase and division of the Villa Maria housing project which mobilized USD \$2.5 million and will provide housing for 400 vulnerable families.<sup>183</sup> The Rural Property and Land Administration Plan (POSPR) is being implemented to formalize thousands of rural properties. Lomitas has become a showcase for Cauca, particularly considering the high number of positive land restitution judgments obtained.<sup>184</sup>

In Caceres, 94 titles were obtained.<sup>185</sup> Tenure security was provided to displaced people who returned to their land which had been occupied by new residents. This involved delivering the titles at no cost to the returning displaced person.

In Tierralta, the neighbourhood (the informal settlement area of destination of IDPs) was regularized and incorporated into the city's masterplan. Since 2017, over 1,950 titles were provided.<sup>186</sup> This is the largest delivery ever of land titles made by a municipal administration in Colombia. In July 2023 alone, 261 parcels of land were provided with titles, almost 70 per cent of these to women.

In Ataco, 11,843 land parcels were identified in the parcel sweep, over an area of 100,000 ha; 5,000 of them are ready to be titled. This represents Colombia's largest land formalization initiative.<sup>187</sup> Between October and December 2020 two MLO regulations for the delegation of functions and guaranteeing women's access to their rights to land ownership in Chaparral (Tolima) were reported. Protected reservations were created for the Pajaio ethnic minority group to ensure that they have secure access to their ancestral land.

Having formal title to municipal land allowed municipalities to attract government funding for social and physical infrastructure. Santander municipality mobilized \$15 million public funding for roads, hospitals, communal spaces, parks, a District Attorney's office, a Medical Examiner and Coroner's office. The municipality also bought titled land for the Santander de Quilichao Hospital and for the regional campus for the National Training Service (Servicio Nacional de Aprendizaje, SENA). Community spaces and parks have been formalized and legalized, leading to increased investments. Residents hope that restitution of their land can help solve the negative environmental impacts of sugarcane farming and illegal gold mining.<sup>188</sup> Caceres now has 22 property titles for schools and they have been able to implement the programme known as 3T: Titles, Transition, Transformation.<sup>189</sup> Having titled land means that they are able to provide assistance in food and agriculture through investments in agricultural and small infrastructure projects to transform rural communities. In Ataco, the MLO has inventoried and

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182 Zúñiga, 2022.

183 Land Links, 2024 14 February, 2024 blog.

184 Ibid.

185 Land Links, 2022 20 April, 2022.

186 Land Links, 2023 20 September, 2023 blog.

187 Land Links, 2023 15 May, 2023 blog.

188 Land Links, 2024 14 February, 2024 blog.

189 Land Links, 2023 21 March, 2023 blog.

studied titling of 18 public parcels, including a health clinic and 10 rural schools. Once formalized, they will be included in Tolima's health and education budgets and receive funding from national government.<sup>190</sup> In Tierralta, women who received their titles registering them as the legal landowner noted that this provides them with access to government programs and subsidies and a mortgage and enables their children to inherit the property.<sup>191</sup>

### Replication and scaling-up

This approach is being carried out across the country, particularly in areas most affected by violence. Over 6,800 land titles have been handed over to families in 42 Municipal and Regional Land Offices living in the urban areas of predominantly rural municipalities of Colombia since 2020.<sup>192</sup> The offices have also formalized over 1,600 public properties and provided land and property services to over 16,000 citizens. This is promoting public investment and development in areas occupied by IDPs. Following the 2016 peace accord, by 2022 18,000 properties were formalized, covering 23,474 ha, 50 per cent directly benefiting women.

### Key pointers for durable HLP solutions

These cases highlight several key pointers for durable HLP solutions in displacement-affected contexts. In

some cases, such as Lomitas, *people have experienced multiple displacements*. As in other case studies in this report, these can have occurred over decades, thus affecting different people differently, according to their age, generation, stage of life, etc. In many cases, such as Lomitas and Caceres, the land abandoned by IDPs was occupied by others: new families (as in Caceres), commercial agriculture firms (as in Lomitas) or by industries and infrastructure. How to determine who has the right to the land in the absence of formal titles becomes difficult. Further, there is the challenge of dealing with secondary occupants (e.g. if IDPs return to their original land, which has been occupied by other households after they left, those new households risked being displaced and need to be accommodated elsewhere).

Increasing capacity at local level (e.g. through the MLOs) has improved the overall land administration system and promoted more durable HLP solutions. Having land administration professionals embedded in the local municipality proves to be very effective. This contributed to the success of parcel sweeps across the country. Parcel sweeps have been inclusive and participatory and have embraced the concept of FPIC, ensuring that affected people are involved in assessing the land and addressing people's rights to the land.

<sup>190</sup> USAID, 2020.

<sup>191</sup> Land Links, 2023, Blog, September 15, 2023.

<sup>192</sup> Land Links, 2023, 3 November, 2023 blog.

## A.3 Salaminita case study

### Return to the area of origin through collective restitution of dispossessed lands

Table 4. Overview of Salaminita case study, Colombia.

Location	Salaminita, in the municipality of Pivijay, Department of Magdalena, in northern Colombia
<b>Characteristics of area</b>	Salaminita was a small rural village established by landless people who built 49 houses, a health centre and a school. It was recognized as a township in 1986. <sup>193</sup> Pivijay had a population of 33,047 in 2018. <sup>194</sup>
<b>Nature of displacement</b>	Established on non-registered vacant land by landless farmers, the village was destroyed by paramilitary forces in 1999 and the land taken by wealthy landowners who expanded their commercial plantations
<b>Type of durable solution</b>	Return to area of origin
<b>HLP challenges faced</b>	Forced displacement caused by violence
<b>Type of approach, tools, solutions to HLP issues</b>	<ul style="list-style-type: none"> <li>• Enabling policies and legislation: recognition of customary and Indigenous rights; peace accord and comprehensive rural reform; addressing root causes of displacement (dissolution of paramilitary groups and restitution of lands taken by paramilitary groups to compensate victims); creation of laws and procedures to reconstitute land rights to legitimate owners.</li> <li>• Land dispute resolution: legal procedures to adjudicate land rights and restore rights to rightful holders, including the shifting of the burden of proof from the returnees to those who occupied their lands after their displacement.<sup>195</sup></li> <li>• Collective restitution of forcibly abandoned or dispossessed land in Salaminita.</li> </ul>
<b>Outcomes</b>	<ul style="list-style-type: none"> <li>• In 2016, the Superior Court of the Judicial District of Antioquia (Civil Chamber Specialized in Land Restitution) recognized the right to land restitution to 36 families from Salaminita; Court ordered landlords to return their land to original residents.</li> <li>• Judge recognized <i>de facto</i> unions that existed when displaced and ordered both partners to be awarded ownership titles supporting women's rights to the land.</li> <li>• Displaced people created "Asorenacer", a community organization to promote and protect the community and the rights of the victims.<sup>196</sup></li> <li>• Superior Court also ordered that beneficiaries be given priority in housing subsidies for new homes. But it was four years and after community struggle and legal battles before beneficiaries realized their right to adequate housing.<sup>197</sup></li> <li>• Although many members of the affected community have returned, several outstanding issues related to the judgement have not been fully implemented and preclude a long-term durable solution: housing, health, and education.</li> </ul>
<b>Key actors</b>	Displaced people, Colombian Commission of Jurists (CCJ), Land Restitution Unit, Swedish Embassy, Norwegian Refugee Council (NRC) and Centre for Research and Popular Education/Peace Programme (CINEP); the people displaced from Salaminita created "Asorenacer", a community organization that aims to promote and protect the community and the rights of victims, and the displaced people themselves.

193 Llinas-Pizarro, 2019.

194 Mindat, n.d.

195 Horan, 2013.

196 GLTN, 2018.

197 CCJ, 2020.



### Background

Salaminita was a small village located in the municipality of Pivijay, in the Department of Magdalena, northern Colombia. The village was established on non-registered vacant land by rural landless people who gradually settled in the area and built their houses. Residents were mainly involved in farming and related activities, and services were minimal. Declared a township in 1986,<sup>198</sup> it consisted of 49 houses, a health centre and a school. In June 1999, paramilitary forces invaded the village and publicly murdered several residents. As a result, the villagers fled to other parts of the country following which the village was destroyed by the paramilitary group. Wealthy landowners on neighbouring farms then took over the land; some of the original residents maintain that these landowners had financed the paramilitary group and were behind the village's destruction and their displacement.<sup>199</sup>

The unfolding of events in Salaminita appears to be fairly typical, showing the link between violence, forced displacement of rural populations and the expansion of commercial plantations as a strategy to transfer land swiftly, sometimes in collaboration with public institutions who play crucial roles in authorizing and legitimizing these transfers (labelled the administrative mechanism of dispossession).<sup>200</sup> Typically these involve initial settlement by poor rural, black or Indigenous communities on unoccupied wasteland (*baldios*) in fairly marginal or isolated areas, followed by violence by the paramilitary, and then the establishment of commercial agriculture on the land that had been abandoned.

### Solution

The Victims and Land Restitution Law (Law 1448 of 2011) is part of Colombia's framework of transitional justice, which seeks to recognize the rights of victims of the armed conflict to land restitution and establishes

a special, free and fast-track process for this. To enact this law, the government established the Special Administrative Unit for Land Restitution (URT) or Land Restitution Unit, that promotes special judicial proceedings and manages the Unique Registration System for Dispossessed Lands (RUTDA).<sup>201</sup> Proprietors, tenants or occupiers of vacant land are eligible for restitution if they were forced to abandon their land after 1991 due to serious human rights abuses or violations of international humanitarian law. The Land Restitution Unit falls under the Ministry of Agriculture, which reviews applications for land restitution and legally represents the applicants before specialized judges who decide if the land should be returned to the applicant, and if any other measures are necessary for full restitution.<sup>202</sup>

The land restitution process has the following steps:

1. **Initial meeting with applicants:** in its first meeting with the applicants, the Colombian Commission of Jurists (CCJ) explains the land restitution process to them. If they wish to proceed with an application, the applicants grant CCJ power of attorney to represent them. In Salaminita, CCJ represented 38 land-restitution applicants and their families (23 women and 15 men, totalling 214 people).<sup>203</sup>
2. **Administrative stage:** the Land Restitution Unit reviews the claim to ensure that the applicants are eligible for restitution and to reconstruct the history of ownership of the property in question.
3. **Judicial stage:** the case is then put before a land restitution judge. Applications are presented individually or collectively. Collective applications may be presented if the claimed plots are situated close to each other, and if the applicants were displaced at the same time and under the same

198 Llinas-Pizarro, 2019.

199 GLTN, 2018.

200 Hurtado-Hurtado et al, 2024.

201 USAID, 2017.

202 GLTN, 2018.

203 Ibid.

circumstances (as in Salaminita). The judge decides if the land is to be returned, and orders measures to secure the applicants' land rights and their return, stability and decent living conditions. CCJ has prioritized the submission of collective applications over individual applications. In Salaminita, CCJ filed a collective land-restitution application on behalf of the residents in 2014.

4. **Implementation of the order:** following the judgement, the measures ordered by the judge need to be implemented by the responsible authorities. The CCJ has created specialized interdisciplinary teams consisting of lawyers, social scientists, psychologists and gender specialists to handle cases. The lawyers lead the applications, while the other team members help reconstruct the context for each case, identify the individual and collective harm suffered by the victims to ensure adequate reparation and support the victims throughout the restitution process. They also help organize and strengthen the communities involved. The gender specialists ensure that women's rights to the claimed land are recognized and attend to the special needs and vulnerabilities of women during the process.<sup>204</sup> In some cases, national and international organizations have assisted by monitoring the implementation of protection measures and compliance with the restitution rulings and undertaking specific actions with the people involved. In Salaminita's case, the Land Restitution Court ruled in their favour two years after their application to the court.

## Outcomes

In 2016, the Superior Court of the Judicial District of Antioquia (Civil Chamber Specialized in Land Restitution) recognized the right to land restitution to 36 families from Salaminita, ordered the landlords

who had bought or occupied the land to return it to its previous owners, and ordered the government to issue the residents formal land-ownership titles. By 2018, the government had granted the claimants titles to the plots and their land had been returned.

The Victim's Law provides a gender sensitive approach that allows for titles to be granted jointly to a partner or spouse. These legal provisions, along with input from a gender specialist in the interdisciplinary litigation teams allow for special claims in collective applications for land restitution that aim to guarantee women's rights to land.<sup>205</sup> In Salaminita, the judge recognized the *de facto* unions that existed at the time of the forced displacement and ordered both partners to be awarded ownership titles.<sup>206</sup>

UN-Habitat reports that the restitution process in Salaminita led to more efficient and better-quality land restitution, land formalization that also addresses unequal land distribution, more efficient and better-quality processes which address and improve women's land tenure security, strengthened and empowered communities, ensured victims' rights to truth, justice and reparations, and restored victims' trust in state entities.<sup>207</sup> Thus the land-restitution process helped secure land rights, promoted women's access to land and fostered the return of IDPs. Factors promoting successful outcomes in terms of HLP rights in Salaminita were the political willingness to correct past injustices, the ability to identify claimants and have evidence to support their claims, the favourable legal framework, reliable and committed new public entities and qualified specialists in law, gender, and community organizing.<sup>208</sup>

Collective applications for land restitution have been effective in revealing the truth about the magnitude, patterns and effects of forced abandonment and

204 Ibid.

205 UN-Habitat, 2018.

206 Ibid.

207 Ibid.

208 GLTN, 2018.

dispossession of land; favouring the implementation of comprehensive reparation measures that might facilitate the return of IDPs and promote rural development; contributing to reuniting, organizing and strengthening communities that were torn apart by their displacement; and accelerating judges' decisions in cases of forced dispossession.<sup>209</sup> The flexible legal entities characteristic of the land restitution process have facilitated victims' access to justice and have helped solve conflicts over land that traditional approaches would not have resolved. In addition, the process has promoted women's access to land and the return of IDPs to their land.

However, land restitution can only lead to durable solutions if not only are properties returned, but also if the necessary conditions to overcome vulnerability are in place. Land restitution needs to go hand in hand with health, education, livelihood and housing.<sup>210</sup> The restitution process in Colombia includes training communities about their rights and how to realize them and providing support to create or strengthen community-based organizations. The people displaced from Salaminita created "Asorenacer", a community organization that aims to promote and protect the community and the rights of the victims.

An important aspect of the restitution judgement in Salaminita in terms of durable solutions and the facilitation of the original residents to the area is that it includes an order that government rebuild the village, provide free healthcare, education and occupational training and build a memorial to record the events of 1999. Asorenacer has advocated to ensure compliance with the ruling and has partnered with other organizations to defend the land restitution policy. As part of the 2016 ruling, the Superior Court of the Judicial District of Antioquia also ordered that the beneficiaries

be given priority in the housing subsidy programmes for the construction of new homes. However, it was almost four years, and after community struggle and legal battles between different government departments, before the beneficiaries were able to realize their right to adequate housing.<sup>211</sup> Although many members of the affected community have returned to the area, several outstanding issues related to the judgement have not yet been fully implemented and preclude a long-term durable solution: housing, health and education. For example, in March 2022 it was reported that the community engaged in protests saying that although they had been granted collective reparation "that has been null for us".<sup>212</sup> Over 60 families still did not have access to drinking water within 500 m of their home in March 2023.<sup>213</sup>

### Replication and scaling-up

The land restitution process has been followed across Colombia, including restitution of collective property rights. For example, the first two land restitution processes involving black communities that successfully claimed the restitution of their collective property rights were the communities of Renacer Negro in the municipality of Timbiqui, department of Cauca and Cuenca del Rio Yurumanguí in the municipality of Buenaventura, in the department of Valle del Cauca. These highlighted the opportunities presented by the state's policy to guarantee collective property rights and the access to public goods and services that foster traditional property relations. By protecting communities from the negative effects of the market-based economy, it can prevent future dispossession. However, this is diminished when the state fails to secure the necessary resources to enable people to use and benefit from their land. If the infrastructure to provide essential public goods and services is not installed, the restitution policy might well not be sustainable.<sup>214</sup>

209 Ibid.

210 Llinas-Pizarro, 2019.

211 CCJ, 2020.

212 W Radio, 23 March, 2022.

213 W Radio, 18 January, 2023.

214 Peña-Huertas et al., 2021.

Since the enactment of the law in 2011, it was estimated in 2022 that 536,148 ha of land had been restituted, only 10 per cent of the goal of 6 million ha in 10 years. A total of 7,166 judgments had been handed down, and these did not provide a guarantee that the properties will be returned or that the court order will be complied with. The degree of compliance is unknown.<sup>215</sup>

### Key pointers for durable HLP solutions

The Salaminita case highlights the steps taken by the national government to facilitate land restitution in Colombia. A gender-sensitive approach promoted better access to land for women. While the approach worked well in terms of restoring HLP rights, it evidenced the importance of supporting communities with complementary interventions (livelihood, services, etc.) to enable durable solutions. Salaminita's experience also shows that "the orders aimed at guaranteeing transformation have not been completely fulfilled, because many of them require public expenditures that affect the finances of weak municipalities, and because the armed conflict persists, as do the pressures by third parties to liberalize the use of soil and subsoil resources."<sup>216</sup>

## A.4 Relevant national legislation and frameworks

The interventions to improve the long-term HLP outcomes for IDPs are underpinned by a set of national legal and policy frameworks. *Law 70/1993* acknowledges the territorial, cultural, economic and social rights of black communities that have historically inhabited the Pacific Region's lands, granting them collective titling.<sup>217</sup> *Law 387/1997* addresses the prevention, attention and socioeconomic stabilization of IDPs.

*Law 975 of 2005 (the Justice and Peace Law)* aims to dissolve the paramilitary groups and includes the return of land held by paramilitaries brought to be used as compensation to the victims. This is a crucial opportunity for displaced and dispossessed people to claim their rights from the state.<sup>218</sup>

*Law 1448 of 2011 (Victims and Land Restitution Law)* resolves, in a just manner, the complicated issues for millions who were displaced from their land. It "consists of both an administrative step to formally register the land claim by the displaced farmer and a judicial action to resolve the land restitution claim made by both parties".<sup>219</sup> It guarantees the right to truth, justice and reparation to victims and establishes a special, fast-track process for land restitution. With this law the government created the Special Administrative Unit for Land Restitution (URT) that promotes special judicial proceedings to have restitution of the lands to the dispossessed. The law also provides alternatives to issues of secondary occupants and big investments that have caused displacement and manages the Unique Registration System for Dispossessed Lands (RUTDA).<sup>220</sup>

*Law 1579 of 2012* regulates the notarial and registration processes for officially registering immovable property.<sup>221</sup> *Law 1561 of 2012* establishes an expedited process for formalizing rights for valid occupants of properties and provides for an expedited procedure for cleaning registered titles that may have problems in the chain of title order to increase security. This obligates judges to issue a ruling within six months. This term can only be exceeded in case of interruption or cessation of the process for a legal cause.<sup>222</sup>

215 La Vía Campesina, 2022.

216 Peña-Huertas et al., 2021.

217 Hurtado-Hurtado, 2021.

218 Ibid.

219 ESRI, 2019.

220 USAID, 2017.

221 Ibid.

222 Ibid.

The 2016 Peace Accord between the Government of Colombia and the Revolutionary Armed Forces of Colombia (FARC-EP) gives visibility to the needs of the victims of forced displacement.

The *Comprehensive Rural Reform* aims to facilitate access to land and property through land formalization in rural areas for poor farmers. The *Social Management of Rural Property* policy mainly focuses on rural farming communities. Among these are over 115 Indigenous groups of Amerindian origin and various Afro-Colombian communities, who are guaranteed collective property rights under the country's constitution. Making massive land formalization processes inclusive of these communities is crucial.

The *National Land Formalization Programme* has been in place since 2013 under the Ministry of Agriculture and Rural Development. It establishes an expedited process for resolving the situation of the owners of properties who lack legal documentation and provides legal security to people who possess registered titles that contain legal deficiencies, enabling them to fully clear their rights. It aims to promote access to rural land and to improve the quality of life of the affected population, coordinating those actions for supporting matters related to formalization of ownership rights over private rural fields, clearance of title in cases of incomplete or irregular documentation, resolution of administrative, notarial and registration matters that have not been fulfilled and promotion of a culture of formalization for rural property.

## B. DEMOCRATIC REPUBLIC OF CONGO (DRC)

### B.1 Context

Post-independence, all land in the DRC was officially nationalized. However, as statutory land management

systems did not develop fast or wide enough to manage the vast tracts of DRC land, customary land management systems continue to co-exist and prevail in rural areas and are often mixed with informal practices in informal settlements in urban and peri-urban areas.<sup>223</sup>

The country had an estimated 6.9 million IDPs in 2023, with land disputes being the second major reason for displacement.<sup>224</sup>

Over the past decades, the eastern areas of the DRC have been plagued with recurrent violence and land-related conflicts. During the second Congo war (1998–2003), much of the eastern parts of the country, including North and South Kivu, were controlled by different factions of the *Rassemblement Congolais pour la Démocratie*. They allocated large areas of land to the emerging elite,<sup>225</sup> in some cases overruling local land rights.<sup>226</sup> Since then, further irregular appropriation of land by the elite and the continuing privatization of land, enabled by weak state institutions and the disrupted national land administration system, has led to widespread tenure insecurity and an increase in land-related conflicts. This is exacerbated by the increasing demand for land from a rapidly growing population, supplemented by incoming waves of refugees and the return of IDPs, particularly in South Kivu, North Kivu and Ituri provinces. Competition for land fuels conflict between communities and ethnic groups, which has sometimes turned violent, with landowners trying to evict villagers from their traditional land.

The land sector in the DRC is characterized by weak governance, capture of state instruments by powerful groups, plural legal systems and weak land administration and management. The risks posed by such structural weaknesses are exacerbated by population pressure, tensions over increasingly scarce land, a bulge in the youth population without secure land rights, land grabbing and forced evictions.<sup>227</sup>

223 Land Link, 2010.

224 NRC, 2023.

225 UN-Habitat, 2018.

226 Van Leeuwen et al, 2020.

227 UN-Habitat, 2020.

## B.2 Eastern DRC case study

### Return and local integration through land conflict mediation and participatory land recordation

Table 5. Overview of North Kivu case study, eastern DRC.

Country and location	Eastern part of the DRC, particularly municipalities of Beni and Goma in North Kivu, including Masiani neighbourhood in Beni
Characteristics of area	Rural, traditionally farming areas historically managed under customary law. IDPs returning to land in eastern provinces often find their land occupied; land conflicts are common.
Nature of displacement	Violence due to wars and ethnic conflict, particularly in South Kivu, North Kivu and Ituri provinces
Type of durable solution	Return to area of origin and peaceful coexistence with other residents
HLP challenges faced	Conflicts over land ownership, occupation and use among new landowners, people who have traditionally used the land, incoming refugees and returning IDPs.
Type of approach, and solution to HLP issues	<ul style="list-style-type: none"> <li>• Enabling policy and legal frameworks: peace agreement, recognition of rights of Indigenous people, recognition of customary land rights. Land conflict mediation</li> <li>• Participatory land recordation</li> <li>• Technical assistance and capacity development</li> <li>• Policy and legal reform</li> </ul>
Outcomes	<ul style="list-style-type: none"> <li>• The resolution of land disputes has benefited 110,580 people (20,334 men, 23,331 women, 32,545 girls, 34,369 boys) and led to a significant drop in land conflicts, promoting more secure land tenure for all, including for the returning displaced people.<sup>228</sup></li> <li>• Locally agreed and legally recognized HLP documents were provided to 564 men and 97 women between June 2016 and August 2018 in the Eastern DRC.<sup>229</sup></li> <li>• Transparent land information system has been established that can facilitate smooth integration of returning and already resident IDPs. This includes digitized tenure information and the database and community-generated map which enable communities to manage their own tenure information.</li> <li>• Communication and coordination on land issues between national and provincial governments and civil society has been strengthened.</li> <li>• Leveraged support which contributed to development of the National Land Policy which recognizes customary land rights in 2022 and land reform programme.</li> <li>• Data from this process is used to attract public investment in community services and infrastructure, and to encourage other local development initiatives.</li> </ul>
Key actors	UN-Habitat, GLTN, UN-Habitat Regional Office for Africa municipalities, UNHCR, traditional leaders, displaced and host communities, Christian Bilingual University of Congo, Ministry of Land Affairs, provincial land administration offices, Consultation Group on Land Tenure (national network of CSOs).

228 UN-Habitat, n.d.

229 UN-Habitat, n.d.

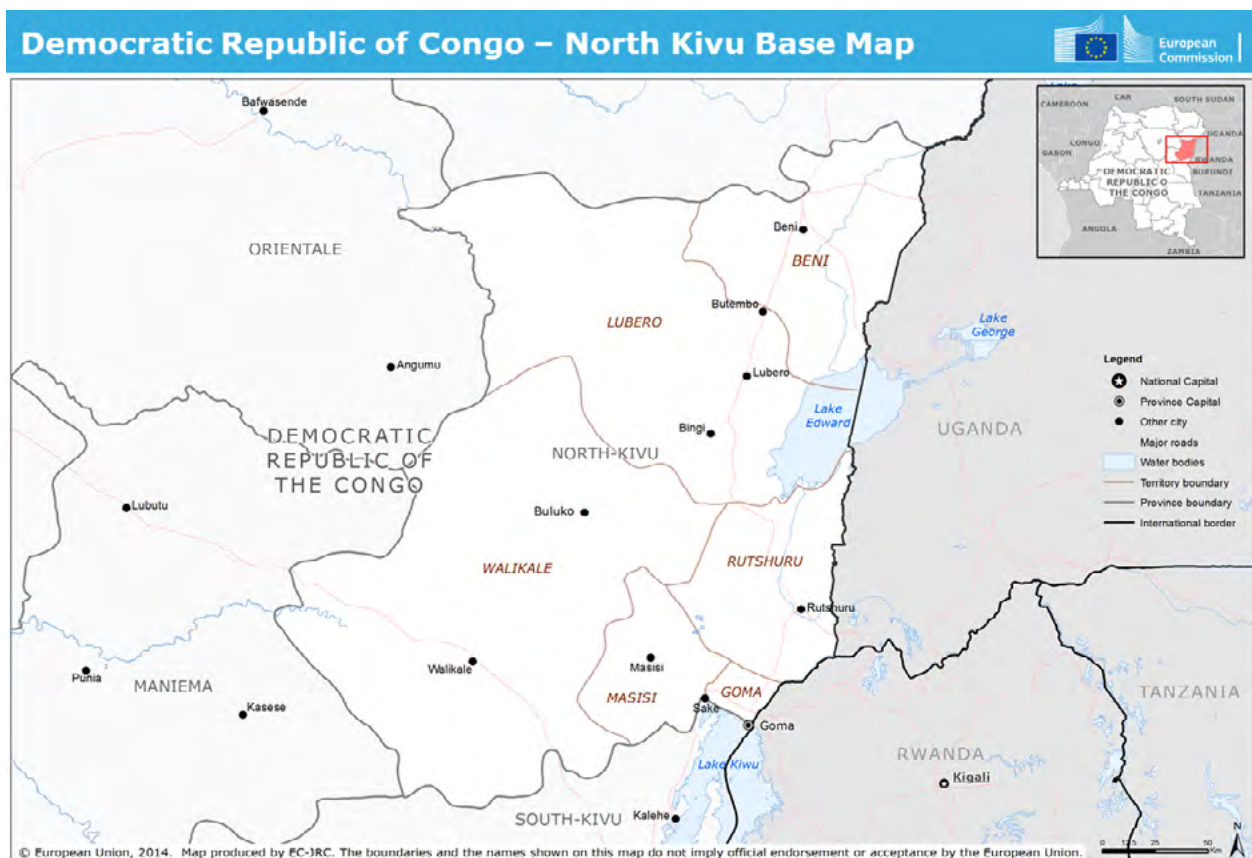


### Background

Beni and Goma municipalities are situated in North Kivu province in the eastern part of the country and are traditionally farming rural areas which have historically been managed under customary law. IDPs returning to the eastern provinces often find their land occupied, and land conflicts are common. In the Masiani neighbourhood of Beni municipality, tenure conflicts affected 40 per cent of the 16,300 households, leading to land grabbing, physical violence, kidnapping, assassinations and unresolved disappearances.<sup>230</sup> In Rutshuru Territory in North Kivu, conflicts over land occur between local communities, the Virunga National Park, and neighbouring farming concessions, aggravated by returning IDPs and the influx of refugees.

### Solution

Since 2009, UN-Habitat, the Global Land Tool Network (GLTN) and United Nations High Commissioner for Refugees (UNHCR) joined efforts to support stabilization after the 2008 Goma Peace Agreement. This focused on assisting the return of refugees from neighbouring countries, and mediation to address land conflicts to reintegrate IDPs and refugees within their communities. Key to this was an approach to land conflict mediation piloted in Beni and Goma municipalities in North Kivu, working with the Christian Bilingual University of Congo and the UN-Habitat Regional Office for Africa. Other parties included the Ministry of Land Affairs, provincial land administration offices, and the Consultation Group on Land Tenure



**Figure 3. North Kivu, Democratic Republic of Congo.**

Source: Emergency Response Coordination Centre, 2014.

(a national network of civil society organisations). The approach combined land mediation and participatory land recordation, supported by a pro-poor, open-source software that records the relations between people and land (the Social Tenure Domain Model, STDM). A tool to ensure the gender responsiveness of large-scale land processes was also introduced (the Gender Evaluation Criteria).

The process included the following steps:

- **Discussion with the broad affected communities**, including traditional leaders, to facilitate consensus and ensure consistency with customary laws in the allocation of lands to the competing groups.
- **Data collection, verification and resolution of disagreements through land mediation** (using GLTN's Land Mediation Guide).
- Provision of certificates of occupancy describing socio-demographic data and land coordinates, established in collaboration with both provincial and customary authorities, which serve as the basis for the pursuit of formal land titles.<sup>231</sup>
- **Agreement between men, women and youth in the community with provincial and customary authorities on the reservation of public space** for infrastructure, services and amenities (schools, roads, health services, burial grounds).<sup>232</sup>
- **Livelihood issues** were addressed by project partners (UN-Habitat, GLTN, FAO, WFP and UNDP).
- **Provision of technical support and equipment** to the provincial land administration including assistance with digitization of the cadastral system.
- **Provision of overall support to the national land reform process** including land tools, capacity building and institutional coordination, to the National Commission for Land Reform (CONAREF),

and to the development of a national land policy that could address the improvement of the land sector overall, including for securing HLP rights of competing communities in customary areas. The National Land Policy was successfully launched in 2022.

Key considerations were to avoid focusing entirely on the displaced and vulnerable people at the expense of the local or nearby population as this can create new social and land tensions.

### Outcomes

UN-Habitat's involvement in the Partnership for Change began in 2016 and resulted in the resolution of many land disputes in its first two years of operation. In the country as a whole, 110,580 people (20,334 men, 23,331 women, 32,545 girls and 34,369 boys) benefitted.<sup>233</sup> Over 4500 of 8000 identified land conflicts were resolved peacefully through the GLTN mediation process, with the others receiving follow up based on an approved cooperation agreement and road map.<sup>234</sup> Successful mediations occurred in Kitshanga Barza village in Bashali Chiefdom, in Rutshuru (with participation of Bwisha Chiefdom and the Rutshuru civil society organization), in Busanza village, Rutshuru, and in Luhonga village, Masisi Territory, North Kivu.<sup>235</sup> Successful land mediation resulted in the signing of Peace Agreements by the parties to a conflict, witnessed by key stakeholders. Overall, the number of land conflicts has decreased. The application of the land and conflict tool in Luhonga and the Masisi Territory has provided access to land for post-conflict returnees.<sup>236</sup>

GLTN reports substantial awareness created at community level which "has led to increased negotiating power of peasants vis-à-vis the authorities

231 UN-Habitat, 2018.

232 Ibid.

233 UN-Habitat, n.d.

234 UN-Habitat, 2020.

235 Ibid.

236 UN-Habitat, 2018.

and big landowners, to women accessing land where their rights were previously unacknowledged, and to peace and stability in communities that were plagued by conflict for many years. It is observed that big landowners cooperate with the participative mediation process and agree to grant access to or confer land to community members.”<sup>237</sup>

Between June 2016 and August 2018, 564 men and 97 women were provided with locally accepted, legally recognized documents as evidence of secured land rights following the land use planning processes.<sup>238</sup> In all 3,399 men and 364 women heads of household had access to land administration services.<sup>239</sup>

The identification and mapping of boundaries through participatory enumeration and STDM in the Masiani neighbourhood of Beni Municipality enabled the development of a transparent land information system based on a continuum of land rights. Land tools were demonstrated through projects benefitting 1,485 households in Beni’s Masiani neighbourhood (389 ha) and 609 households on 24 ha in Luhonga near Goma.<sup>240</sup> These were based on a land use plan developed by UN-Habitat in conjunction with community members, the local government and customary chiefs. This process (using STDM) was acknowledged by North Kivu’s Provincial Land Ministry and community members as key to recording land rights through participatory enumeration. The resulting certificates of occupancy provide documentary evidence of legitimate rights and facilitate access to financial services. Tenure information is now digitized. The database and community-generated map enable communities to manage their own tenure information. There has been an increase

in applications for title deeds.<sup>241</sup> In Rutshuru, residents started to invest in pursuing formal land titles and claim eagerness to start to invest in brick houses following the participatory land recordation.<sup>242</sup>

The initiative has leveraged support which contributes to a durable solution. For example, DFID approved a community land use planning programme, which includes tenure security activities.<sup>243</sup> Land use planning in Luhonga facilitated delivery of water and sanitation services through partnerships with other UN agencies.<sup>244</sup> The Central African Forest Initiative (CAFI) provided funding for UN-Habitat to assist in developing a national land policy and land reform programme. The National Land Policy which was approved in 2022 recognizes the tenure security of customary lands in urban and rural areas, enhances recognition of land rights of marginalized groups including women, modernizes land tenure and the delivery of land tenure services, and decentralizes land tenure functions.<sup>245</sup> Communications and coordination on land issues between national and provincial governments and civil society have been strengthened. In Goma and Bukavu cities, 24 public and private organizations and Cadre de Concertation des Organisations de la Société Civile Congolaise et des Peuples (CACO) signed an agreement of cooperation to move the land reform process forward, working with provincial and local governments.

This process has shown that land mediation is useful in a post conflict context as it seeks to maintain or restore social balance, contributes to the stabilization and peaceful coexistence of communities that were opposed, and allows for all parties to be fully involved in finding the solution that suits them. This is important

237 Ibid.

238 UN-Habitat, n.d.

239 Ibid.

240 UN-Habitat, 2020.

241 Ibid.

242 UN-Habitat, 2018.

243 UN-Habitat, 2020.

244 UN-Habitat, 2018.

245 CAHF, 2022.

in promoting the integration into the community of displaced people who are returning to their home areas and providing them with secure tenure and the opportunity to pursue productive lives.

Data from this process is being used to attract public investment in community services and infrastructure, and to encourage other local development initiatives.

### Replication and scaling up

In North Kivu, provincial and customary authorities participated in the agreements on land. The Ministry of Land expressed an interest in improving land management by investing state funds and with the support of an experienced land expert. This suggests that the approach could be expanded to promote change across a wider area. Improved collaboration between national and provincial governments and civil society is likely to have a positive effect on resolving other land conflicts across eastern DRC, with positive outcomes for displaced people. Traditional leaders actively support the mediation process which bodes well for resolving other land conflicts including those involving IDPs returning to their areas of origin or settling in new areas. In Rutshuru alone around 20 NGOs are now working on mediating land conflicts. Local NGOs capacitated on the mediation process by this initiative take the practice to scale without further external support.

As a result of this work, the UN-led International Security and Stabilization Support Strategy has recognized land-related disputes as a priority to tackle the root causes of conflict. Support has therefore been expanded substantially. There has been a realization that participatory land management can improve security and stability. This has important implications for the successful integration of IDPs, whether they are returning to their area of origin, being integrated into the area where they settled, or choosing to be relocated to a new area.

This is not a very expensive or time-consuming process, suggesting that it could be applied and/or adapted to other areas across the DRC and beyond.

### Key pointers for durable HLP solutions

- The DRC case study points out that customary land management is not always found only in rural areas, and can be prevalent in other settings, particularly in peri-urban and informal areas.
- It shows the value of land mediation and participatory land recordation (e.g. supported by the Social Tenure Domain Model, a participatory and inclusive process to record people's relation to the land).
- Working with national level policymakers to find local level durable solutions can influence national land policy, as has been evident in this case.

## B.3 Relevant national legislation and frameworks

The interventions in the DRC are underpinned by a set of national legal and policy frameworks. The *Bakajika Law of 1966* specifies that all the land and its underground contents belong to the State. *Law No. 73-021 of 1973 on the General Regime of Property, Land Tenure, Real Estate and Securities* as amended and supplemented by Law No. 80-008 of 1980 (the Land Law) aims to end the prevailing system of parallel state and customary tenure, declaring all land as state property. However, the law fails to specify the exact jurisdiction of customary authorities with the result that there continues to be confusion about the status of land under customary tenure and the land governing roles of customary authorities.<sup>246</sup>

The *2006 Constitution* guarantees equal access to property for all Congolese citizens, both women and men. However, under the customary system in eastern DRC, despite being the main cultivators, women can only access land through their husbands or male

246 Van Leeuwen et al, 2023.

relatives, and much more rarely through rental or purchase. This also affects inheritance practices.

The *Law for the Protection and Promotion of the Rights of Indigenous Pygmy Peoples of July 15, 2022* formally recognizes and protects the rights of “landless” Indigenous people, who experienced decades of evictions, injustice, and human rights abuses.

The *National Land Policy* approved in 2022 is expected to ease the recognition of tenure security of customary lands in both urban and rural areas, along with subsequent land transactions, enhance recognition of land rights of marginalized groups, particularly women, who are denied access to registered rights to land due to patriarchal norms and customary rights, modernize land tenure, improve transparency and delivery of land tenure services and decentralize land tenure functions.<sup>247</sup> The “*e-Foncier*” project for digital transformation of the management of the national land cadastre works to improve issuing and securing title deeds.<sup>248</sup>

## C. SOMALIA

### C.1 Context

Somalia historically has an agrarian rural economy, with 55 per cent of household livelihoods based on pastoralism or agro-pastoralism and 24 per cent on agriculture. Land tenure in the country is extremely complex. During the Barre regime, the Land Law of 1975 nationalized all land. Agricultural policies and land reforms overturned customary land tenure arrangements and attempted to enforce formal land registration across the country, even though the country did not have the necessary capacity to implement this. Farmers were required to apply to the state for leasehold titles, which were granted for 50 years. If they failed

to do so, the farmland could be lost even if they had farmed it for generations. Only one title per household was allowed, which severely limited the farmer’s ability to use their traditional risk-mitigation strategies of agricultural related migration and also threatened women’s customary tenure.<sup>249</sup> Over time, much of the fertile farmland was misappropriated by the elite and the original farmers lost their land, their ability to grow crops and therefore their ability to earn a living. Agricultural land gradually became more concentrated in larger plantation farms, negatively impacting the relationship between farmers and pastoralists.

Somalia’s land-related legal framework is characterized by legal pluralism, with overlaps between statutory legislation, Sharia and customary (*Xeer*) laws. Customary approaches to resolving disputes are often preferred as they are quicker and simpler than more formal approaches. However, they frequently discriminate against women.<sup>250</sup> Where land registration systems are in place, they are often very dysfunctional, and land disputes are common.

Somalia has experienced multiple disruptions over the last few decades, including civil war, the al-Shabab insurgency, famine and disease. This has led to massive internal displacements estimated in 2018 of an estimated 1.1 million people, a large portion of whom were displaced by the 2016/17 drought and subsequent famine.<sup>251</sup> By 2023, further drought increased the total internally displaced population in the country to 2.6 million.<sup>252</sup> This has been exacerbated by uncertainty over land rights. Local governments lack the capacity to manage land, there is a pluralistic system of land management dominated by traditional authorities and a lack of mechanisms to ensure tenure security or to resolve land disputes. Despite legal protections,

247 CAHF, 2022.

248 Ibid.

249 NRC, 2008.

250 Ibid.

251 UN-Habitat, 2018.

252 Baidoa City Strategy, 2023.



women tend to be discriminated against in terms of tenure security and dispute resolution mechanisms, and their access to HLP rights is often compromised by

customary Xeer and Sharia laws. Women are therefore more vulnerable to eviction and to poverty arising from the denial of their land rights.

## C.2 Baidoa case study

### Local integration through land tenure agreements to prevent eviction and secure land for housing

**Table 6. Overview of Baidoa case study, Somalia.**

Country and location	Baidoa is a large town in the Bay region of South West State, Somalia
<b>Characteristics of area</b>	Baidoa had an estimated 750,000 IDPs <sup>253</sup> living in approximately 498 IDP sites. <sup>254</sup> This far outnumbered the host population, estimated at around 75,000 in 2020. <sup>255</sup> The cumulative urban population increased at least five-fold from 2018-2023.
<b>Nature of displacement</b>	Multiple causes – drought, famine, disease, violence; displacement in the Bay region is ongoing
<b>Type of durable solution</b>	Local integration in Baidoa, facilitated by the provision of land tenure security. Some areas allocated for voluntary relocation within Baidoa (i.e. local integration)
<b>HLP challenges faced/ addressed</b>	Ongoing land conflict between landowners and people who have traditionally used the land and newcomers (IDPs and refugees) displaced by violence and drought; threat of eviction
<b>Type of approach, and solution to HLP issues</b>	<ul style="list-style-type: none"> <li>• Broker the land agreements: For public land, municipality issues a written offer; for community or private land, the clan leader or landowner writes a letter as basis of a communal witnessed agreement.</li> <li>• Individual occupancy certificates are then issued. These are used by municipality to issue land certificates for the plot.</li> <li>• For privately-owned land, lease agreements are drawn up giving the lessee the rights to use, possess, control and transfer the land for a fixed time</li> </ul>
<b>Outcomes</b>	<ul style="list-style-type: none"> <li>• Over 1,300 land-tenure documents provided to IDPs providing tenure security to over 70,000 people,<sup>256</sup> including through lease agreements (for 5–8 years), with over half being for women heads of households.</li> <li>• IDPs were able to use these land documents to prevent forced evictions and for dispute resolution when eviction was threatened (at household or settlement level)</li> <li>• Since 2019 2,009 households (about 12,000 people)<sup>257</sup> have been resettled on 300 ha of newly developed public land (Barwaqo), 7km north of Baidoa town centre. Relocated families are given cash assistance and a plot of land and receive their title two years after relocation.<sup>258</sup></li> <li>• Technical and operational capacity at the Baidoa Municipality and Cadastral Services has increased.</li> <li>• Better relations with host communities and secure tenure means IDPs are no longer at risk of eviction and have better opportunities for livelihoods and access to other rights. This promotes durable solutions for IDPs.</li> </ul>
<b>Key actors</b>	<ul style="list-style-type: none"> <li>• Municipality, Sharia courts, displaced families, NRC, UN-Habitat, IOM</li> </ul>

253 Laser Pulse, 2024.

254 Baidoa City Strategy, 2023.

255 UN-Habitat's Baidoa Urban Profile 2020, cited in Baidoa City Strategy, 2023.

256 NRC, 2021.

257 Land Pulse, 2024.

258 UN-Habitat, 2018.

### Background

Baidoa is a large town in the Bay region of South West State. In 1992 conflict broke out in the Bay region disrupting farming, and thousands of residents fled to relief camps in Baidoa. Profiling of IDPs in 2007 showed that the average household size in Baidoa was 6.9 people, with 77 per cent living on government land and 19 per cent on municipal land. Approximately 59 per cent of IDPs in Baidoa originated in the Bay region, 50 per cent of whom fled due to violence, 26 per cent due to floods and drought and 22 per cent as a result of eviction and relocation. Before they fled, almost 60 per cent of them were involved in agriculture and 51 per cent said they had “owned” their property. However, to resolve land

related disputes, 77 per cent said they would refer to the customary system, 21 per cent to Sharia courts, and only 7 per cent to secular courts, suggesting that this right to their land of origin was through customary tenure.<sup>259</sup>

Baidoa’s 2023 City Strategy indicates that the city hosts over 600,000 IDPs living in approximately 90,000 households in 498 IDP sites, far outnumbering the host population which was estimated to be around 75,000 in 2020.<sup>260, 261</sup> Most IDPs moved to the town in 2017 as a result of the drought, with the city growing over five times its size between 2018 and 2023. Figure 4 shows the growth in area covered by IDP settlements from 2014 to 2020, a six-fold increase. Most IDPs live



**Figure 4. Map showing location of Baidoa and IDPs, Somalia.**

Source: UN Habitat, 2018.

259 NRC, 2008.

260 UN-Habitat’s Baidoa Urban Profile 2020, cited in Baidoa City Strategy, 2023.

261 However, estimates of the number of IDPs differ, with Laser Pulse suggesting that it reached 750,000 in August 2023.



**PRMN (Protection & Return Monitoring Network)**  
**Location and populations of IDP sites in Baidoa as of 28 April 2017**



**Key Figures**

**185**

IDP sites around Baidoa  
of which 105 new in 2017

**169,000**

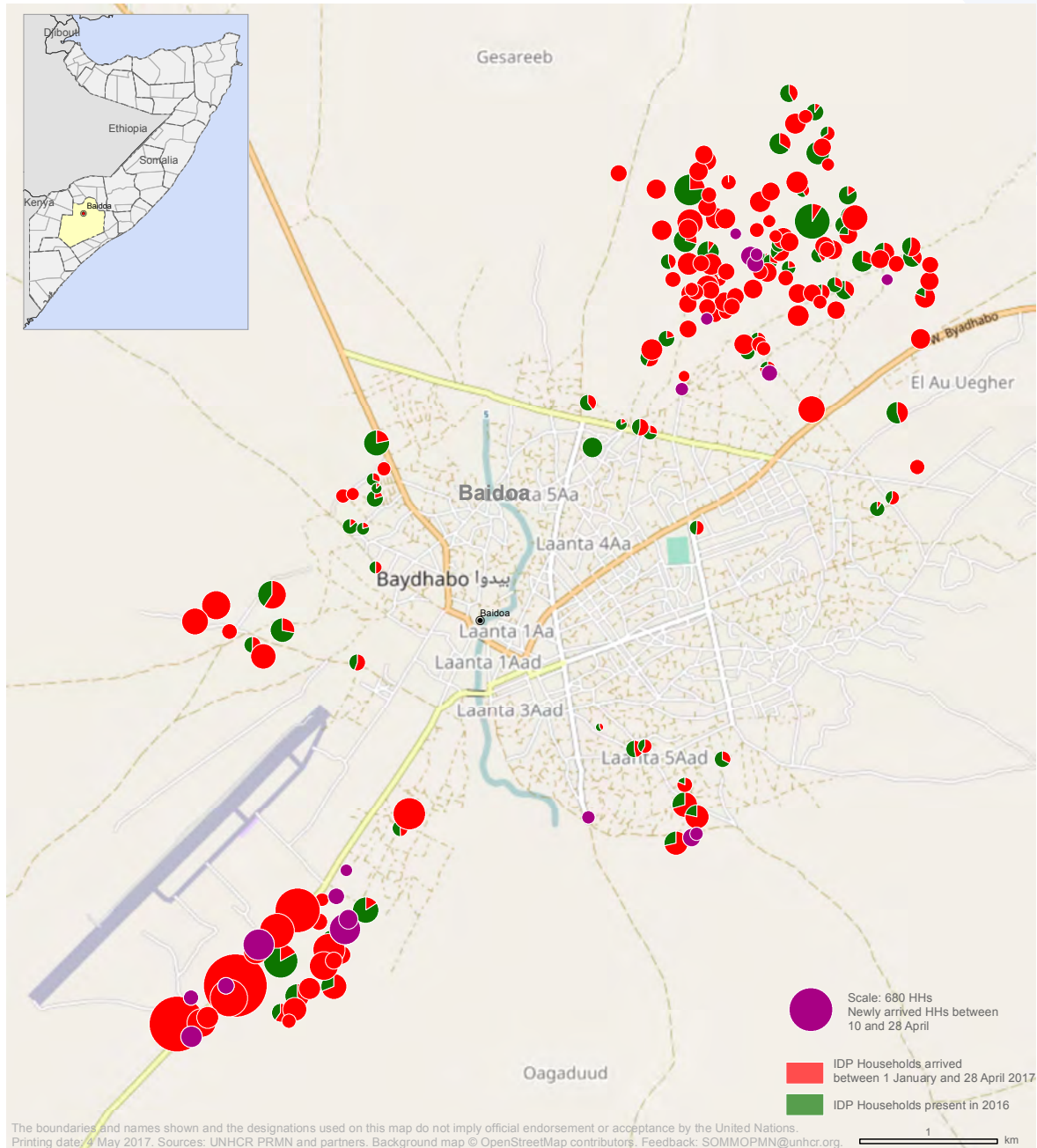
displaced individuals\*  
of whom 134,000 new in 2017

**28,000**

IDP households\*  
of which 22,000 new in 2017

**85%**

of new displacements  
are from the Bay region



Contact:  
SOMMOPMN@unhcr.org

Since December 2016, more than 134,000 individuals internally displaced by drought have arrived in the town of Baidoa or its outskirts contributing to the increase of the IDP population to approximately 169,000 individuals (\*28,000 households multiplied by a factor of 6). The map above may not include all IDP sites so the true figure may be higher.

**Figure 5. Location and population of IDP sites in Baidoa as of 28 April 2017.**

Source: UNHCR, 2019.

in precarious situations in terms of tenure security – for example, the IOM reported that in the first three months of 2019 over 11,900 people were evicted without proper notice.<sup>262</sup> From 2017 until mid-2021, 124,271 eviction incidents took place in the town, with many evicted IDPs moving to the periphery which is also precarious in terms of tenure security.<sup>263</sup> Often these moves, and the tenure arrangements that accompany them, are managed by gatekeepers who coordinate settlement arrangements between displaced populations and landowners, and manage any related documentation or written agreement.<sup>264</sup> Women are at greater risk as most women do not hold title to their own land as they are guaranteed access rights to the land of their husbands or brothers.

Large areas of Baidoa are informal with little urban planning. The town is characterized by weak governance, population pressure, chaotic urbanization, natural resource exploitation, competition over land, forced evictions, including of displaced people and dysfunctional land systems. However, the Baidoa City Strategy (2023) outlines measure to address this. For example, the Strategy highlights a property registration exercise that was carried out in 2020 using satellite data and on-field survey to collect data on physical characteristics of properties within urban areas, together with information on owners and occupants. This resulted in 21,482 properties being surveyed and registered, with a house number plate provided. The objective was to develop a basic cadastre for the city, but it only covered parts of the city, and excluded the peripheral IDP sites.<sup>265</sup>

### Solution

The Norwegian Refugee Council (NRC) has been working to address the problems faced by IDPs in Baidoa since 2014, focusing on preventing and mitigating conflict between IDPs and host communities, and improving IDPs' land tenure security. This has involved the following steps:

1. **Building partnerships** between the municipality, local authorities, the Sharia courts, host communities and formal courts.
2. **Needs mapping** to find solutions to improve land tenure security. This began with dialogue between communities and the local government and information sessions on land rights and security of tenure.
3. **Identification of land** – three types of land were identified: community-owned, private and public land. Community and private land were donated by the host community clan or someone closely linked to the IDPs' clan, and public land was identified by the municipality.
4. **Conducting due diligence** to ensure that the offer was genuine and there were no competing land claims.
5. **Surveying the land** – Surveyors recorded the GPS coordinates of the land and the conditions for shelter construction and the resulting maps.
6. **Issuing occupancy certificates and land documents** – The municipality issued a written offer for public land. This included further consultations with the host community and IDP focus groups to ensure that there were no other

<sup>262</sup> IOM, 2019.

<sup>263</sup> NRC, 2021.

<sup>264</sup> UN-Habitat, 2018.

<sup>265</sup> Baidoa City Strategy, 2023.

claims to the land. For community or private land, the clan leader or landowner wrote a letter that formed the basis of a communal agreement witnessed by clan leaders, IDP leaders and religious leaders from both communities.

7. **Issuing and finalizing of individual occupancy certificates** – NRC staff then issued individual occupancy certificates for shelters to be built which the municipal land department used to issue land certificates for the plot. For privately-owned land, lease agreements were drawn up which give the owner the rights to use, possess, control and transfer the land for a fixed time. The land certificates were then notarized and a ceremony was held to present this to the IDP concerned, at which all key parties were present.
8. **Building capacity** – Local authorities were trained on HLP issues, and NRC conducted advocacy on the relevance of documentation in securing land tenure and preventing evictions. NRC seconded an HLP focal point in the mayor's office to coordinate access to legal institutions and provide HLP information. Local authorities and customary authorities were trained on resolving land disputes. HLP training was also conducted for IDPs, refugees, host communities, religious leaders, youth and women. Community Dispute Resolution (CDR) committees were set up to assist returnees. In addition, host communities were given support on land-tenure security through interventions to improve tenancy agreements with landlords, training on how to obtain land documentation and information on which government departments to approach.<sup>266</sup>

Addressing gender inequities – IDP women and girls are often illiterate which limits their understanding of the land documentation process. To address this, information was provided to women and their communities. In addition, with the women's consent, NRC worked with women and men to issue land documents in joint names and to ensure that women understood the implications of this. Female heads of displaced households were prioritized and were given training and offered legal assistance if necessary.

In addition to this, UN-Habitat worked with local stakeholders to develop a development framework of the city known as the Baidoa City Strategy, 2023 which incorporates issues related to IDPs. Since 2018 IOM has also been involved, working with partners and the municipality to develop the area of Barwaqo, 7km north of Baidoa town centre.

### Outcomes

Since 2015 over 1,300 land-tenure documents have been provided to IDPs in Baidoa, including through lease agreements (for 5–8 years), providing tenure security to over 70,000 people,<sup>267</sup> over half of them to women heads of households.<sup>268</sup> IDPs were able to use these land documents to prevent forced evictions and to use different dispute resolution mechanisms when eviction was threatened, both at household level (spouse or relative) or settlement level (gatekeepers). Formalizing written land tenure agreements and ensuring that there are witnesses during the signing who can be called upon in case of disputes has been very successful. Evictions have decreased by 39 per cent since 2018, from 42,224 people to 25,722 with a further 22 per cent decrease in

<sup>266</sup> UN-Habitat, 2018.

<sup>267</sup> NRC, 2021.

<sup>268</sup> UN-Habitat, 2018.

2020 to 21,120.<sup>269</sup> The municipality now requires land transactions to be concluded in writing and recorded; for example, for community-owned and private land, IDP leaders and landowners are required to enter a witnessed tenancy agreement which is registered by the municipality. This avoids the need for gatekeepers and, should the agreement be breached, allows for the Bay Eviction Task Force to intervene.<sup>270</sup>

Land recordation has been accompanied by building the capacity of local communities, government authorities and humanitarian and development actors so that they could understand and respond to land tenure insecurity among IDPs and of IDP communities, especially women, to increase their understanding of land-tenure security and to deal with land-related disputes. Municipal authorities and staff at a local NGO, the Association of Somali Women's Lawyers, were trained on land documentation to facilitate a long-term sustainable response. There has been increased engagement on land governance issues, dispute resolution committees have been established at community level and the municipality has established a Land Committee to address land conflicts. Technical and operational capacity at the Baidoa Municipality and Cadastral Services has increased. Because the municipality lacks the resources to operationalize an electronic land management system, it has developed a simple Excel-based platform for land recordation, which could be upgraded in the future.<sup>271</sup> The dialogue between the IDPs and host communities has promoted social cohesion, strengthened community relations and mitigated conflicts over land and other resources. Having better relations with host communities, reducing

the fear of forced eviction and building capacity has promoted durable solutions for IDPs, who are now more able to focus on their livelihoods and improve their access to health, education and other basic needs.<sup>272</sup>

Working with UN-Habitat, local leaders have developed the Baidoa City Strategy 2023. This outlines a development framework in line with international developmental principles. These include inclusion and social diversity, a compact city and densification, and minimizing land conflict and relocation. The spatial strategy specifies the integration of both peripheral areas of the city and IDPs. It notes that IDPs need an integrated, holistic approach to build durable solutions. This requires providing adequate housing and key infrastructure investments such as schooling and health facilities. The Strategy highlights the need to treat gender and youth as cross-cutting issues, and to ensure that they are included in development.<sup>273</sup>

In addition to issuing secure tenure documents, since 2019 a total of 2,009 households (about 12,000 people)<sup>274</sup> have been resettled on 300 ha of newly developed public land in an area known as Barwaqo, 7km north of Baidoa town centre. This involved building new roads, streetlights, a school, two police stations, a health centre, a nutrition centre and water infrastructure.<sup>275</sup> Relocated families are given cash assistance and a plot of land and receive their title two years after relocation.<sup>276</sup> The area is included in the Baidoa City Strategy 2023 as the Baidoa North planned city extension. It notes that the area as a whole has the most IDP sites (211 of 498) and the highest eviction risk. The area is 27 km<sup>2</sup>, or 2,700 ha with a capacity to hold

269 NRC, 2021.

270 Ibid.

270 Ibid.

271 Ibid.

272 UN-Habitat, 2018.

273 Baidoa City Strategy 2023.

274 Land Pulse, 2024.

275 South West State Ministry of Public Works, Reconstruction and Housing (2020). Baidoa Urban Profile.

276 UN-Habitat, 2018.

240,000 people at medium-high density of 100 people/ha, representing 21 per cent of the total projected population by 2035, or 44 per cent of expected population growth.<sup>277</sup> A problem with development of the area in terms of sustainability is that plots are large, leading to low densities and therefore higher costs of service provision (transport, etc.).

### Replication and scaling up

The Baidoa experience shows that credible land records can be developed and used for addressing displacement, dispute resolution and conflict prevention, even during conflict. The approach could be applied at scale for IDPs and returnees in urban areas in other countries. This approach to relocation has inspired other cities in Somalia, such as Kismayo, Garowe and Mogadishu.

### Key pointers for durable HLP solutions

Baidoa grew over five times its size in only five years from 2018, with over 600,000 IDPs far outnumbering the host population, estimated to be about 75,000 in 2020.<sup>278, 279</sup> This demographic pressure is compounded by the complexity of land management and land tenure in both the areas from which IDPs are fleeing and the town, with overlapping land tenure systems including statutory legislation, religious law (Sharia law) and customary law (Xeer law). This presents huge challenges in terms of land allocation and management, and relations between different groups. Throughout the process broad consultation and dialogue is needed at all levels. This includes identifying land, conducting due diligence, and issuing notarized and witnessed land tenure documents (occupancy certificate and lease agreements), to reduce the possibility of evictions. There has been a conscious focus on strengthening the tenure situation of women heads of households.

As with the support provided to MLOs in Colombia, in Baidoa capacity building at local level has been crucial, including providing direct HLP support in the mayor's office (through the HLP focal point). Training for all parties included municipal officials, traditional leaders, the IDPs themselves, and host communities. Training the Association of Somali Women's Lawyers on land documentation promotes sustainability of the approach. The planned development of a new area north of the town centre (Barwaqo) includes services and is intended to accommodate almost half of the expected population growth. However, the large plots in this area, and low densities might well lead to higher costs in terms of providing services, possibly impacting the sustainability and replicability of the approach. Support to the municipality to develop the Baidoa City Strategy (2023) represents a significant step in inclusive local level planning which provides a vision for the city which integrates peripheral areas and IDPs, hopefully providing a longer-term solution for IDPs moving into the city, along with rural-to urban migrants.

## C.3 Relevant national legislation and frameworks

The interventions in Baidoa are underpinned by a set of national legal and policy frameworks. The *Provisional Constitution of the Federal Republic of Somalia (2012)* states that every person has the right to own, use, enjoy, sell and transfer property, protects women's access to equitable land allocation and use, and establishes an available and accessible land registration system. It therefore promotes the right to equality and non-discrimination which includes combating sex-based discrimination in land allocation and registration. This ensures equal access to justice and treatment before the law for women and men and prosecutes and prevents

277 Baidoa City Strategy 2023.

278 UN-Habitat's Baidoa Urban Profile 2020, cited in Baidoa City Strategy, 2023.

279 However, estimates of the number of IDPs differ, with Laser Pulse suggesting that it reached 750,000 in August 2023.



violations of women’s rights to land and property (Article 11).<sup>280</sup> The constitution also states that property will not be expropriated unreasonably. Thus, the constitution states, on the one hand, that “anyone can own property and will be protected against unjustified expropriations”, and, on the other, “that the land is public property, commonly owned by the nation”.<sup>281</sup>

At federal level, the *Law for Social Protection of 1970* abolished, and claimed for the State all forms of tribal association, rights and privileges, including rights over land and water, ignoring the reality of customary tenure rights over land, especially in rural areas.<sup>282</sup> The *Agricultural Land Law of 1975* transferred ownership of all land to the State and attempted to abolish customary ownership in rural areas and to make registration of land compulsory, and imposed the registration of leasehold titles (granted for 50 years) as the only way to claim rights to cultivated agricultural land.<sup>283</sup> The *Urban Land Law of 1980 (amended in 1981)* shifted the responsibility of land management and registration to each municipality. It distinguished between “permanent” and “temporary” land titles. It established a municipal land department, which consisted of a Land Administration and Technical Committee. However, significant gaps existed in provisions relating to the responsibilities of the municipality.<sup>284</sup>

Several states have developed land laws. In Somaliland, the 2001 Land Management Law (amended in 2008) is the key law.<sup>285</sup> The South West State’s law pertaining to urban land states that all land belongs to the state, but plots can be allocated to individuals in line with a master plan, for permanent or temporary use.<sup>286</sup>

Puntland passed the Urban Land Management Law in 2008. *South West State’s Law No. 5 (ULML)* of 2nd February 2022 protects the rights of individuals, groups, corporations and communities to enjoy, use, access and own land, and includes a chapter on evictions and land dispute management.

Other relevant policies include the *Somalia National Development Plan (2020-2024) (NDPO)* which addresses building resilience for IDPs and returnees and providing adequate housing, the *National Durable Solutions Policy on IDPs and Refugee Returnees*, the *Recovery and Resilience Framework for Somalia*, the *UN Somalia Cooperation Framework (2021-2025)*, the *Interim Protocol on Land Distribution for Housing for Eligible Refugee-Returnees and IDPs* and *National Eviction Guidelines*. Of particular relevance, the 2014 *Policy Framework on Displacement* within Somalia recognizes and facilitates community-based tenure arrangements. It “sets policy actions for the federal and member governments to provide IDPs, including women, with tenure security, temporary and permanent title deeds, or usufruct schemes and to ensure access to land without risk of eviction and other interference”.<sup>287</sup> Government must also recognize ownership and inheritance rights of women and children of deceased title carriers.

At city level, the *Baidoa City Strategy 2023* and the *Integrated Baidoa District Community Action Plan (CAP)* provide a vision for the development of the city, including integrating the peri-urban settlements and promoting inclusivity, including integration of the IDPs.

280 UN-Habitat, 2022.

281 Burman et al, 2014.

282 UN-Habitat, 2022.

283 UN-Habitat, 2022. This stand is currently under review at the federal level, but the current situation remains very unclear (Somalia Ministry of Energy and Water Resources, 2023).

284 UN-Habitat, 2022.

285 Ibid.

286 UN-Habitat, 2008.

287 UN-Habitat, 2022

## D. SUDAN

### D.1 Context

In Darfur, including in returnee villages, most rural land is effectively under customary tenure, although this arrangement and the role of customary land administrators is not legally recognized. Registered land rights cover less than one per cent of the land. Registered leasehold land is the only kind of registered land available. The government owns leasehold land and makes it available to the lessee for an annual rent or upon renewal of the lease. Leases vary from 20 to 50 years, depending on land-use zoning. Registered leases are rare but are, however, one of the most secure forms of land tenure, which makes them desirable for people from outside local communities who struggle to access land through customary mechanisms. Processes for registering new leases are expensive, complex and time-consuming.<sup>288</sup>

The government does not legally recognize customary land ownership rights, following nationalization of land according to the 1970 Unregistered Land Act, and also “does not consider customary ownership as giving any right of adverse possession or prescription over the land to customary occupiers”.<sup>289</sup> Customary landowners can be tribes (as in *dar*), small groups (as in *hakura*), family (as in *housh*) and individuals. The Native Administration manages people’s access to land according to the customary system and mainly uses oral history and witnesses to keep records of land management decisions. However, this is difficult in conflicts involving people from outside. The Native Administration has no recognized land management role and therefore doesn’t have access to official land records and maps<sup>290</sup>

or the mandate to oversee registered leaseholds, which reduces its effectiveness.

People in Darfur perceive their customary land tenure rights as secure, especially in villages and farms. It is not, however, secure in areas of conflict, particularly in pastoral, farm and village areas and some IDP camps, in fertile or rain-fed areas where there is competition over land, in buffer zones around villages near cattle corridors and where towns have extended into customary areas. Secondary rights to customary land are often in place, such as seasonal use or pastoral corridors, or renting it to outsiders. Women usually only hold customary tenure for kitchen gardens and small farms attached to the house.<sup>291</sup>

Land and access to land is one of the root causes of the conflict in Darfur, and without this being adequately addressed the region is relapsing into conflict. In January 2024 IOM reported that 10.7 million people have been uprooted from their homes in Sudan, including 9 million displaced internally, two-thirds of them since conflict broke out in April 2023.<sup>292</sup> West Darfur is one of the most affected areas, with mass population movements driven by conflict being common. The IDP population in West Darfur reached over 300,000 by mid-June 2023.<sup>293</sup> During the April 2023 conflict at least 29 cities, towns and villages were fully or partially destroyed in Darfur, particularly in West and South Darfur. Historically, areas occupied by sedentary farmers (as opposed to nomadic farmers) have been badly affected, and many people fled their fertile ancestral lands to IDP camps in Darfur. This has led to ongoing clashes between the IDPs and the host communities.<sup>294</sup>

288 UN-Habitat, 2020.

289 Ibid.

290 Ibid.

291 Ibid.

292 IOM, 2024.

293 UNHCR, 2023.

294 Ibid.

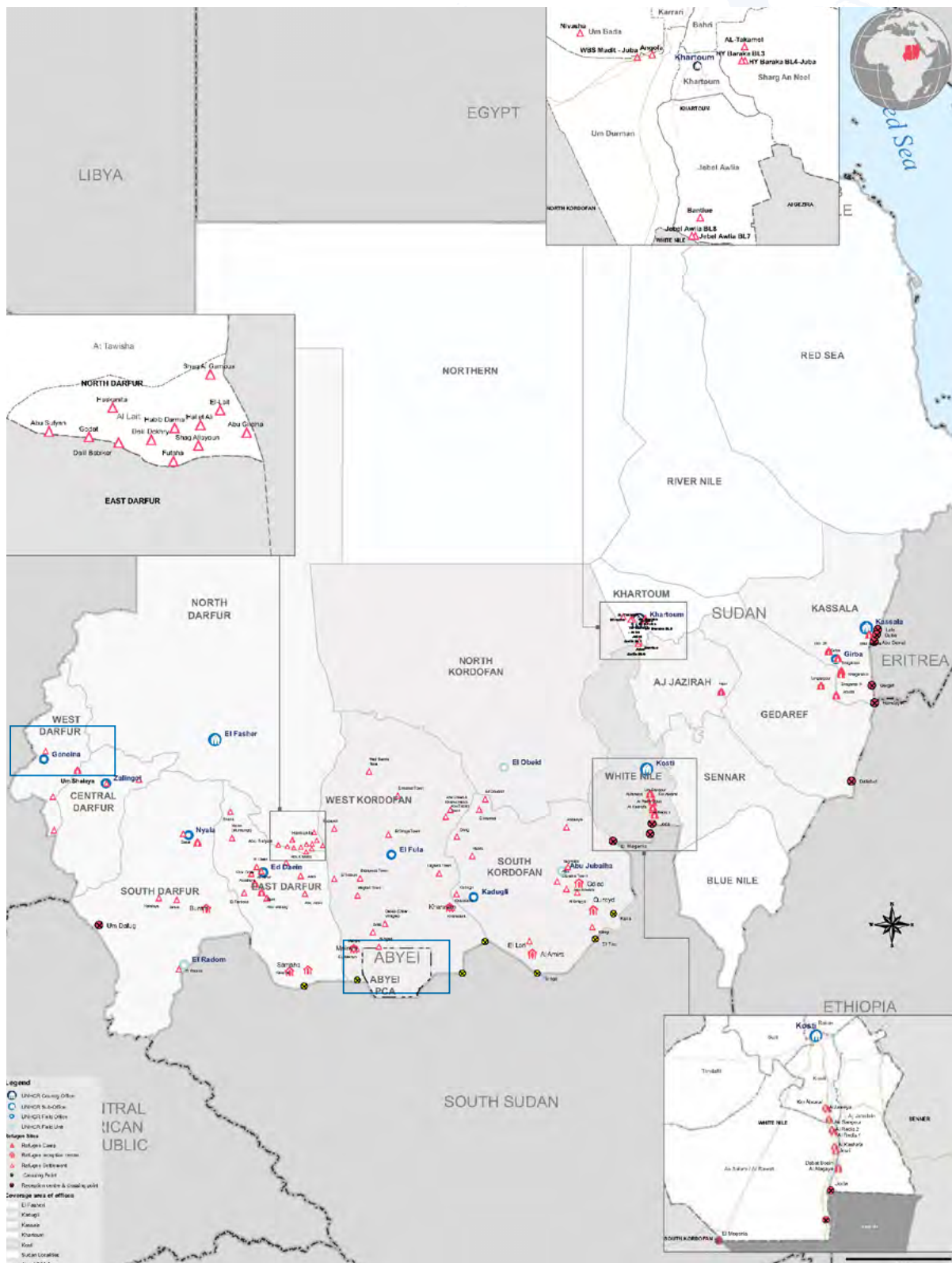


## D.2 El Geneina case study

### Local integration through intercommunal reconciliation and local peace agreement including land use rights

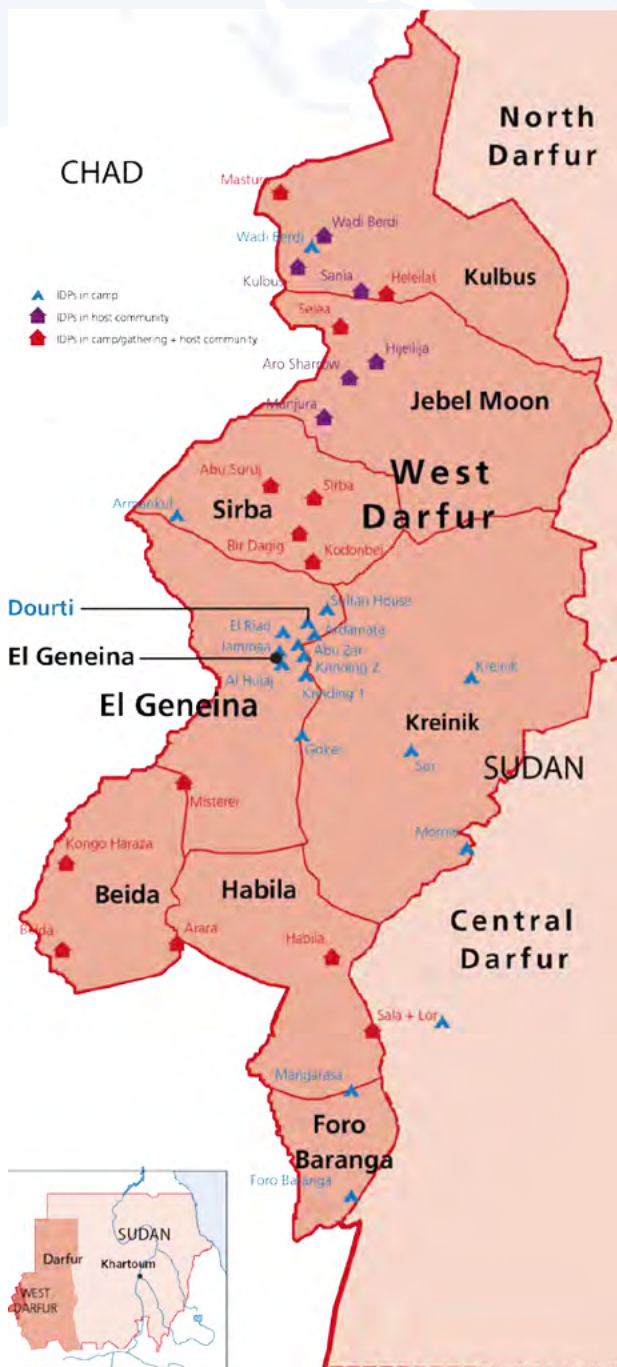
Table 7. Overview of El Geneina case study, Sudan.

Country and location	The village of Dourti located in the Ardamata administrative unit of El Geneina city, West Darfur, Sudan
<b>Characteristics of area</b>	Residents are a mix of the local host community and IDPs who fled their villages around Umsebeke, north of El Geneina town, as a result of successive conflicts in Darfur
<b>Nature of displacement</b>	Multiple causes of displacement: conflict over customary land rights, livestock, traditional leadership, competition between crop farmers and pastoralists over farmland and water exacerbated by climate change, armed protests, violence and floods
<b>Type of durable solution</b>	Local integration
<b>HLP challenges faced</b>	Competition and conflicts over land use between pastoralists and farmers
<b>Type of approach, and solution to HLP issues</b>	<ul style="list-style-type: none"> <li>• Intercommunal mediation and reconciliation of parties competing over land and land-based resources.</li> <li>• Secure access to suitable land where IDPs can live and farm.</li> <li>• Local peace agreements and land-use zoning and agreements to share land and resources peacefully.</li> <li>• Capacity development – Community leaders trained on local dispute resolution mechanisms.</li> </ul>
<b>Outcomes</b>	<ul style="list-style-type: none"> <li>• The displaced communities enjoy greater land tenure security.</li> <li>• Shared use and management of land and land-based resources (e.g. water) and improved food security.</li> <li>• To strengthen reconciliation, three projects were built, two primary schools and a water point. The use and management of these is shared by both communities to promote social cohesion.</li> <li>• This community-led and community-owned process encouraged peaceful coexistence, enabled opposing parties to engage in mutual consultation and strengthened traditional conflict resolution mechanisms.</li> <li>• Strengthened land-use zoning to address conflict between the nomadic communities and farmers.</li> <li>• Increased participation of women in decision making.</li> </ul>
<b>Key actors</b>	UN–African Union Mission in Darfur, Civil Affairs Section (UNAMID CAS), Native administration leader), displaced and host communities, Peace and Reconciliation Council of the Regional Dev Authority, Darfur Regional Authority, UNDP.



**Figure 6. Map showing location of the two case study areas, Darfur and Abyei region**

Source: UNHCR, 2020. Boundary (CBS, FGC, NIC), Geodata: UNHCR, OCHA.



**Figure 7. Location of IDPs in West Darfur.**

Source: UN-Habitat, 2018, adapted from OCHA.

### Background

Dourti is a village in the Ardamata outlying district of El Geneina, a city of 538,390 people<sup>295</sup> in West Darfur. Residents include members of the local host community and IDPs who fled their villages around Umsebeka, north of El Geneina town, as a result of successive conflicts in Darfur. It is located next to Um Al Qura, an area inhabited by nomadic farmers with whom the Dourti community do not have peaceful relations. Farmland in the area is limited, and the IDPs needed to occupy some of this land, which the people of Um El Qura also needed for their animals.<sup>296</sup> The underlying reasons for the conflict are competition over land, aggravated by pre-existing ethnic frictions between the displaced and the host communities. This led to displacements through armed insurgency, competition between the host community and displaced people over scarce land-based resources, and competition over land use between pastoralists and farmers.

### Solution

The African Union–United Nations Hybrid Operation in Darfur (UNAMID) was established in 2007. To reduce violence and support conflict resolution at local level, its Civil Affairs Section (CAS) engaged with the local community, identifying areas of support and collaborating with the administration and community leaders to find agreement. Issues usually related to land and grazing rights, using cultivable land, animal migration, leadership and compensation.<sup>297</sup> The approach consisted of the following steps.

1. **Individual meetings with the opposing side:** CAS staff met separately with leaders on both sides. They listened to their concerns, identified causes of the conflict, and explored ways to resolve the dispute.

295 UNICEF, 2022.

296 UN-Habitat, 2018.

297 UN-Habitat, 2018.

2. **Joint discussions and written agreement:** following this, CAS brought the disputing groups together for discussions, supporting the participants to resolve the issues themselves. This involved the opposing parties negotiating a settlement, including compensation if necessary, and demarcating animal seasonal migratory routes. A written agreement was signed by all parties. In Dourti, this took the form of a public meeting for reconciliation between both communities in collaboration with the Native Administration and the Peace and Reconciliation Council, which culminated in a public reconciliation and signing of a peace agreement.
  3. **Awareness raising:** outreach and awareness campaigns were then held to disseminate these agreements to the communities.
  4. **Implement quick-win projects:** as a show of good faith and to boost community confidence in the process, several basic social amenities were provided through “quick impact” projects.
  5. **Advocacy:** the results were shared with influential stakeholders in civil society and government ministers at state and federal levels as a means to stop violence and to address the underlying reasons for the conflict to ensure longer term action such as policy decisions on land issues. In addition, some key activities were implemented in collaboration with the UN Country Team and others.
  6. **Monitoring:** to monitor implementation of the agreement CAS conducted several missions to Dourti and Um Al Qura, engaging with local leaders and developing capacity through meetings and workshops.
  7. **Capacity development:** CAS organized workshops on conflict resolution and management and on livelihood skills. Participants included Native Administration leaders, youth and women’s groups, opinion leaders and other influential personalities.
- Throughout its engagements, CAS engaged community leaders on the need for gender balance; as a result, at least 30 per cent of the beneficiaries of the interventions were women.<sup>298</sup> Key factors in the project’s success were the willingness of parties to resolve their differences, the availability of funding, the acceptability of external assistance to all parties and securing safety and security.

### Outcomes

A durable solution is achieved when IDPs no longer need protection and their human rights are protected, including their HLP rights. Following this process, the Dourti community was taken off CAS’s list of hotspots that guides its peace-promotion work, on the assumption that a lasting solution was in place.

The peace agreement made provisions for sharing land, pasture and water. A recommendation was also made to form a resource-management committee with members from both sides to oversee the implementation of the local peace agreement. It was agreed that the *dija* (payment as atonement for the shedding of blood) would be waived. Understanding and communication between communities increased while tensions were reduced, meaning that communities could share the use of some resources. The process has strengthened land-use zoning to address conflict between the nomadic

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<sup>298</sup> Ibid.

communities and farmers. In addition, there has been increased participation of women in decision making.

CAS met with 30 people in Dourti representing the reconciliation steering committee, youth, women and community members. They identified the drivers of the conflict and possible durable solutions. They agreed that CAS's facilitation had achieved relative peace but were concerned that many nomads still held negative attitudes towards the farmers and that the youth were not committed to peace. They stressed the need to build infrastructure such as schools, health centres and water points to address this.

To strengthen reconciliation, three projects costing USD 75,000 were built, two primary schools (one each in Um Al Qura and Dourti) and a water point in Dourti. The use and management of these resources is shared by both communities as a conscious effort to promote social cohesion.

Overall, at local level this community-led and community-owned process encouraged peaceful coexistence and built social cohesion. It enabled opposing parties to engage in mutual consultation and strengthened traditional conflict resolution mechanisms. The IDPs in Dourti recognized their precarious position and agreed to live peacefully alongside their neighbours. The

solution was considered viable for the short-to-medium term, while the hope to return one day to Umsebeke remained.

### Replication and scaling up

This approach hinges on building trust between communities who have long-standing violent conflict. It is time-consuming, resource intensive and requires constant engagement and follow up. If implemented by a UN entity, there is a risk of creating false expectations about UN's ability to intervene to address disputes. On the other hand, the approach works well in challenging contexts and could be replicated in similar contexts by respected local actors that are perceived as neutral by host and displaced communities.

### Key pointers for durable HLP solutions

The case study highlights the complexity of managing the peri-urban growth of towns into customary areas. The Dourti case study shows the benefits of outside mediation in situations of conflict over land and land-based resources. Having an external party seen as neutral by both sides helped facilitate discussion between the opposing groups. This resulted in the development of a local peace agreement based on land-use zoning and agreements related to shared use and management of land and land-based resources (e.g. water) and thus improved food security.



## D.5 Abyei case study

### Local integration through the rapid provision of customary extended family land rights

**Table 8 Overview of Abyei case study, Sudan.**

Country and location	Abyei region is a contested area on the border between Sudan and South Sudan. Abyei town is the capital of the region.
<b>Characteristics of area</b>	The area is resource rich and fertile, and of strategic significance as a key transport and trading hub. The area was given special administrative status following a peace agreement between the two countries in 2005. <sup>299</sup> The administrative region has an estimated population of 133,958 (2023) <sup>300</sup> while that of Abyei Town was estimated at 20,000 in 2011, prior to many of the displacements. <sup>301</sup>
<b>Nature of displacement</b>	Inter-ethnic clashes, as well as military actions and armed conflict
<b>Type of durable solution</b>	Local integration of displaced people at area of destination
<b>HLP challenges faced</b>	Informal settlements with lack of tenure security, and challenges installing infrastructure and services
<b>Type of approach, and solution to HLP issues</b>	<ul style="list-style-type: none"> <li>• Upgrading of informal settlements using existing legal framework</li> <li>• Participatory approach to mapping, surveying and planning</li> <li>• Use of customary extended family land rights (as in the <i>housh</i>) for fast-tracking the provision of land rights to displaced families</li> </ul>
<b>Outcomes</b>	<ul style="list-style-type: none"> <li>• Use of the traditional concept of <i>housh</i> (extended family compound), with rapid planning and surveying meant that general boundaries were accepted, and no individual rights needed to be adjudicated. Land is under joint ownership.</li> <li>• People marked their plots on satellite images.</li> <li>• Using this technique, about 9,000 plots were mapped and planned in 18 days.</li> <li>• Internal family dynamics and land tenure relations were not disrupted.</li> </ul>
<b>Key actors</b>	Displaced communities; city planner; Unity Support Fund (USF); two private sector planners/architects; the late Kual Deng Majok, chief of the Ngok Dinka tribe.

299 The Conversation, 2024.

300 HDX, 2023 South Sudan Data Grid.

301 Laessing, 2011.



**Figure 8. Location of the disputed region of Abyei, Sudan/South Sudan**

Source: Nicolay Sidorov, Wikimedia Commons

### Background

The Abyei region is a politically disputed area on the southern border of Sudan, bordering South Sudan, with both Sudan and South Sudan claiming it as part of their territory. The area was given special administrative status following a peace agreement between the two countries in 2005.<sup>302</sup> It is a resource rich and fertile area of great strategic significance as a key transport and trading hub. The administrative region has an estimated population of 133,958 (2023).<sup>303</sup>

The area is one of severe poverty, with long-standing and ongoing historical conflict between the largely pastoralist Misseriya and predominantly farming Ngok Dinka communities. At the heart of this is competition over land and natural resources, particularly fertile

grazing land and access to water sources. The Misseriya herders are nomadic and Arabic with ties to the north. They cross Abyei and other border areas with their cattle in search of water and pasture in the dry season and to trade goods.<sup>304</sup> The Ngok Dinka, on the other hand, have strong cultural and linguistic ties to South Sudan.

Prior to 2006 there were 23 functioning village councils in Abyei district. However, conflict destroyed their villages and led to people moving into Abyei town or other northern areas.<sup>305</sup> The predominant form of land tenure in their areas of origin was ancestral land. Many displaced people live in camps in urban areas or in informal settlements on the peripheries of towns. These generally lack infrastructure and services and residents do not have secure tenure.

302 The Conversation, 2024.

303 HDX, 2023 South Sudan Data Grid.

304 Zapata, 2013.

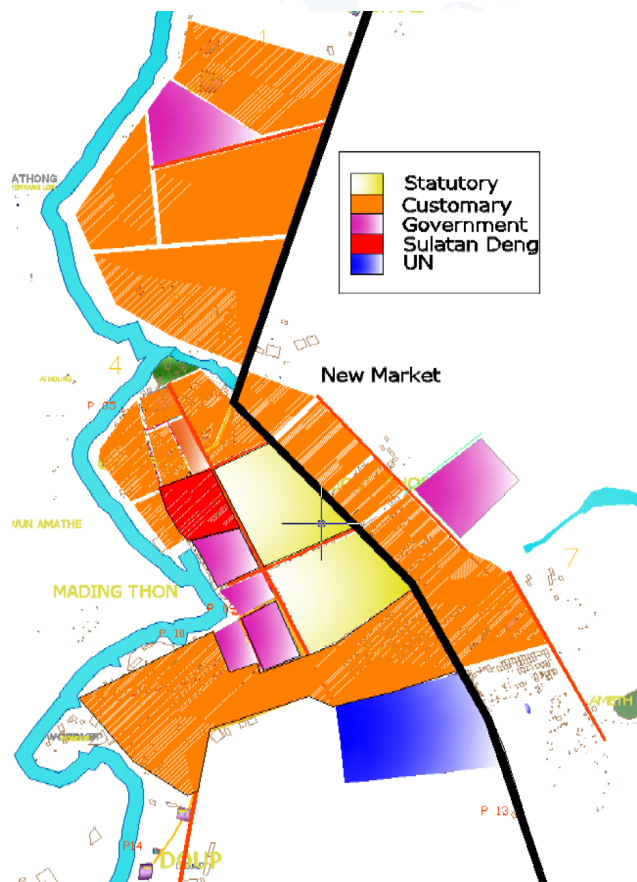
305 IDMC, 2006.



In 2015 UN-Habitat noted increasing land tensions in the area, not only between the Missiriya Humr and the Ngok Dinka but also within the Ngok community.<sup>306</sup> This is heightened by the fact that host communities need to share resources and services with displaced people who would also like to farm, creating increasing tensions over land. A study by IOM in 2023 showed concerns over lack of transparency and unfair land allocations in the area, with land grabbing and boundary issues being key. Because of the customary nature of land tenure, traditional leadership is central to resolving disputes and building peace and social cohesion.<sup>307</sup> Chiefs administer customary law, assigning rights to using land and water and resolving conflicts.

Abyei town is the capital of the region and had an estimated population of 20,000 in 2011, prior to many of the displacements.<sup>308</sup> In the city, 20 per cent of land is statutory, and the remainder customary, with different tribes managing tribal areas within the city as shown in the figure above.<sup>309</sup>

By 2023 IOM DTM mapped 46,696 IDPs in Abyei, of whom 90 per cent were internally displaced within Abyei. Four sub-areas collectively hosted 90 per cent of the entire IDP population: Ameth-aguok (12,039 IDPs), Abyei Town (10,580), Mijak (9,930, and Rumameer (9,459), with Abyei Town hosting the second highest number of IDPs, most of whom (9,869 individuals) were previously displaced from within Abyei Administrative Area.<sup>310</sup> These people were displaced by inter-ethnic clashes, military action and armed conflict arising from the tensions between Sudan and South Sudan. In Abyei town many IDPs live in informal settlements without secure tenure, where authorities face challenges installing infrastructure and services.



**Figure 9. Land tenure classes in Abyei.**  
 Source: Survey team, 2009, in Abukashawa and de Meijere, 2011.

### Solution

Following the destruction of a large part of Abyei town in 2008, reconstruction began in 2009, with a pilot project to survey streets and plots completed through a participatory process in 2010.<sup>311</sup> The project was primarily funded by the Unity Support Fund (USF), established by the government following the Naivasha Agreement between the Government of Sudan and the Sudan People's Liberation Movement/Army. The USF aimed to promote unity and support development and infrastructure in South Sudan and the Three Areas

306 UN-Habitat, 2015.

307 Ibid.

308 Laessing, 2011.

309 Abukashawa and de Meijere, 2011.

310 IOM, 2023.

311 Abukashawa and de Meijere, 2011.

(Abyei, South Kordofan, and Blue Nile). Surveyors from the National Survey Authority contributed to the project, as did town planners/architects from a private company, Heavens International. The late Kual Deng Majok, chief of the Ngok Dinka tribe, served as the customary manager and representative of the landowners.<sup>312</sup>

The pilot project used the country's existing legal framework for the upgrade.<sup>313</sup> To integrate displaced people into their area of destination the pilot solution had three key elements:

- Upgrading of informal settlements using existing legal framework
- Participatory approach to mapping, surveying and planning
- In older parts of town, use of *housh* for extended family plots. A *housh* is customary land which belongs to one extended family, usually in the form of a family compound with several houses and structures fenced together in one area. The land is under joint ownership and can be informally inherited.

The pilot project used participatory approaches to map, survey and plan the city. Generally accepted boundaries were used, and no individual registered rights were adjudicated. People marked their plots on satellite images. Meetings were held to discuss the project and once all stakeholders accepted the plan, the streets and plots were surveyed, and infrastructure installed. The planners compiled the data that was collected in CAD formats and projected these onto Google Earth images to present to stakeholders (tribal chiefs, citizens and

officials).<sup>314</sup> This allowed for discussion and negotiation. Once agreed, the demarcation was done using a tractor. The process also planned areas for expansion, assigning areas to different tribes to allocate family plots under customary arrangements.<sup>315</sup>

In addition, the project team aimed to preserve the community's heritage by integrating significant features such as Baobab trees (*Tabaldi*), ensuring their preservation either in open spaces or at the corners of *housh* to avoid removal during road construction. The Shrine of the late Deng Majok Kual and other sacred places were included in the Abyei Museum location. During the new planning to accommodate the returning IDPs, planning of the northern extension of the town maintained social structures by keeping different clans in separate blocks.<sup>316</sup>

### Outcomes

Using this technique, about 9,000 plots were mapped and planned over just 18 days. Using the traditional concept of *housh* ensured that internal family dynamics and land tenure relations were not disrupted. Combined with rapid planning and surveying, this allowed for general boundaries to be accepted, and no individual rights needed to be adjudicated. Having plots marked out and agreed upon enabled infrastructure to be installed and provided some tenure security to families.

The project showed the importance of participatory approaches in addressing HLP issues in a post-conflict environment, given the many stakeholders and prevailing legal pluralism that can lead to conflicting ownership claims.<sup>317</sup>

312 Information provided by Salah Abukashawa, 28 July, 2024.

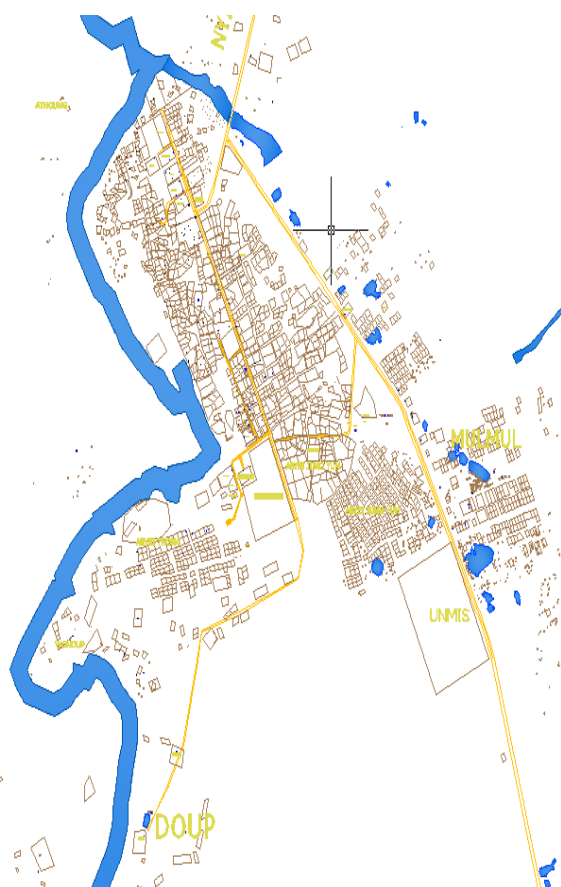
313 UN-Habitat, 2020.

314 Abukashawa and de Meijere, 2011.

315 Ibid.

316 Information provided by Salah Abukashawa, 28 July, 2024.

317 UN-Habitat, 2020.



**Figure 10. Abyei plot layout before planning project.**  
 Source: Survey team, 2009, in Abukashawa and de Meijere, 2011.



**Figure 11. Abyei Land use plan of 2009**  
 Source: Survey team, 2009, in Abukashawa and de Meijere, 2011.

### Replication and scaling up

In areas where customary traditions are in place, *housh* land tenure could be used with rapid planning and surveying to provide some level of tenure security to families at scale and within a relatively short period of time.<sup>318</sup> The concept of joint land ownership also exists in statutory law and could possibly be used in conjunction with the *housh* concept to promote greater tenure security. Specifically, the Civil Transaction Law of 1984 encourages families to be allocated available registered residential leases, rather than individuals. This ensures that most leases are held jointly by husband and wife and the property is considered as belonging

to the whole family even if purchased by the husband. An individual can only acquire a registered lease by way of exception (i.e. if they are widowed), by buying an existing lease or through auction of residential land.<sup>319</sup>

### Key pointers for durable HLP solutions

The case of Abyei town highlights the complexity of legal pluralism. It also demonstrates the potential of using customary concepts, such as the *housh*, to facilitate a relatively speedy process to improved tenure security for IDPs, and the potential of a rapid planning and surveying exercise to record the land rights of large numbers of plots.

318 Ibid.  
 319 Ibid.

A strong and continuously active tribal system in the city that is actively involved in land administration can fast-track the provision of HLP solutions for displaced people, keeping land disputes to a minimum.<sup>320</sup> This fit-for-purpose mechanism to survey and allocate dispute-free plots of urban land can provide the basis for increasing the availability of land for displaced people and people in need of urban and peri-urban land. It shows a positive collaboration between governmental and customary land management mechanisms.<sup>321</sup>

### D.7 Relevant national legislation and frameworks

Sudan has a range of national laws and frameworks that apply to access to land, people's rights and approaches to assist displaced citizens, as outlined below. However, past volatility in the area has led to changes such as the suspension of the 2005 Interim Constitution. The peace agreements of 2006 and 2011 have not yet been effectively implemented which has led to protracted conflict in the region. The legal and policy uncertainty are likely to negatively impact the development of sustainable and durable HLP solutions.

The *Unregistered Land Act of 1970* effectively nationalized all land to the state. The 1971 People's Local Government Act abolished customary leadership governing communally owned lands.<sup>322</sup> The *Civil Transaction Act of 1984* and its amendments provided a legal framework regarding access to land providing for land transactions, including leases and easements, transfer and inheritance. It builds on Islamic Sharia but reaffirms the State as landowner and gives Government administration rights over land.<sup>323</sup> These laws gave the

federal government "a legal mechanism to interfere at will in customary land management."<sup>324</sup> The *Physical Planning and Land Disposal Act of 1994* lays out the procedures and institutional responsibilities for physical planning and increased state control over the land.

The 2005 *Interim Constitution* (suspended in 2019) includes provisions related to land and natural resource management. Article 187 establishes an independent National Land Commission. Article 186-1 states: (1) the acquisition and exploitation of land and the exercise of rights shall be the common power exercised at the level of the relevant government in accordance with the provisions of the law. (2) The president of the republic, from time to time, may issue decrees to determine which lands are exploited for purposes of investment and how to dispose of the proceeds of its investment and to determine the level of government concerned for its administration and exercise of rights.<sup>325</sup> The *Constitutional Charter (2019)* recognizes that issues of land and tribal lands (hawakir), compensation and restoration of property are essential for peace negotiations, and obliges state agencies to work within the transitional period to return properties belonging to organizations and individuals that were confiscated due to war in accordance with the law.<sup>326</sup> Despite this, however, it seems that there continues to be "an increasing state denial of communal rights and the weakening of local governance structures regulating them".<sup>327</sup> In Darfur and much of Sudan, customary land tenure is still practised in spite of the state legislation although traditional authorities' powers have been diminished by this legislation, with negative impacts on peace and security.<sup>328</sup>

320 Abukashawa and de Meijere, 2011.

321 Ibid.

322 Gari, 2018.

323 FAO, 2021.

324 IDMC, 2006.

325 UN-Habitat, 2020.

326 Ibid.

327 Gari, 2018.

328 Ibid.

The *National Policy for IDPs (2009)*, based on the global Guiding Principles on Internal Displacement, covers all phases of displacement and applies equally to IDPs and returnees, but is limited to Sudanese citizens.<sup>329</sup>

Following the signing of the *Comprehensive Peace Agreement (2005)*, the *Darfur Peace Agreement (2005)* was concluded. It establishes the Darfur Land Commission, the Voluntary Return and Resettlement Commission, the Truth, Justice and Reconciliation Commission, the Security Arrangements Implementation Commission and the Darfur Reconstruction and Development Fund. However, the weakening of traditional leadership that arose from earlier legislation meant that traditional leaders were less able to manage access to land and land-based resources and to resolve land disputes. This, in turn, contributed to increased conflict.

Customary tenure was not effectively addressed in the 2005 agreements, and they did not clearly recognise or legalize communal land governance.<sup>330</sup> The *Doha Document for Peace in Darfur (DDPD) (2011)* acknowledges the importance of returning the land to the original owners and of developing “new land policies and laws that respond better to the realities of the different populations.”<sup>331</sup> This includes the decentralization of decision making over access to land and natural resource management as a concurrent power to central decision making.

Increasing demographic pressure, land shortages and protracted conflict continue to weaken customary governance, create opportunities for land-grabbing by elites, prevent productive use of the land (e.g. due to land mines), and often result in competing land claims by returnees and new occupants, which creates further conflict. Therefore, implementing these agreements requires considerable human and financial resources, along with political will. However, failure to implement

them effectively left unresolved underlying issues of access to land and land-based resources and the traditional mechanisms of dispute resolution and land management were rendered ineffective or undermined. This has contributed significantly to the region’s relapsing into renewed conflict, as witnessed in 2023.

The *Regional Spatial Planning Strategy of Darfur (RSPSD) (2018)* provides “guidelines for a more balanced and functional regional development of the region to facilitate conflict resolution, peace consolidation, economic recovery and long-term sustainable development, especially through deployment of a network of urban settlements that can benefit surrounding rural areas”.<sup>332</sup>

## E. ZAMBIA

### E.1 Context

About 94 per cent of rural land in Zambia is customary land legally vested in the President, but in practice falls mainly under the control of traditional authorities (chiefs). The Zambian Constitution (2016) guarantees the institution of chieftaincy and traditional institutions, as does other legislation such as the Chief’s Act (22) of 1981 and the Land Act of 1995.

The Ministry of Chiefs and Traditional Affairs – House of Chiefs serves as a complementary institution to Parliament, highlighting that chiefs play a recognized role as part of the constitutional and political structure of post-colonial Zambia.<sup>333</sup> The Zambian traditional authorities manage, allocate and resolve disputes over land through customary law. The land rights of the people are undocumented and rely on the local knowledge of the community. The process to acquire such land is through the chief or chieftainess and is therefore not necessarily complicated, and thus suitable to accommodate those in need of land.

329 UN-Habitat, 2020.

330 Gari, 2018.

331 Ibid.

332 UN-Habitat, 2020.

333 Binsbergen, 1987.



However, the fact that land rights are undocumented poses several challenges, including limited transparency, frequent disputes over boundaries, challenges in communicating about land rights and related facts and

needs to state institutions and external parties, weaker rights of women, higher risk of dispossession and displacement and related limited interest in investing on the land.

## E.2 Chamuka case study

### Prevention of displacement through customary land recordation

**Table 9. Overview of Chamuka case study, Zambia.**

Country and location	Chamuka chiefdom in Chisamba district, central Zambia, about 100 km from Lusaka
<b>Characteristics of area</b>	Customary land in a peri-urban fringe area situated between two rapidly growing cities, Kabwe in the north and Lusaka in the south.
<b>Nature of displacement</b>	High demand for land in fertile agricultural and peri-urban areas increases the risk of displacement caused by market-led evictions and dispossessions
<b>Type of durable solution</b>	Prevention of displacement by addressing its key land-related root causes (dispossession of rural and peri-urban communities due to insecure and unrecorded land rights and poverty resulting from the limited investments due to land tenure insecurity, particularly of women)
<b>HLP challenges faced</b>	Risk of displacement due to increasing demand for customary land, particularly in peri-urban fringe where customary and statutory land management systems interact
<b>Type of approach and solution to HLP issues</b>	Establishment of a customary land recordation system, including participatory enumeration, mapping, digital data processing, monitoring data collection and capacity building. Conscious promotion of women's rights. The approach benefitted from enabling legislation recognizing the role of customary land authorities and contributed to the passing of a suitable national land policy that streamlines land administration and strengthens land tenure security to statutory and customary lands.
<b>Outcomes</b>	<ul style="list-style-type: none"> <li>• Strengthened land tenure security of local communities, thanks to the recordation of customary land rights and the issuing of 4,752 certificates of customary occupancy<sup>334</sup></li> <li>• Reduction in disputes on land boundaries thanks to the availability of land maps validated by the communities and the establishment of a reliable database generated using participatory fit-for-purpose land recordation tools and approaches.</li> <li>• Spatial and socio-economic data for future infrastructural and services planning</li> <li>• Strengthened women's and girls' land rights - policy introduced declaring that 50 percent of land should be reserved for women</li> <li>• Women's role as project leaders resulted in changes to perceptions of women's participation in land matters</li> <li>• Overall reduction of key root causes of displacement: dispossession of local communities and poverty due to land tenure insecurity and consequent limited investments.</li> <li>• Successful mapping helped leverage funding for road rehabilitation and attracted private sector investment (solar farm, manganese plant, fish farm)</li> <li>• Strengthened the capacity of community organizations, local youth volunteers and traditional chiefs</li> </ul>
<b>Key actors</b>	<ul style="list-style-type: none"> <li>• Traditional leaders, local communities, People's Process on Housing and Poverty in Zambia (NGO affiliated with Slums Dwellers International), displaced communities, Global Land Tool Network and UN-Habitat</li> </ul>

334 GLTN/STDM, 2018.

## Background

Chamuka chiefdom covers an area of 207 villages, over 300,000 ha in the Chisamba District of Central Zambia. It is a largely peri-urban fringe area, lying between two rapidly growing urban areas; Kabwe, the capital of Zambia's central province in the north and Lusaka, Zambia's capital city in the south.<sup>335</sup> Increasingly people are looking for land in areas such as this to invest in agriculture, mining, tourism and peri-urban and urban development. As a result, large areas of land are being converted to leasehold title, displacing local customary landholders who do not have documentary proof of their right to land. There is also displacement of people from arable land to barren land, leading to increased poverty. These kinds of displacement are occurring in areas like Solwezi, Mpika, Choma, Mazabuka, Kitwe, Mansa and Lusaka, leaving those affected with very little ability to negotiate their land rights, receive adequate compensation or relocation assistance.<sup>336</sup>

## Solution

Following the lessons learnt from the neighbouring area of Mungule chiefdom, traditional leaders worked with GLTN, UN-Habitat, government authorities and partners to issue certificates of customary land occupancy, with a focus on women and vulnerable groups. Having this documentary proof of their right to land would greatly enhance their tenure security and their capacity to invest on their lands. The project, 'Support to customary land certifications interventions in Chamuka Chiefdom has been implemented in Chamuka in three phases (2016-2018, 2019- 2021, 2021-2022) with the objective of strengthening the land rights of communities living under customary lands by recording and recognizing their land rights through the issuance of certificates of occupancy

that can be validated by both traditional leaders and local authorities. In all, 4,252 households (1,305 females, 2,947 males) have since been issued with certificates of customary occupancy by His Royal Highness Chief Chamuka VI to improve their tenure security on the lands they call home. Additionally, over 27,428 were registered as beneficiaries by virtue of being members of the households that received the certificates of occupancy.<sup>337</sup> The process included capacity development, participatory enumeration and the use of a pro-poor open source land recordation tool, the Social Tenure Domain Model (STDM), to create a database recording the relation between the local people and their land, supported by a wide range of documentary and alternative evidence.

The approach in Chamuka involved the following actions:

1. Building awareness by informing the community and leaders about STDM and its applications. The Chief was keen to participate.
2. Establishing a STDM steering committee responsible for rolling out and supervising project activities i.e. profiling, enumeration, mapping, data entry and analysis in the villages. The team comprised of members from the People's Process on Housing and Poverty in Zambia (PPHPZ) and its grassroots alliance partner, the Zambia Homeless and Poor People's Federation (ZHPPF).<sup>338</sup>
3. Working with the village head, the team identified and trained volunteer community members. Capacity building included how to conduct participatory enumeration and mapping techniques for land parcels.

335 UN-Habitat, 2018.

336 ZLDC, n.d.

337 Katungula et al, 2018.

338 Katungula et al, 2018.



4. Training on data collection whereby local people were trained on questionnaire administration (participatory enumeration), GPS and mapping, including the use of handheld GPS devices to collect spatial data such as village boundaries, land uses and basic services, as well as data entry and analysis. This involved the incorporation of data generated through participatory enumeration questionnaires and maps coordinates gathered using the handheld GPS devices into the STDM software.
5. Digital processing of the data: A digital database was then created from which reports on the social tenure relationship in village were produced.
6. Issuing of certificates of occupation, based on the database compiled and the associated spatial mapping. Local people agreed on the cost of acquiring these certificates, USD 10, paid to the headman to cover transport and other logistical costs.

### Outcomes

Between 2016 and 2022, 57 villages were profiled, enumerated and mapped in the Chamuka chiefdom. This involved 6,761 land parcels and about 29, 216 beneficiaries. A total of 4,752 certificates of customary occupancy have been issued to households residing in these villages at a public ceremony attended by high profile national officials. Women's rights were consciously promoted by the Chief throughout the process; a total of 1,518 certificates were issued to women. Further, His Royal Highness Chief Chamuka has made joint registration of certificates of occupancy possible for spouses and promoted the issuing of certificates of occupancy to women who occupy land as single heads

of households. Women have been appointed as project leaders in data collection and facilitating discussions on land governance issues, resulting in changes to perceptions of women's participation in land matters. A policy was also introduced in Chamuka declaring that 50 per cent of land should be reserved for women in all 207 villages.<sup>339</sup>

Key to the project's success was the strong support from the Chief and the cooperative relationship between the actors: GLTN, UN-Habitat, the government, People's Process on Housing and Poverty in Zambia (PPHPZ) and its grassroots alliance partner, Zambia Homeless and Poor People's Federation (ZHPPF) and affiliated to Shack Dwellers International (SDI).

Following this process, local authorities are better equipped to deal with land management in their area, knowing their village boundaries and what land this covers. Spatial visualization and data from the participatory mapping process is easily understood by traditional authorities and residents, can be easily updated and facilitates planning of local development, particularly in terms of infrastructure and services.

The consultations and dialogues that underpin the process encourage collective decisions, build ownership and manage expectations. They have contributed to solving 613 disputes (interfamily, intra-family land succession and village boundary disputes). The maps generated through the process have helped people to negotiate financial compensation and relocation arrangements with investment companies (representing manganese and solar-energy firms).

<sup>339</sup> UN-Habitat, 2020.

Successful mapping of the area helped leverage funding for the rehabilitation of a 65 km-long road from Chisamba to Kabwe, which cuts across the Chamuka chiefdom. In addition, private sector investment was attracted to the area, specifically by an international investment firm that has negotiated plans with the community in Bulemu village to set up a solar farm. This is extremely beneficial to the community as households will receive free solar energy for the next 25 years and will share in profits. A manganese plant is being established which required the relocation of five families who were able to use their certificates of customary land occupancy to negotiate compensation. A fish farm was established in Ndililwa village on land allocated by the Chief after the STDM survey. The Ministry of Livestock and Fisheries provided funds for this project which supports young people in aquaculture.

The participatory nature of the STDM process strengthened the capacity of community organizations, local youth volunteers and traditional chiefs. This included skills such as designing the certificates, sensitizing villagers, collecting and entering data, using open-source software on their smart phones and uploading it to a digital database. Using volunteers cut costs and mitigated the common expectation that working with NGOs and external development agencies will have direct financial incentives.

With documented customary land rights in place, traditional leaders are better able to administer land in a more transparent, accountable and equitable manner. Rather than undermining their authority, it serves to strengthen it in collaboration with their local communities.<sup>340</sup>

### Replication and scaling up

This project followed a similar approach in the Chibombo district on the outskirts of Lusaka in 2015. It has therefore already been replicated and could be implemented in other similar areas.

During the initial phases of the project over 70 para-surveyors were trained to ensure sustainability of the process in other villages of Chamuka and beyond. The participatory nature of the process built their confidence to handle GPS devices and computerized data entry. This team acted as 'trainers of trainees' to enumerate and map the further 207 villages.<sup>341</sup>

The success of the process in Chamuka is regarded as a reference for people working in this sector internationally, especially as it pertains to customary communities and women's land rights. Lessons from this project informed the ongoing land policy process in Zambia on approaches that can be used for customary land administration and on improving coverage of land records to improve tenure security. This was emphasized by Zambia's Surveyor General who advocated the use of STDM in implementing mainstream land policies.<sup>342</sup> Zambia's National Land Policy was launched in 2021 following a participatory and inclusive process. This policy seeks to streamline land administration and promote equitable access to both statutory and customary land and to strengthen land tenure security. It has revised land distribution quotas for available land to 50 per cent reserved for women and 20 per cent reserved for youth and persons with disabilities. To accomplish this, the government has embarked on a land titling programme; chiefs are encouraged to abide by these quotas to promote inclusivity.

340 Katungula et al, 2018.

341 Ibid.

342 UN-Habitat/GLTN, 2019.

### Key pointers for durable HLP solutions

The Zambian case study highlights the potential threats to tenure security in customary areas in rapidly growing peri-urban locations and the related land and HLP solutions to prevent displacement. The successful mapping of the area through the STDM process led to an enhanced ability to attract investment for development in the area and reduce disputes. This allowed for the possibility of both direct and indirect benefits to residents. For example, the solar energy project not only provides free electricity to residents for the foreseeable future, but also provides them with a share of the profits. In addition, the fish farm established in the area provides jobs for local young people. As in the DRC, this project involved senior leaders at national level and provided input into the processes followed for the development of the National Land Policy adopted in 2021. Further, the intervention benefitted from the strong leadership of the customary authorities, supported by an enabling national legislation that recognizes their role.

### E.3 Relevant national legislation and frameworks

The interventions in Zambia are underpinned by a set of national legal and policy frameworks. The *Land Act, 1995* recognizes both leasehold tenure and customary tenure, and sets out that in cases where statutory law

and customary tenure are in conflict, the statutory takes precedence. The *Lands and Deed Registry Act* provides for the registration of land and issuance of certificates of title, but the process to secure land is expensive and difficult for poor and vulnerable groups, particularly in customary settings.<sup>343</sup> The *Urban and Regional Planning Act, No. 3 (2015)* is applicable over both state and customary land and makes reference to the need to establish a democratic, accountable, transparent, participatory and inclusive process for urban and regional planning and to ensure multi-sector cooperation, coordination and involvement of different levels of ministries, provincial administration, local authorities, traditional leaders and other stakeholders in urban and regional planning.

The draft *National Lands Policy (2021)* seeks to streamline land administration and promote equitable access to both statutory and customary land and to strengthen land tenure security. The *National Urbanization Policy (2021-2030)* aims to promote prosperous, inclusive and resilient urban settlements. The *National Land Titling Programme* provides Certificates of Title to all landowners. It seeks to provide simplified, low-cost land titling services to targeted areas, regularize unplanned settlements and prevent displacements and reduce inequalities of access to land ownership due to income differences.<sup>344</sup>

<sup>343</sup> Katungula et al, 2018.

<sup>344</sup> Pearce, 2021.

## F. MYANMAR

### F.1 Context

For decades Myanmar has suffered from violent conflict and land seizures. There have been multiple land seizures and forced evictions by the government, military and private companies since the end of the socialist period in 1988. Rural farming communities live under constant threat of losing their land and their livelihoods. In 2016 the government estimated that 809,000 ha of land had been illegally confiscated.<sup>345</sup> Currently, traditional land use practices are threatened by economic liberalization in the county, which is generating a massive land grab, facilitated in part by some of the land-related legislation.

Many people living in conflict-affected areas follow customary land governance systems not recognized by the government. About 70 per cent of the country's population relies on agriculture for their livelihood; half of these are landless, with millions more having weak legal rights to their farmland. This tenure insecurity renders them vulnerable to land seizures by government or large-scale commercial operations. Forest-dependent ethnic people and IDPs are particularly vulnerable as their customary lands are insufficiently protected which means they risk losing their traditional livelihoods and facing further displacement.<sup>346</sup>

Issues around displacement and access to land are complicated by the fact that displacement has occurred over such a long period of time that many displaced people now live on land that previously belonged

to people who were displaced. There are therefore complex layers to claims to land. Displaced people have often lost any documentation which could have been used to prove ownership, such as tax receipts, and therefore struggle to recover their land.<sup>347</sup>

Between 2014 and 2018 violence against ethnic minorities escalated. This has worsened further since the 2021 coup. The UN Secretary General estimated in 2023 that approximately 1.7 million people had been displaced by armed conflict and attacks on civilians since the coup, bringing the total number of IDPs to nearly 2 million. More than 60 per cent of those newly displaced originate from Sagaing and Magway Regions. Chin, Kayin and Kayah States also experienced proportionally very high rates of displacement.<sup>348</sup> In the South-East, armed conflict occurred in Bago (East) and Tanintharyi Regions and Kayin, Kayah, Mon and Shan (South) States. The return of IDPs to their areas of origin is complicated by landmines in many areas.<sup>349</sup>

Although Myanmar's land-related legislation is gender-neutral, there are very few women in land governance. This, along with cultural norms, could explain why mainly men apply for the newly available land use certificates, which are the strongest form of evidence of land possession for farmers in the country.<sup>350</sup> Namati, an NGO that works on land rights issues, reports that 80 per cent of people who they have assisted with land registration were men and only 16 per cent women, with 4 per cent being joint registration by married couples.<sup>351</sup>

345 Yangon and Dotto, 2019.

346 Landesa.

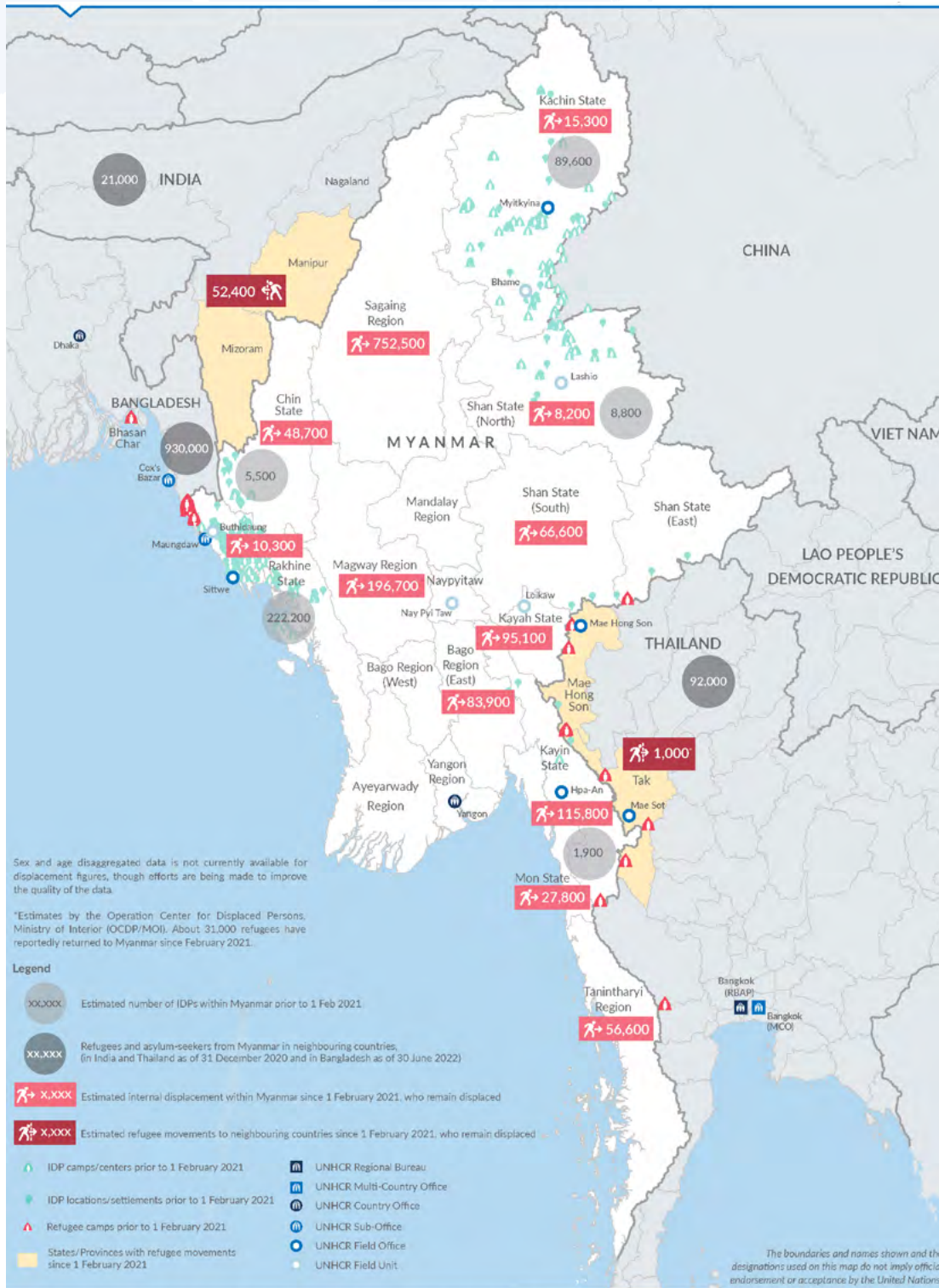
347 OHCHR, 2020.

348 UN Secretary General, 2023.

349 Ibid.

350 Pierce, 2016.

351 Ibid.



**Figure 12. UNHCR Myanmar Emergency – Regional Overview Map.**

Source: UNHCR Myanmar Emergency – Regional Overview Map as of 10 April 2023.

## F.2 Southern Kayin (Kawthoolei) case study

### Recordation of communal customary land rights to prevent displacement

Table 10. Overview of Southern Kayin case study, Myanmar.

Country and location	Southern Kayin state of Myanmar, also known as Kawthoolei
<b>Characteristics of area</b>	This area is part of the Indo-Burma biodiversity hotspot, one of the world's top 10 biodiversity hotspots for irreplaceability but one that is highly threatened.
<b>Nature of displacement</b>	Land grabs and armed conflict
<b>Type of durable solution</b>	Prevention of displacement
<b>HLP challenges faced</b>	Lack of tenure security in ancestral lands; risk of loss of land and biodiversity due to land grabs by government, militia, logging and extractive industries or through expropriation or armed conflict
<b>Type of approach, and solution to HLP issues</b>	<ul style="list-style-type: none"> <li>• Participatory mapping and use of GIS and digital technologies</li> <li>• Recordation of land rights and provision of land certificates</li> <li>• New customary land policies were issued to protect land rights of internally displaced people</li> </ul>
<b>Outcomes</b>	<ul style="list-style-type: none"> <li>• Mapped ancestral lands in seven districts of the state</li> <li>• Demarcated 326 <i>kaws</i> (ancestral customary lands) over 842,820 hectares, including 107 reserved forests, 18 wildlife sanctuaries, 204 community forests and four herbal medicine forests, covering a total forest area of over 2.7 million hectares<sup>352</sup></li> <li>• Villagers receive land certificates that give inheritance rights and protect them from land grabs</li> <li>• Mitigation of displacement</li> <li>• Participatory process enabled remote rural communities with limited internet access to use accessible technology to protect their land and resources.</li> <li>• Process enhanced community conservation efforts and biodiversity.<sup>353</sup></li> </ul>
<b>Key actors</b>	Karen communities, Kawthoolei Agriculture Department (KAD), the Karen National Union (KNU), Kawthoolei Central Land Committee (KCLC), Karen Environmental and Social Action Network (KESAN), Cadasta Foundation

352 Hyolmo, 2024.

353 Ibid.



### Background

Myanmar has over 100 different ethnic groups. The Karen ethnic group is estimated to be about 7 million people, constituting between 7 per cent<sup>354</sup> and 10 per cent<sup>355</sup> of the national population. They live mainly on ancestral, or customary land in the hilly and forested eastern areas of the country and are predominantly small-scale farmers. Since 1947 the Karen people have been fighting for autonomy, with the formation of the Karen National Union, and its armed wing, the Karen National Defence Organization (KNDO). Research suggests that 717,626 civilians have been internally displaced in all KNU districts.<sup>356</sup> Some ethnic group administrations, such as the Karen and the Kachin, run their own autonomous land ministries, and issue land certificates as a means of improved governance and of protection from land seizures.

### Solution

For over a decade, Karen communities living in the southern Kayin state (or Kawthoolei, as Karen nationalists call it) have taken part in the recordation of their land rights. The Kawthoolei Agriculture Department (KAD), which falls under the Karen National Union (KNU), supported by the Karen Environmental and Social Action Network (KESAN), developed this land policy in 2012. The policy aims to strengthen their claim to their ancestral land (known as kaw), protect their land from land seizures and protect the fragile ecosystems in one of the most threatened biodiversity hotspots in the world.<sup>357</sup>

Working with the KNU, using participatory methods, KAD has demarcated agricultural plots and community forests. Initially this was done through hand-written records, but in 2017 the Cadasta Foundation began providing technical support. Since then, they have mapped and documented community land in seven districts using GIS. Local people collect data directly from the field using their mobile phones. Community groups then meet to agree on boundaries to prevent disputes. Karen leaders and communities use the digital tools and systems to interpret, document and agree on lands and forest data. The GIS technology helped cover a larger area in a shorter time, which has encouraged further collective planning and decision-making.<sup>358</sup> Traditional knowledge about the territories has been integrated with the GIS software, maps, data analysis and storytelling.<sup>359</sup> The Kawthoolei Central Land Committee (KCLC) records customary communal lands and issues land certificates to residents. The initiative also aims to establish a governance framework to manage the forest and the land parcels. Culturally significant sites are also recorded.<sup>360</sup>

### Outcomes

Since the project began ten years ago, ancestral lands in seven districts of the state have been mapped. This involved demarcating 326 *kaws* (ancestral customary lands) over 842,820 ha, including 107 reserved forests, 18 wildlife sanctuaries, 204 community forests and four herbal medicine forests, covering a total forest area of over 2.7 million ha.<sup>361</sup> Villagers have been

354 Baver et al, 2013.

355 Karen Women's Organisation, n.d.

356 Mathieson, 2024.

357 Hyolmo, 2024.

358 Ibid.

359 Ibid.

360 Ibid.

361 Ibid.

issued land certificates that protect inheritance rights and reduce the risk of land grabs by the government, megaprojects, logging and extractive industries.<sup>362</sup> The participatory process, using mobile phones, enabled remote rural communities with limited internet access to use accessible technology to protect their land and resources. In addition, the process has enhanced community conservation efforts.<sup>363</sup>

The community land recordation process has been underway for over ten years. While not officially recognized by government, the government has not yet impeded the process. In fact, some members of Parliament have reportedly indicated that “they would like to study land administration and governance that is led by the KNU”.<sup>364</sup>

### Replication and scaling up

The Karen people are not the only minority group developing their own land recordation system in Myanmar. Other ethnic groups, such as the Mon people, are also developing their own systems by engaging in similar land recordation processes to secure their lands for the future.<sup>365</sup> This stems from their desire for autonomy and recognition that the central state is very weak, constantly in flux and therefore unlikely to be able to implement a functioning land governance system. The resources required for the process outlined here are easily accessible (mobile phones) and not very expensive to operate, which bodes well for its replication and scaling up in other areas.

### Key pointers for durable HLP solutions

This case study illustrates the ability of a marginalized ethnic group to recognize the need for and to independently establish a functioning land governance system that records people’s rights to land, enhances land tenure security and mitigates displacement in a context of prevailing political uncertainty and institutional weakness at the national level. This recognition has prompted the Karen people to develop a participatory and sophisticated system of land recordation to inform land management and promote vitally needed environmental conservation. Further, new customary land policies were issued to protect land rights of internally displaced people.

### F.3 Relevant national legislation and frameworks

The interventions in Myanmar are underpinned by a set of national legal and policy frameworks many of which are in flux and changing due to recent political upheaval. The *Constitution (2008)* states that the Union (state) is the ultimate owner of all land and resources, and that it shall enact necessary law to supervise extraction and utilization of State-owned natural resources by economic actors. It grants citizens’ rights to private property, inheritance and other land-related uses in accord with the law.<sup>366</sup> As such, only land use rights are recognized and can be registered (and not land ownership).<sup>367</sup>

362 Ibid.

363 Ibid.

364 Ibid.

365 Ibid.

365 Ibid.

366 Displacement Solutions, 2017.

367 OHCHR, 2020.

The *Vacant, Fallow and Virgin Lands Management Act (2012, amended in 2018)* aims to attract large-scale investment and development to rural areas. It has been criticized for not recognizing customary land rights, and therefore putting rural ethnic minorities at risk of losing their land. One third of the country's land area is classified as vacant, fallow and virgin, 82 per cent of which is populated by ethnic minorities. An amendment in 2019 required existing farmers to apply for ownership or risk losing their land, but many are unaware of this requirement.<sup>368</sup> The *Forest Law (2018)* recognizes forest lands that are customarily managed by local communities and promotes the role of local people in forest management.<sup>369</sup>

The *National Land Use Policy (2016)* lists as one of its objectives “to recognize and protect customary land tenure rights and procedures of the ethnic nationalities” and states that customary land use tenure systems shall be recognized in the National Land Law”. It provides a framework for pro-poor, gender responsive reforms that protect the customary rights of ethnic minorities and land tenure security of small farmers.<sup>370</sup>

The *Land Policy of the Karen National Union (KNU)* states that “internally displaced persons have the right to reoccupy their land, which they owned previously, and to receive compensation”, recognizes, prioritizes and promotes the rights of restitution of refugees and displaced persons who have been forced from their lands, livelihoods and homes and aims to “establish an appropriate, accessible and effective system for addressing and remedying tenure-related grievances and disputes”.

## G. VIETNAM

### G.1 Context

Vietnam has a total surface area of 31 million ha, 35 per cent of which is agricultural, a population of 92 million, 61 per cent of whom work in agriculture and a population density of 296 people per sq. km.<sup>371</sup> There are 54 recognized ethnic groups in the country, with 87 per cent of the population being Viet.<sup>372</sup> These groups have developed a range of different systems of customary tenure over centuries, some of which are still very strong in some areas.<sup>373</sup>

Between the end of the war in 1975, the reunification of North and South the following year and the drafting of the 1980 Constitution, all land was declared under ownership of the entire people of Vietnam, effectively nationalizing all land, with the State in charge of managing and distributing all land. Traditional village leaders were replaced by state appointed heads, and the country's legal system ceased to recognize customary laws. However, customary rules have prevailed in many areas, where they are important for regulating social relations, ownership rights, property disputes, marriage and inheritance. While land cannot be owned outright, “ownership-like tenure” exists within a framework of land use rights rather than actual ownership, and there are laws in place that address different components of customary tenure within this framework. For example, Article 197 of the 2015 Civil Code allows for “multiple ownership” of land if it is in accordance with provisions of the law or customary practice.<sup>374</sup> Multiple ownership by a community means “ownership by a family line, hamlet, village, tribal village, mountainous

368 Yangon and Dotto, 2019.

369 Land Portal, 2022.

370 Landesa, n.d.

371 Mellac and Castellonet, 2015.

372 Ironside, 2017.

373 Ibid.

374 Ibid.

hamlet, ethnic hamlet, religious community or other community of property which is formed in accordance with customary practice" (Article 211). Boundaries of immovable property may be determined "in accordance with customary practice or according to boundaries that have existed for 30 or more years without dispute" (Article 175). In some areas, particularly the lowlands, customary tenure has been formalized by issuing land use rights certificates (LURCs), known as red books. Articles 75 and 77 of the 2013 Land Law allow for households, individuals and communities without LURCs to receive compensation for expropriation if they were using the land prior to 1 July 2004. In some areas, an informal mechanism known as, the Hou Koa system is used to certify ten years of possession by a family.<sup>375</sup>

The extent to which customary practices are carried out varies across the country. In the northern mountainous areas, most people are valley-dwelling rice farmers, and more village land is under individual family claims than communal. In the central and northern highlands many communities are forest-based and focus on shifting cultivation and forestry with communal tenure arrangements.<sup>376</sup> In many areas, such as the upland areas, customary land governance is not understood by officials, and the tensions which arise between state law and customary practices need to be managed.

Despite the prevalence of customary systems in much of the country, the state plays a dominant role in land management and state authorities have wide

discretionary powers over land. Multiple laws and decrees create confusion compounded by overlapping institutional mandates, which are interpreted and implemented in different ways at local level.<sup>377</sup> By law, districts have considerable power to value, reallocate and repossess agricultural land which can encourage non-transparent withdrawal of land use rights.<sup>378</sup> Between 2001 and 2010, using the 2013 Land Law which allows the government to expropriate land for socio-economic development for national and public benefit, almost one million ha of agricultural land was converted to non-agricultural purposes, creating livelihood vulnerability and conflicts.<sup>379</sup> Where government is involved in forest and land conflicts, legal rights usually prevail over customary tenure.<sup>380</sup>

Perhaps the key challenge in terms of land in Vietnam today is the pressure to modernize the economy. This involves large-scale infrastructure projects, mining and granting land concessions for agro-industry and plantations.<sup>381</sup> In many areas, this entails expropriation of farmland, much of which has been managed through customary tenure over generations. This is possible through the 2013 Land Law which allows expropriation for urban expansion, roads, hydropower dams, government buildings and mining.<sup>382</sup>

The frequency and extent of expropriation varies across the country. Recently, expropriations have increased in the north and central highlands, increasing tenure insecurity in the poorest regions which depend more on

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375 Ibid.

376 Ibid.

377 Ibid.

378 Ibid.

379 Gillespie, 2013 cited in Ironside, 2017.

380 Ironside, 2017.

381 Mellac and Castellanet, 2015.

382 Ironside, 2017.

customary arrangements.<sup>383</sup> Approximately 10 per cent of the population has been affected by expropriation, with land conflicts and disputes arising from improper procedures of land acquisition, unfair compensation and perceptions of corruption.<sup>384</sup> In rural areas this resulted in around one million disputes between 2003 and 2015, only half of which were handled correctly or partly correctly, according to the National Assembly's Standing Committee, reflecting the lack of independent courts to enforce land rights and limited legal capacity of officials to deal with land disputes.<sup>385</sup> Land disputes over expropriation tend to have been more violent in peri-urban areas.<sup>386</sup> Research suggests that over 80 per cent of resettled people are unhappy with the compensation they received which was usually significantly lower than market prices.<sup>387</sup>

Expropriation usually benefits wealthy people. Small-scale farmers are often excluded from agricultural plans and encouraged to link to agri-business which leads to them abandoning customary practices, increasing livelihood insecurity and leading to poorer conservation. The extension of state authority into more remote areas

in pursuit of rapid economic development has changed livelihoods and management systems, impacting customary tenure systems. In forests, community management is often replaced by management by Commune People's Committees and exploitation of forests for commercial gain, with the result that neither customary nor state management function effectively.<sup>388</sup>

Communities are not static and customary practices need to adapt to changes. Displacement often leads to mixing of ethnic groups, which requires negotiation around continuation of customary practices and redefining of roles with state authorities. Younger members of the community often move or adopt new customs.<sup>389</sup> Vietnam is a rapidly changing country, where the drive for economic growth favours large-scale agriculture and industrialization. This has led to tensions between "community and individual land rights, local versus central level authority, and balancing exploitation with protection of forest resources".<sup>390</sup> Land disputes have become a major political issue with the role of customary management becoming less clear.<sup>391</sup>

383 Markussen, 2015, cited in Ironside, 2017.

384 Open Development Vietnam, 2019, cited in De Andrade Correa and Jansen, 2021.

385 Ironside, 2017.

386 Ibid.

387 Ty et al, 2013.

388 Ironside, 2017.

389 Ibid.

390 Ibid.

391 Ibid.

## G.2 Bô Hòn case study

### Relocation in new area due to hydro-power plant

Table 11. Overview of Bô Hòn case study, Vietnam.

Country and location	Bô Hòn village in Thua Thien Hue province, Central Vietnam
<b>Characteristics of area</b>	Bô Hòn was located in a valley of the Nam Hoa State Forest Enterprise, approximately 15 km from the Binh Thanh commune and 40 km from Hue city. By 2014, the relocation area had a population 278 people residing in 54 households.
<b>Nature of displacement</b>	Displacement caused by a mega infrastructure project and relocation to a new area
<b>Type of durable solution</b>	Integration in the relocation area
<b>HLP challenges faced</b>	Loss of communal land for livelihoods and houses Need for tenure security at household level in the relocation area
<b>Type of approach and solution to HLP issues</b>	Compensation for (some of the) lost customary land rights Provision of alternative accommodation to displaced villagers. Provision of communal land rights in the new location, to boost livelihood.
<b>Outcomes</b>	27 households were moved (although the settlement subsequently grew), Village lost 87.3% land, each household 30%; initially not able to use protected forest, given permission to reclaim unused uplands to plant acacia forests in 2007.  Initially relocated families suffered a loss in land and income. After a few years, many families recovered thanks to support from local authorities to re-establish communal land use rights.  The fact that residents felt that the compensation had been unfair, and the widening of the income gap led to less trust among them. <sup>392</sup>
<b>Key actors</b>	Displaced/resettled households and their adult children, Binh Thanh Commune People's Committee (CPC) and Centre, Traditional village leaders, Hydropower company, new village management board appointed by the commune authority, Centre for Rural Development (CRD) of Hue University of Agriculture and Forestry (HUAF), Huong River Protection Forest Management Board (HRPFMB), Japan Bank for International Cooperation (JBIC), Vietnam Water Resources Assistance Project (WB3), Local authorities.

<sup>392</sup> Ty, 2023.



### Background

There are over 400 large-scale hydro-electricity projects operational in Vietnam and over 450 small-scale hydroelectricity plants. By 2023 hydropower dam construction had displaced 44,557 households, (approximately 200,000 people) and expropriated 133,930 ha of land. Most displaced people are ethnic minority groups in mountainous areas relying on land and natural resources for their livelihood<sup>393</sup>

Bồ Hòn was a small hamlet located in Thua Thien Hue province, Central Vietnam, in a valley of the Nam Hoa State Forest Enterprise, approximately 15 km from the Binh Thanh commune and 40 km from Hue city. The inhabitants originally came from the Humon Nguyen commune, moved to Lác River in the mid-1980s, and then to Bồ Hòn in 1995 because of floods. Most people were from the Kinh ethnic group and practised slash and burn cultivation. The village had very poor infrastructure, no piped water, electricity or schools, and was difficult to access.

Access to land and resources was through customary law. In 2003 residents were told that they had to move to make way for the construction of the Binh Dien hydropower dam which involved acquiring 616 ha of land including 140 ha of expropriated land. The entire village received compensation and moved to the new Bo Hon relocation village, known as the Binh Thanh commune in 2006.<sup>394</sup>

### Solution

The company responsible for developing the dam was required to provide alternative accommodation (land for land) and compensation to residents who were displaced. Compensation was set in accordance with the

terms of decision 3721/2005/QĐ-UBND of Thua Thien Hue province. Every household received a 0.3 ha piece of land with a house, garden, electricity, water supply and an area for crop production. Most households received cash compensation as well, averaging VND 35.8 million per household. The company built the new village downstream of the dam, 15 km from the original village. It is well connected to the centre of Binh Thanh commune 2 km away, and to Hue city, 25 km away. The village has a communal house, a primary school and a kindergarten, with a secondary school and high school only 4 km away in Binh Dien commune. By 2018, the number of households increased to 62, accommodating a population of 248.<sup>395</sup> In 2007, 27 households were given permission to reclaim unused uplands to plant acacia forests. They were supported by JBIC and WB3 projects with technical training and low interest loans.

In 2014 local authorities allocated forest Red Books to all households for an average of 1.65 ha of Acacia Forest per household. Sales from acacia forest products became the second largest source of income for households after wage labour. However, households benefited differently. Some more vulnerable households (women-headed, handicapped and Kinh households) had less land and insufficient income to plant acacia trees while village leaders had far more land for acacia forests than others. The new settlement's location also provided opportunities for displaced people to work for other acacia forest owners, which generated the largest source of income for households.<sup>396</sup> This benefited women-headed, disabled and Kinh households the most as their children could earn a significant income from this. Another strategy adopted was to work in cities, assisting those in the new village through remittances.<sup>397</sup>

393 Ibid.

394 Ibid.

395 Ibid.

396 Ibid.

397 Ibid.

A study to assess the situation of the residents 12 years after displacement found that displaced households had adopted several adaptation strategies in their new village.<sup>398</sup> Most households spent their compensation money to overcome the severe shortage of food and improved their living standards after displacement. Displaced households also began trying to recover traditional livelihoods but could not find suitable lands. Poor soil quality in their new area meant that they were unable to grow traditional cassava, so they switched to a new variety of industrial cassava and cultivated other cash crops which grew in poor soil and needed less land. This mainly involved women and was successful.

There were some problems with the process. Compensation for land was insufficient as, in line with 2003 Land Law, the project authority was only required to give compensation for land legally owned and registered with land use right certificates (LURCs, or red books). The 'slash and burn cultivation' practised occurred through customary rights and thus was not officially recognized. Thus, lands planted according to customary rule without red books, including 61 ha of bamboo land along riverbanks, were not compensated. Most displaced households felt that the compensation process was unfair and had involved nepotism and corruption.<sup>399</sup>

### Outcomes

Loss of land was the greatest challenge faced by displaced households. In all, the village lost 87.3 per cent of its original land area after relocation, with the loss of productive land for upland rice, dry and perennial crops being critical as people were unable to find suitable agricultural land to replace this. The productive land available to each household dropped from 1.7 to

0.16 ha. Prior to the relocation, people had used fertile land on hills and along the riverbanks to grow crops but afterwards they had more limited productive land. They also no longer had access to the protected forest of unused land in the mountains. Displaced households also lost 30 per cent of their residential land.<sup>400</sup> The loss of land was compounded by unequal distribution of land among the displaced households after relocation, which enabled some households (such as former and new village leaders) to invest more in reclaiming land for acacia forest plantation, and thus to their becoming wealthier, increasing the inequality of land distribution and income in the village.<sup>401</sup>

The WB3 project assisted in acquiring LURCs or red books for each household. They also assisted with LURCs for areas of reclamation and afforestation in 70.4 ha of the original area, bringing the total production forest area of the village inhabitants to 75.8 ha, although this is unequally distributed across households.<sup>402</sup>

Displaced households lost access to 450 ha of natural forest, unused land and water bodies, all previously managed under customary land which enabled them to pool resources and provided an important contribution to their livelihoods. They lost 90 per cent of fishing products and 97 per cent of rattan, reducing household incomes by an average of 55 per cent. The loss of Lo ô bamboo plantation activity was particularly difficult as this had provided a sustainable source of income.<sup>403</sup> The loss of access to productive land on which displaced households could grow rice and cassava was severe, with annual rice productivity dropping from 52 kg household to only 18 kg. Before relocation, 70 per cent of households could supply sufficient amounts of food for themselves, but the move meant that over 56 per

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398 Ibid.

399 Ibid.

400 Ibid.

401 Ibid.

402 Ibid.

403 Ibid.

cent of households had to spend their compensation and income to buy rice and food.<sup>404</sup>

The new village management board replaced the role of the customary village leader but was less able to deal with conflicts. The fact that residents felt that the compensation had been unfair and the widening of the income gap led to less trust among them.<sup>405</sup>

Two stages of development were identified after 12 years of relocation.<sup>406</sup> The first three years was one of disruption when the total income of displaced households decreased greatly. This was followed by recovery, during which the total income of displaced households increased substantially, linked to their acacia forest plantation land and working for wages. It is important to note, however, that the recovery of households varied greatly among households with different livelihood outcomes.<sup>407</sup> This points to the need to study the effect of displacement over longer periods of time than is usually the case. Bô Hòn village experienced a faster recovery than did other communities also displaced by hydropower dams. Twelve years after displacement household incomes were slightly higher than before they moved, enhancing their resilience to food insecurity and marginalization.<sup>408</sup>

### Replication and scaling up

The case of Bô Hòn village highlights the different livelihood strategies adopted by displaced households following their relocation. Key to their success was the fact that the peri-urban location of the relocation

site provided access to jobs and infrastructure which displaced households could use to enhance their livelihood opportunities, through working and remitting income.<sup>409</sup>

Relocation should ideally be planned close to urban areas and displaced and vulnerable households should be given financial and technical support to invest in livelihood activities, especially in land- and agriculture-based livelihoods.<sup>410</sup>

### Key pointers for durable HLP solutions

The Vietnam case highlights the fact that there is not a clearcut dichotomy between customary and statutory land governance systems, but the behaviours of ethnic and religious groups are influenced by the different systems at play. There may be more than one system prevailing in a particular area, and in some cases local officials may be more sympathetic to customary management than in others.

A long-term perspective is needed to assess the impact of relocation on livelihood and the extent of adaptation, or resilience, of displaced households.<sup>411</sup> Even before their forced move, the villagers of Bô Hòn had moved several times, in one case due to floods. Communities are not static, and customary practices need to adapt to changes. Displacement often leads to mixing of ethnic groups, which requires negotiation around the continuation of customary practices and redefining of roles with state authorities. Members of the community may also move or adopt new customs.<sup>412</sup>

404 Ibid.

405 Ibid.

406 Ibid.

407 Ibid.

408 Ibid.

409 Ibid.

410 Ibid.

411 Ibid.

412 Ironside, 2017.

In this case, most displaced households lost land initially. Then, with the support of local authorities and NGOs, they increased their access to communal forest land, which boosted their income. Access to communal productive land is therefore critical to the integration of displaced people in terms of their ability to reconstruct their livelihoods.

The location of the resettled village in a peri-urban area close to Hue city enabled displaced people to adapt their traditional livelihood strategies by getting jobs either in the city or in surrounding agricultural areas, broadening the options previously available to them.<sup>413</sup> Support by local authorities and NGOs enabled them to reclaim unused uplands for acacia forest plantation. Thus, they were able to adopt a combination of land-based and market-oriented strategies which improved their livelihood outcomes.<sup>414</sup>

### G.3 Relevant national legislation and frameworks

Relocation in Vietnam is underpinned by a set of national legal and policy frameworks, along with numerous decrees. The Constitution of 1992 allows the State to expropriate land for national defence, security or development in the national or public interest. This needs to be compensated. The 1993 Land Law states that land belongs to the entire people, is managed by the state, and that the state allocates or rents land use rights to users. It introduced LURCs which allow individuals and families to exchange, transfer, inherit, lease and mortgage land. The 'owner' thus has a legal right to the property, with the state retaining ownership

and having final decision-making authority over the land, which overrides the right to use land.<sup>415</sup> The 2003 Land Law allowed allocation of land to communities although this has been slow. It also stated that property, including land acquired during marriage, belongs to the wife and husband and LURCs must contain both the wife's and husband's names.

State Forest Enterprises control most forest land.<sup>416</sup> The 2004 Law on Forest Protection and Development provides some limited recognition of customary tenure.<sup>417</sup> Communities may apply to District Peoples' Committees for forests they are managing, and these committees can assign production and protection forests to "village population communities", giving priority to forests associated with ethnic minority customs. This may recognize customary tenure on condition that these cannot be assigned to organizations, households, or individuals. The community appears to be a secondary right holder compared to state organizations.<sup>418</sup> Even though village collectives are legally recognized, allocation to individual households predominates.<sup>419</sup>

The 2013 Land Law includes compensation and relocation provisions including the allocation of new land, monetary compensation based on land price, compensation for remaining investment costs and livelihood restoration support.<sup>420</sup> It allows for disputes over land with a certificate to be taken to court. For land without a certificate, disputes are based on civil litigation legislation and are resolved by the Commune Peoples' Committee, then the District Peoples' Committee or the courts.

413 Ty, 2023.

414 Ibid.

415 Ironside, 2017.

416 Ibid.

417 Ibid.

418 Ibid.

419 Ibid.

420 De Andrade Correa, F and L.J.M. Jansen, 2021.

Two kinds of communities are recognized in the 2013 Land Law: the first based on those who live in the same area and share customs and practices, and the second based on family ties. A Joint Circular in 2014 outlines the principles for identifying and recognizing customary elders and leaders, possibly allowing for recognition of communal management structures and customary leaders' role in conflict resolution.<sup>421</sup> The 2013 Land Law includes measures to enhance transparency and allows for local level monitoring of official land management actions, including land certification, acquisition and land use planning.<sup>422</sup> It strengthens community tenure over land by outlining state responsibilities for adopting policies on residential land and land for community and agricultural activities for ethnic minorities. It allows for state allocation of LURCs over agricultural land to communities and for the allocation of protection forest to communities.<sup>423</sup> It gives power to allocate all land, change land use classifications and approve leases to the Chair of the Provincial People's Committee<sup>424</sup> and allows for those who do not have LURC to receive compensation if their land is expropriated and was in use

prior to 1 July 2004.<sup>425</sup> Independent land committees determine the compensation due.<sup>426</sup>

A new Land Law was passed in January 2024. This strengthens land rights for small-scale farmers, women and ethnic minorities, "explicitly safeguarding them in the process of land transition for socioeconomic development and ensuring access to land resources."<sup>427</sup> It provides for public participation in land use planning and land acquisition and provides regulations for land expropriation, compensation and relocation.<sup>428</sup> The new law is aligned to forestry and agricultural practices and the Forestry Law to promote sustainable forest management and efficient agricultural land use. It "clearly stipulates allocating production, protection, and special-use forest land to communities".<sup>429</sup> The 2024 Land Law is intended to value land fairly and to increase compensation for large land acquisitions. Moving from a mainly bureaucratic approach it now incorporates market and social considerations and allows for direct negotiation between developers and individual land users.

421 Ironside, 2017

422 Ironside, 2017

423 Ironside, 2017

424 Ironside, 2017

425 Ironside, 2017

426 Mellac and Castellonet, 2015

427 MRLG, 2024

428 MRLG, 2024

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## ABOUT THIS PUBLICATION

This paper analyses case studies and provides evidence-based recommendations on how to prevent or provide durable solutions to displacement in customary contexts through housing, land and property (HLP) rights' interventions. The cases include voluntary return, local integration and relocation in other locations, and describe measures to prevent internal displacement.

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