

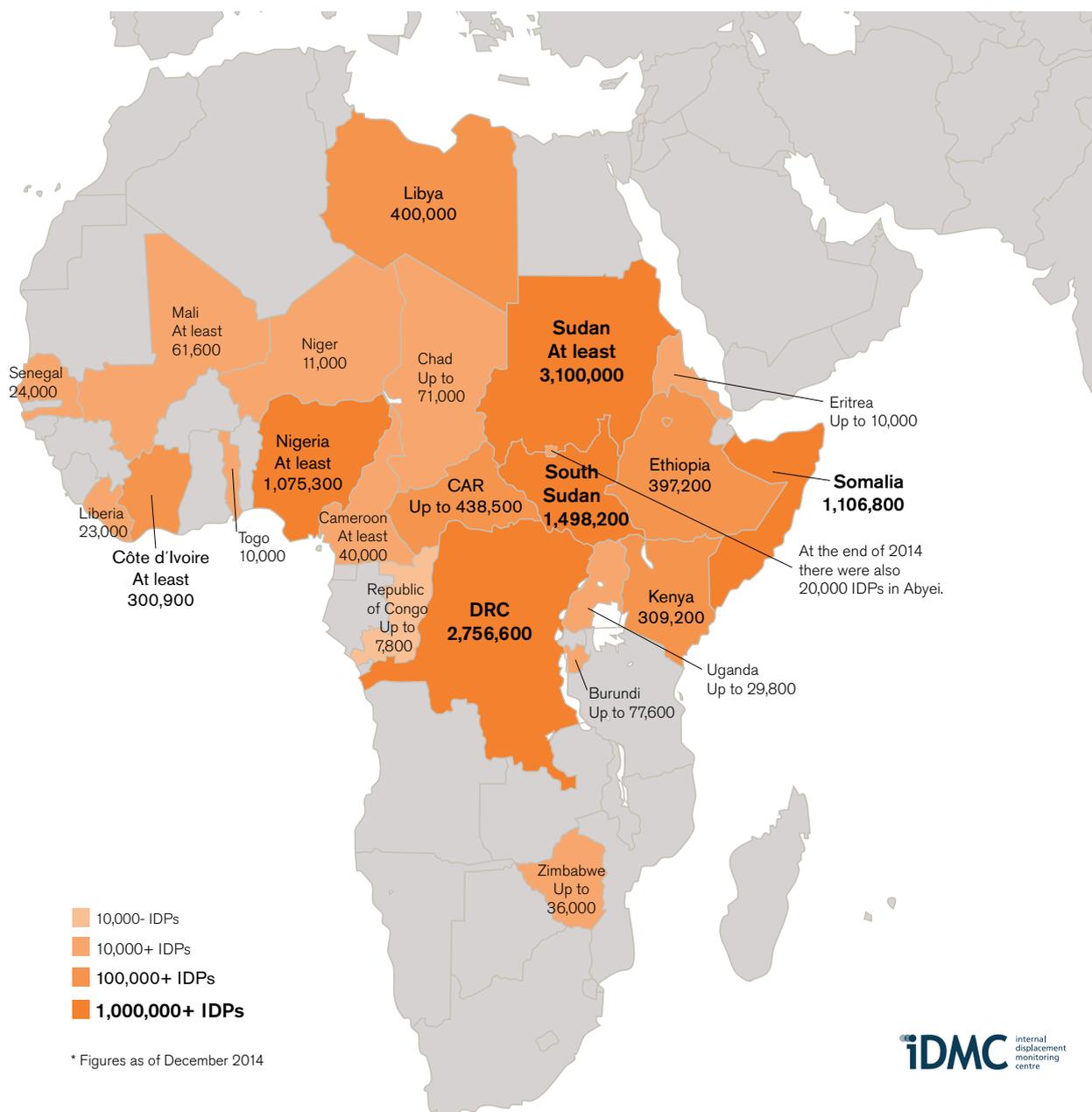


# THE KAMPALA CONVENTION: Make it work for women



NORWEGIAN  
REFUGEE COUNCIL

## Number of people internally displaced by conflict and violence at the end of 2014



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## SUMMARY

December 2015 marks the third Anniversary of the entry into force of the Kampala Convention<sup>1</sup>, the groundbreaking treaty that obliges African governments to protect the rights of people who are forced to flee their homes by armed conflict, violence, human rights violations and natural disasters<sup>2</sup>. By establishing state responsibilities, the convention is an important step towards protecting the almost 12 million internally displaced people (IDPs) across the continent.

As of December 2015, 40 of the AU's 54 member states had signed the convention and 25 had ratified it. By becoming parties, governments recognise that they are responsible for the protection and well-being of their country's IDPs.

At the same time, implementation of the convention proceeds at a slow pace. Displaced persons across Africa are too often the victims of discrimination and abuse. They are frequently denied the "inherent rights of internally displaced persons (IDPs)" that the convention strives to protect.

For the nearly six million women and girl IDPs in Africa, the violations are particularly acute. Based on their gender, they are often subjected to violence, forced evictions and discrimination, among other violations, with restricted access to redress.

A particular concern centers on women's rights to housing, land and property. Denial of marital property rights, exclusion from inheritance, and lack of access to justice afflict women across the continent. These practices prevent women from accessing housing, land and property rights at a time when their survival can depend on it. They undermine women's survival strategies in displacement and prevent return and reintegration. This in turn limits their potential to engage in their country's recovery and propagates a cycle of poverty and violence, which stifles development. For many displaced women, the physical, sexual, structural and social violence they experience lasts well beyond the signing of any peace agreements.

**At the third anniversary of the convention's entry into force, the call for the African Union and its Member States is to promote the full implementation of the convention, and to ensure women and girls benefit from its protections.**

**This report makes recommendations on how to improve this protection for displaced women and girls, with a focus on housing, land and property rights. It offers four ways that governments can meet their obligations for displaced women by enforcing existing national laws and implementing legal reforms to comply with the convention.**

1 African Union Convention for the protection and assistance of internally displaced persons in Africa [http://www.au.int/en/sites/default/files/treaties/7796-file-african\\_union\\_convention\\_for\\_the\\_protection\\_and\\_assistance\\_of\\_internally\\_displaced\\_persons\\_in\\_africa\\_kampala\\_convention.pdf](http://www.au.int/en/sites/default/files/treaties/7796-file-african_union_convention_for_the_protection_and_assistance_of_internally_displaced_persons_in_africa_kampala_convention.pdf)

2 See analysis by the Internal Displacement Monitoring Centre (IDMC) <http://www.internal-displacement.org/sub-saharan-africa/kampala-convention/>

The report is based on NRC's extensive work in some of the African countries with the highest levels of displacement, including South Sudan, the Democratic Republic of Congo (DRC) and Somalia, which together have over 5.3 million IDPs.<sup>3</sup> NRC's legal assistance programmes in South Sudan, Liberia, Somalia, DRC, the Central African Republic and Côte d'Ivoire have identified a number of significant challenges for IDP women and practical ways to support them.

To implement these recommendations requires political will from governments to continue what they started in 2009 when the Kampala Convention was born. And it requires an eye towards the needs of displaced women and girls, who face major obstacles and abuses before, during and after displacement.

The recommendations here are also consistent with the vision set out in the **African Union's Agenda 2063**, which emphasises a future of gender equality, where women are able to fulfill their potential as drivers of change. To achieve this requires an end to harmful practices that deny displaced women their housing and land rights. Fortunately, national laws prohibiting these practices and strong equality guarantees in national constitutions can be used to support these goals and implementation of the Kampala Convention for IDP women.

African Union Member States must employ a more comprehensive strategy to protect Africa's IDP women, to support their potential to rebuild their lives and to catalyse change in post-conflict economies. The 2015 Year of Women's Empowerment towards Africa's Agenda 2063, followed by the 2016 African Year of Human Rights, in particular focus on the rights of women, as well as the Second Plan of Action on the implementation of the Kampala Declaration, are opportunities to bring the convention to life for Africa's displaced women.

## HOUSING, LAND AND PROPERTY (HLP) RIGHTS

HLP rights are about having a home, free from the fear of forced eviction; a place that offers shelter, safety and the ability to secure a livelihood. HLP rights are referenced and defined in several international human rights instruments and include a number of universally-recognised human rights, particularly the right to adequate housing. More than four walls and roof, adequate housing means the ability to live somewhere in security with protection against forced eviction, harassment and other threats.

Under international human rights law, women's rights to own, manage, enjoy and dispose of property are inherent in the rights to be free from discrimination, to an adequate standard of living (including adequate housing), to enjoy financial independence and to earn a livelihood. Taken together, this bundle of rights goes some distance in securing women's rights to land, housing and property.

<sup>3</sup> IDMC Global Overview 2015: People internally displaced by conflict and violence <http://www.internal-displacement.org/publications/2015/global-overview-2015-people-internally-displaced-by-conflict-and-violence>

## RECOMMENDATIONS

1. **To promote the protection of displaced persons in Africa, especially vulnerable populations, NRC recommends that all AU Member States sign, speedily ratify and implement the Kampala Convention.**
2. **To strengthen the Second Plan of Action for implementation of the Kampala Convention, NRC recommends that convention signatories fully integrate the monitoring and review of displaced women's housing, land and property rights into the plan.**

To meet their obligations under the Kampala Convention and to support IDP and returnee women's ability to secure a home and livelihood for themselves and their families, NRC recommends that convention signatories:

3. **Eliminate discriminatory and harmful practices, as defined in the convention, that displace women and prevent their return;**
  - a. Repeal laws that discriminate against women and adopt new laws that protect women's land and property rights;
  - b. End practices that exclude women from obtaining inheritance and marital property;

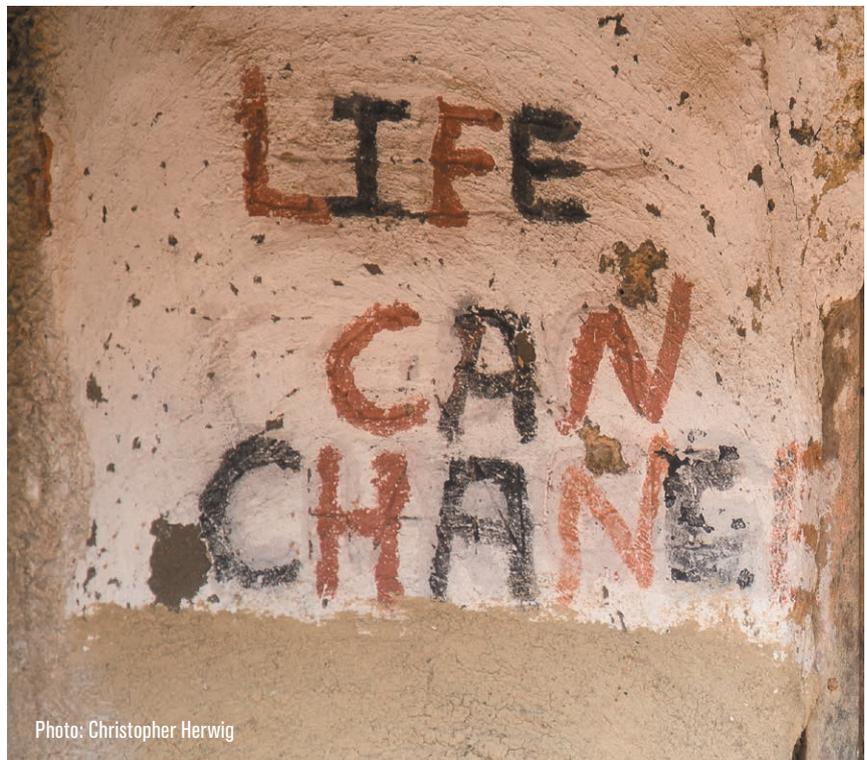


Photo: Christopher Herwig

- 4. Remove barriers that women face to access justice for housing, land and property rights;**
  - a. Facilitate women's access to documentation for land and property;
  - b. Prohibit discriminatory cultural practices.
- 5. Take steps to support displaced women escape of the cycle of poverty;**
  - a. Include women in decision making about the allocation of limited social and economic resources;
  - b. Recognise women's right to own and control property.
- 6. Monitor gender indicators;**
  - a. Gather and analyse data to monitor the impact of displacement on women;
  - b. Document gender discrimination in national marital property regimes and land administration e.g. land reform policies.



# FOUR WAYS TO MAKE THE KAMPALA CONVENTION WORK FOR WOMEN

## 1 ELIMINATE HARMFUL PRACTICES THAT DISPLACE WOMEN AND PREVENT THEIR RETURN

The Kampala Convention defines harmful practices as: “*all behavior, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education.*”<sup>4</sup>

The Kampala Convention makes a significant advance of international law by recognising harmful practices as a cause of displacement. These practices disproportionately affect women and contribute to the cycle of violence continuing long after conflict ends. The economic, social and structural violence women experience from their families and communities – the denial of HLP rights – is yet to be fully addressed in practice as a cause of displacement. Neither is it acknowledged as a source of continued destitution upon return.

NRC’s experience shows that these practices are widespread among the displaced communities we work with, including the following:<sup>5</sup>

- ▶ Eviction of widows
- ▶ Denial of marital property rights, particularly in divorce
- ▶ Exclusion from inheritance
- ▶ Omission from title deeds and lease agreements
- ▶ Inability to access justice for violations of housing, land and property

Despite most member states’ national laws guaranteeing equality for women, the prevalence of these practices exacerbates challenges during displacement. Discriminatory practices which exclude women from

4 Kampala Convention, supra note 1, art. 4(4)(e).

5 NRC has published reports on displaced women’s HLP rights in the Central African Republic, Côte d’Ivoire, Liberia, and South Sudan. See [www.womenshlp.nrc.no](http://www.womenshlp.nrc.no)



Photo: Christopher Herwig

inheritance and marital property can also have serious consequences when IDPs return to rebuild their lives. Research shows that when women have secure homes they are better able to support their families<sup>6</sup>. They are also generally better able to cope with other demands connected to displacement.

## AGENDA 2063

Agenda 2063 recognises that in order to advance Africa's development: *All forms of gender-based violence and discrimination (social, economic, political) against women and girls will be eliminated and the latter will fully enjoy all their human rights. All harmful social practices (...) will be ended and barriers to quality health and education for women and girls eliminated.*

### What the Kampala Convention says

#### Art 4. 4

*All persons have a right to be protected against arbitrary displacement. The prohibited categories of arbitrary displacement include but are not limited to:*

#### ***e. Displacement as a result of harmful practices;<sup>7</sup>***

#### Art. 9. 1 1

*States Parties shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing, the following acts, amongst others:*

*d. Sexual and gender based violence in all its forms, notably rape, enforced prostitution, **sexual exploitation and harmful practices** (...)*

<sup>6</sup> NRC, *Life Can Change: Securing housing, land and property rights for displaced women*, 2014, <http://womenshlp.nrc.no>

<sup>7</sup> Kampala Convention, *supra* note 1, art. 4(4)(e). "Harmful practices" are defined as "all behavior, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education."



## 2 SUPPORT WOMEN TO ACCESS JUSTICE

NRC's experience shows that women face specific barriers to access justice when they try to claim their HLP rights. Access to justice and remedies for displaced women who suffer gender-based human rights abuses is also key to their achievement of durable solutions. Conflict and violence can have devastating consequences for women, but experience shows that opportunities also arise to promote equality during recovery, when lives are rebuilt.

Displaced women need to be able to claim their rights and seek redress for violations, including to challenge harmful practices such as exclusion from inheritance under customary law. Any reparations mechanism, set out in the convention, will only work if the many barriers to women accessing their housing and land rights are lifted. Establishing additional mechanisms cannot replace a state's obligations to provide displaced women with effective remedies when their HLP rights are denied by their families and communities. Neither will additional legal frameworks for reparations be effective if women are prevented from realising their HLP rights under existing national law.

### Women's barriers to justice:

- ▶ Illiteracy and lack of education, including knowledge of human rights;
- ▶ Lack of documentation for land and housing;
- ▶ Discrimination that prevents access to customary justice;
- ▶ Application of customary law when it contradicts statutory law or Islamic Shari'ah;
- ▶ Costs and fees in statutory courts and for customary dispute resolution;
- ▶ Pressure from family and community not to challenge the status quo, and to accept customary practices.

For this reason, the United Nations Pinheiro Principles,<sup>8</sup> which are generally accepted as the setting out the basis for the right to restitution for displaced persons, emphasise that restitution programmes should implement a gender strategy, in particular where the status quo effectively discriminates against women's right to ownership, either in law or practice.<sup>9</sup>

The Pinheiro Principles also oblige states to ensure that restitution programmes, policies and practices recognise joint ownership rights of both male and female heads of household as an explicit component of the restitution process. This provision is designed to combat discrimination, which occurs when only male heads of households are recognised as rights holders or are provided with formal title to housing, as it leaves women without legal control over what should also be treated as their property.

This specific focus on women is absent from the reparations and compensation sections of the Kampala Convention. But Article 12 is significant in that it underscores a broader obligation on states to remedy harms suffered as a result of displacement, beyond HLP rights, and the focus on the right to restitution.<sup>10</sup>

*The type of damage is open-ended, and may well include dispossession of real or personal property or indeed, physical and mental harm. This opens up the potential for remedies for displacement in itself, for violent treatment, or for discrimination, or any other breach of human rights that is prohibited under the Kampala Convention and other instruments.*<sup>11</sup>

The challenge of providing effective remedies for IDPs in Africa should

8 Principle 4.2. The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons. See also the Handbook: Implementing the Pinheiro Principles, [http://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

9 *Ibid.*

10 Brookings Institution, *What does the Kampala Convention on Internal Displacement in Africa Mean for Housing, Land and Property Restitution*, Megan Bradley and Mike Asplet, October 25, 2012. <http://www.brookings.edu/research/opinions/2012/10/25-kampala-bradley>

11 *Ibid.*

not be underestimated. This underscores further the importance of a commitment from states parties to ensure equal access to justice for women.

## AGENDA 2063

*Agenda 2063 foresees an Africa of good governance, respect for human rights, justice and the rule of law. This can only be achieved when justice is equally available for displaced women.*

### What the Kampala Convention says

#### **Article 11**

*Obligations of States Parties relating to Sustainable Return, Local Integration or Relocation*

*4. States Parties shall establish appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons.*

#### **Article 12**

*1. States Parties shall provide persons affected by displacement with effective remedies.*

*2. States Parties shall establish an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards.*



Photo: Vincent Tremeau, NRC

## SUPPORT DISPLACED WOMEN TO ESCAPE THE CYCLE OF POVERTY 3

*The ability to use property is important to everyone, regardless of gender. Access to property not only increases women's financial security, but is also associated with their increased bargaining power within the household. Access to assets has also been linked to gains in family welfare, such as children's health.*<sup>12</sup>

Demographic changes as a result of conflict mean that greater numbers of women are heading households, providing opportunities for women to lead their families through conflict and towards recovery.

But the widespread violence that internally displaced women face, both personal and systemic, contributes to their poverty, livelihood insecurity, and social exclusion. The denial of HLP rights is part of this, causing further marginalisation, exclusion from peace building processes and undermining development. Given that women's HLP rights are closely

<sup>12</sup> World Bank, *Women, Business and the Law*, p.12. <http://wbl.worldbank.org>

linked to other elements of durable solutions, such as access to livelihoods, safety, security and an adequate standard of living, failure to uphold them constitutes a serious impediment to women's prospects for return, local integration or settlement elsewhere.<sup>13</sup>

As a result, vulnerable groups such as IDP women may be excluded from participating in decision making about the allocation of limited social and economic resources. An important component of this is the right of IDPs to participate in decisions that affect their lives, which is included in the convention. By drawing attention to IDPs with special needs, the convention reiterates the need to assess the specific vulnerabilities and capacities of IDPs and host communities.<sup>14</sup> Such assessments form the basis of a protection response. They should be conducted in a participatory manner, ensuring that representatives of all members of displaced and host communities are consulted and are able to present their own concerns and proposed solutions.<sup>15</sup> Women in situations of internal displacement need an implementation agenda that targets their needs and, in doing so, actively encourages their meaningful participation in all stages of the process.

## AGENDA 2063

*Agenda 2063 envisages women being empowered in all spheres of life and playing an important role as drivers of change (principles 44 and 45).*

### What the Kampala Convention says

#### **Art. 9.2 States Parties shall:**

Secure land rights for all are a critical component of the **Post-2015 Sustainable Development Goals:** Ownership and control over land and other forms of property and inheritance are seen as essential to ending poverty.

*a. Take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security;*

*c. Provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases;*

*k. States Parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance;*

<sup>13</sup> IDMC Global Overview 2015: People internally displaced by conflict and violence <http://www.internal-displacement.org/publications/2015/global-overview-2015-people-internally-displaced-by-conflict-and-violence>

<sup>14</sup> IDMC-NRC Kampala Convention Progress Report, 2013, p. 18 <http://www.internal-displacement.org/publications/2013/the-kampala-convention-one-year-on-progress-and-prospects>

<sup>15</sup> *Ibid.*



Photo: GohounBenoit, NRC

## MONITOR GENDER INDICATORS

# 4

Signatory states to the Kampala Convention have been called upon to establish a Conference of State Parties to monitor and review the convention's implementation. The conference will be required to submit reports to give effect to the convention through legislative and other measures. NRC recommends that the Conference of States Parties incorporate key indicators on women and girls to measure progress:

### 1. Collect gender disaggregated data on IDPs

States parties should develop indicators, conduct training and mainstream the collection, analysis and dissemination of data on the displacement of women that could be used to measure policy effectiveness and evidence-based decision making. Without this it is difficult to understand the gender implications of displacement and devise interventions that cater to women's needs.

As the Internal Displacement Monitoring Centre (IDMC) has concluded, given that sex disaggregated data provides key indicators for effective and well-targeted responses, the shortage of such data "constitutes a considerable obstacle to addressing IDP's protection and assistance needs and facilitating their pursuit of durable solutions."<sup>16</sup>

### 2. Monitor harmful practices that undermine women's HLP rights

1. Document discrimination in national marital property regimes and land administration e.g. land reform policies;
2. Monitor the provision of free legal assistance for women.

### What the Kampala Convention says

#### Art 5.5

*States Parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities, in cooperation with international organizations or agencies.*

<sup>16</sup> IDMC Global Overview 2015: People internally displaced by conflict and violence <http://www.internal-displacement.org/publications/2015/global-overview-2015-people-internally-displaced-by-conflict-and-violence>

## NRC'S INITIATIVE ON DISPLACED WOMEN'S HLP RIGHTS

womenshlp.nrc.no

The Norwegian Refugee Council (NRC) is an independent, international, humanitarian non-governmental organisation, which provides assistance and protection as well as contributes to durable solutions for refugees and internally displaced people worldwide. In 2011 NRC embarked on a five-year initiative to increase displaced women's access to HLP rights through improved programming and advocacy.

The project's evidence base is drawn from NRC's extensive operational experience over 15 years as a provider of information, counselling and legal assistance (ICLA program) related to HLP rights in 20 countries afflicted by conflict or recovering from it. Studies involving assessments of NRC's legal cases and commissioned country research have been conducted in Afghanistan, the Central African Republic, Côte d'Ivoire, Lebanon (Palestinian refugees), Liberia, Gaza and South Sudan, and also with Colombian refugees in Ecuador, Panama and Venezuela and Syrian refugees in Lebanon and Jordan. For the country reports and more information, visit [womenshlp.nrc.no](http://womenshlp.nrc.no).

The rationale for focusing on displaced women's HLP rights stems from the growing understanding that women in the countries where NRC operates are already disadvantaged in many areas, including access to HLP rights. Factors such as displacement, poverty and being a single head of household often serve to exacerbate discrimination and therefore these groups warrant specific programmatic and policy interventions.

### NRC Publications on Displaced Women's HLP rights in Africa

**Côte d'Ivoire** – Displaced women's rights to housing, land and property in post-conflict western Côte d'Ivoire, NRC, 2015

**Central African Republic** – Consequences of Evicting Widows: Displacement and women's housing, land and property rights in the Central African Republic, NRC, 2015

**Liberia** – Violence Against Women and Housing, Land and Property in Monrovia, NRC, 2013

**South Sudan** – Nowhere to Go: Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan, NRC, 2013



## **NRC'S WORK WITH THE AFRICAN UNION**

In 2013- NRC signed a comprehensive Memorandum of Understanding (MoU) with the African Union Commission (AUC) to closely collaborate on humanitarian issues. The signed MoU articulates the role that the AUC and NRC can play jointly, inter alia, enhancing the capacity of the AUC, African Union (AU) member states, and the Regional Economic Communities (RECs) to reduce risk of humanitarian disaster situations, respond to humanitarian emergencies, document displacement related issues and situations, strengthening policy on the rights of the displaced, and strengthening international dialogue on displacement related issues. It also specifies modes of information exchange and consultation.

The Pan African Liaison Office in Addis Ababa, Ethiopia leads NRC's harmonised and coordinated approach to regional institutions and partners in Africa; in addition, the Pan African liaison Office will ensure and oversee the attainment of the objectives as outlined in the signed MoU.

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