



DISPLACED
WOMEN'S RIGHTS
TO HOUSING, LAND AND PROPERTY

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



NORWEGIAN
REFUGEE COUNCIL

Authors: Safiatu Ayandunke Alabi, Laura Cunial, Kirstie Farmer and Kelsey Jones-Casey

Acknowledgements

The authors would like to thank NRC staff in Côte d'Ivoire who provided the information for this report. We would also like to express our sincere appreciation to the many women and men who NRC works with for sharing their personal stories and expertise to shed light on this important issue.

Editor: Tim Morris

Photographs: Gohoun Benoit, and Christopher Herwig

The research was funded by the UK Department for International Development and the Norwegian Ministry of Foreign Affairs. The views expressed do not necessarily reflect the policies of either the UK or Norwegian governments.



**NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS**



NRC'S INITIATIVE ON DISPLACED WOMEN'S HLP RIGHTS

The Norwegian Refugee Council (NRC) is an independent, international, humanitarian non-governmental organisation, which provides assistance and protection as well as contributing to durable solutions for refugees and internally displaced people worldwide.

In 2011, NRC embarked on a five-year initiative aiming 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, for over 15 years, as a provider of information, counselling and legal assistance (ICLA) 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, Palestine (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

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. Furthermore, research has shown that when women have secure rights to land, they are able to realise many other benefits for themselves and their families. These include improved nutrition and health, better access to credit, decreased susceptibility to domestic violence and strengthened intra-household bargaining positions.¹

¹ Landesa. Women's Secure Rights to Land: Benefits, Barriers, and Best Practices, pp. 1-2.
<http://www.landesa.org/wp-content/uploads/Landesa-Women-and-Land-Issue-Brief.pdf>



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

TABLE OF CONTENTS

International legal protection of women's housing, land and property rights	4
ICLA In Côte d'Ivoire	6
Background	7
1. INTRODUCTION	8
2. LAND GOVERNANCE	11
3. LAND DISPUTE RESOLUTION	14
4. NATIONAL LEGAL PROVISIONS RELEVANT TO WOMEN'S HLP RIGHTS	16
4.1 Equality in the Constitution	17
4.2 Responsibility for marital property in statutory marriage	17
4.3 Inheritance law	17
4.4 Customary law excludes women	18
4.5 The 1998 land law reinforces customary land ownership by men	19
5. MAIN CHALLENGES FOR WOMEN'S HLP RIGHTS IN COTE D'IVOIRE	20
5.1 Land registration processes exclude women	21
5.2 A widow's fate is not her own – discriminatory inheritance practices	22
5.3 Divorced and abandoned women lose access to land and livelihoods	23
5.4 Women lack access to justice for HLP rights violations	24
5.5 Practical barriers resulting from socio-economic disadvantages	25
6. CONCLUSION	26
7. RECOMMENDATIONS	28
7.1 Recommendations for the government of Côte d'Ivoire	29
7.2 Recommendations for NGOs and civil society	29
Bibliography	30

INTERNATIONAL LEGAL PROTECTION OF WOMEN'S HOUSING, LAND AND PROPERTY RIGHTS

Housing land and property (HLP) rights are about having a home, free of 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 which include a number of universally recognised human rights, particularly the right to adequate housing. Since the early 1990s humanitarians have called attention to the importance of HLP rights in providing durable solutions for both internally displaced persons (IDPs) and refugees.

In international 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 way towards securing women's HLP and inheritance rights. It should be noted that neither the right to land nor the right to inheritance appear as independent rights in international human rights law. For this reason, the right to housing is particularly important in the struggle for women's HLP rights, as is the principle of non-discrimination.

More information on HLP rights in humanitarian response and on the international legal frameworks is available in Sanchez Bermudez, M, Cunial, L and Farmer, K, 2014 *Life Can Change: Securing housing, land and property rights for displaced women*, Norwegian Refugee Council.

ICLA IN CÔTE D'IVOIRE

The NRC's Information, Counselling, and Legal Assistance (ICLA) Programme assists displaced persons to claim and fulfil their rights, reach durable solutions and prevent further displacement through application of information and legal methods.

Since the conflict of 2002 and the election crisis in 2010 in Côte d'Ivoire, NRC has worked on HLP issues, beginning with an internal study on rural land issues in the west of the country. Based on this study, the ICLA programme has focused on Collaborative Dispute Resolution (CDR)² to resolve disputes related to land and to provide civil documentation to residents living in western Côte d'Ivoire. The ICLA team now works in collaboration with local customary authorities who are responsible for most HLP dispute resolution. In particular, NRC provides support for women to resolve their cases with customary authorities.

Since 2013, NRC has operated a cross border project in western and south-western Côte d'Ivoire and, together with the Danish Refugee Council, has identified communities for particular support of women's HLP rights. Another project funded by the European Commission implements activities on women's HLP in collaboration with VNG international³ and AVICOMCI⁴ in western Côte d'Ivoire. The programme includes training customary and state authorities on CDR methodology as well as awareness campaigns on prevention of land disputes and women's HLP rights. Direct mediation services are provided for contested cases with a special focus on women's HLP disputes. NRC also advocates for securing land tenure and alternative solutions for people evicted from protected forests.

Following this study, NRC has documented more women's HLP cases in order to support advocacy initiatives including workshops on women's HLP rights in western Côte d'Ivoire. The conclusion of this study will be presented to the government. The recommendations will be disseminated and discussed with relevant stakeholders for advocacy for long-term solutions, including resolution of HLP issues for displaced women after the planned closure of NRC's programme in Côte d'Ivoire.

² Collaborative dispute resolution (also referred to as alternative dispute resolution) mainly includes negotiation, mediation and arbitration.

³ Association des municipalités Néerlandaises

⁴ Association des Villes et Communes de l'Ouest Montagneux

BACKGROUND

The purpose of this study was to identify the challenges facing displaced and returnee women living in western Côte d'Ivoire in exercising their HLP rights. The information is from interaction with communities in which NRC works in western Côte d'Ivoire. It is important to note that since most of NRC's work is in rural areas, the focus is predominantly on access to land.

The communities include those described in Ivoirian parlance as *autochtones* (original residents), *allochtones* (people who have migrated from other regions of the country) and *allogènes* (immigrants from other countries; foreigners). The term 'migrant' is here used to refer to both *allochtones* and *allogènes*.



INTRODUCTION

Once relatively prosperous, Côte d'Ivoire is still emerging from crisis. Two waves of armed conflict and violence – in 2002 and following presidential elections in 2010 – both led to massive population upheaval, displacing around a million people on each occasion.

Many observers regard the numerous recurrent land disputes, particularly in the fertile west, as key drivers of displacement and conflict. Questions about land ownership are central to notions of belonging and identity. Land is more than a means of livelihood in Côte d'Ivoire for it also holds significant economic, cultural, social and religious meaning.

In an attempt to increase the export of cocoa, timber and coffee produced in the west of the country, national authorities began encouraging migration to the region in the 1960s. Migrants came both from within Côte d'Ivoire and from neighbouring countries, mainly Burkina Faso and Mali, and the local population swelled by almost a third. Traditional leaders allocated land to *allochtones* and *allogènes* despite it being considered an inalienable asset under customary law. The result was confusion as to the true nature of transactions and the transfer of rights involved. Many buyers asserted that they had acquired ownership rights, while sellers insisted they had only leased their land.

Subsequent conflicts have exacerbated tensions over land between *autochtones*, *allochtones* and *allogènes*. The process of formal land registration has been disrupted by conflict and insufficient capacity of local government. Tensions between land use and land ownership have strained the land administration systems in western Côte d'Ivoire since the beginning of the 1990s. During the 2010-2011 post-election crisis the situation became even more acute, with both sides trying to use ethnicity and its relevance to land disputes to their political gain. Local youth saw the law as a means to reclaim land their elders had sold or ceded to migrants.

AUTOCHTHONOUS WOMEN FEAR ACCESSING LAND

Autochthonous women in western Côte d'Ivoire repeatedly talked about their fears of going to their land plots (*campements*) located outside villages on the edge of forests. Some reported they were afraid “because of what happened during the crisis” or that they felt threatened due to on-going communal tensions. As one woman said:

“We used to go to campements for weeks at a time and return only for ceremonies at the weekend. Now we are afraid to go there because migrants have taken them over.”

Improving security has allowed many internally displaced persons (IDPs) to return to their home areas since mid-2011, but more than 300,000 still live in displacement⁵ and around 38,000 refugees are still in Liberia.⁶ Most IDPs are with host families or have rented their own accommodation, but others squat or live in urban slums, where they are at risk of eviction. Nearly a quarter of the houses damaged or destroyed in 2010-2011 are still to be rebuilt. Returning IDPs and refugees often find their homes, land and plantations have been occupied or fraudulently sold in their absence. Inter-communal tensions are still high as a result and remain a major obstacle to peace building.

Furthermore, many IDPs, returning IDPs and refugees still have humanitarian needs related to their displacement which tend not to be taken into account by national and international actors. IDPs face a range of obstacles to achieve durable solutions, including difficulties in obtaining documentation and accessing employment, livelihoods, land and property restitution mechanisms. This perpetuates their displacement and fuels ethnic tensions in return areas.⁷

Land disputes are frequent in western Côte d'Ivoire due to weak land administration institutions and tensions between different ethnic and national groups. These tensions reflect the larger political and national conflicts that divide the country. In addition, in recent years, environmental factors and specifically reduction in agricultural yields have become an important factor shaping land disputes.⁸ Disputes are driven by a combination of less available land as a result of large scale cash-cropping as well as decreasing fertility, as crops such as rubber drain resources from the soil.

5 Internal Displacement Monitoring Centre, 2015, Côte d'Ivoire IDPs figure analysis, <http://www.internal-displacement.org/sub-saharan-africa/cote-divoire/figures-analysis>

6 UNHCR <http://data.unhcr.org/liberia/regional.php>

7 For more background to conflict and displacement in Côte d'Ivoire see Internal Displacement Monitoring Centre, 2015, Côte d'Ivoire: new commitments signal hope for 300,000 still internally displaced <http://www.internal-displacement.org/sub-saharan-africa/cote-divoire/2015/cote-divoire-new-commitments-signal-hope-for-300000-still-internally-displaced>

8 Hartman, A. (2012) Land Conflict and Food Security in the Liberian-Ivoirian Border Region, NRC, p.20. http://www.ivorycoast.nrc.no/data/doc_res/NRC_report_e_LR.pdf.pdf



LAND GOVERNANCE

Land governance in Côte d'Ivoire reflects colonial history, post-independence economic development policy and policies of recent governments. The institutions that govern land are divided into two groups: the statutory system, based on statutory law and the customary system. This has been described as “an extreme form of legal pluralism” in which customary and statutory systems overlap and sometimes collide.⁹ Customary institutions and laws dominate land matters, especially in rural areas characterised by the “virtual absence of state law and unpredictable interventions of administrative authorities.”¹⁰

Customary rights were rescinded in 1935 when the state became the owner of unregistered land “concerning almost all of the pastoral and agricultural land; and the dispenser of private property (by licensed registration) and the dispenser of rights of land usage (by concession)”. Since then statutory law alone has governed all forms of land transaction and transfer.¹¹

However, despite the 1935 decree customary law continues to govern land rights in the majority of the country, particularly in rural areas. A rural land law (*loi relative au domaine foncier rural*)¹², passed in 1998, set out to incorporate customary law into statutory law after these customary land tenure systems proved unable to manage the increasing number and intensity of land-related conflicts.¹³ The law included two very important provisions that have shaped the nature of land governance ever since:

1. It provides landowners with a ten-year period in which they can assert their claim to their customary rights and register their property (acquiring legal title deeds).
2. It also extends the possibility of land ownership to all citizens of Côte d'Ivoire, but excludes all non-Ivorians.¹⁴ Article 1 of the law concerning rural land specifies that:

“only the State, public authorities and national citizens of Côte d'Ivoire are permitted to (...) become landowners” of land belonging to the rural land domain.

9 Crook, Richard, Simplice Affou, Daniel Hammond, Adja F. Vanga, and Mark Owusu-Yeboah. (2007). The Law, Legal Institutions and the Protection of Land Rights in Ghana and Côte d'Ivoire: Developing a more effective and equitable system, p. 32. <http://www.ids.ac.uk/files/Rr58.pdf>

10 Ibid.

11 Aline Aka, (2001) “Analyse de la nouvelle loi de 1998 au regard de la réalité foncière et de la crise socio-politique en Côte d'Ivoire”, in Cahiers d'anthropologie du droit, p.117. <http://a.c.a.j.free.fr/AKA.html>

12 1998 Loi relative au domaine foncier rural (Loi n°98750 du 23 décembre 1998 modifiée) http://www.droit-afrique.com/images/textes/Cote_Ivoire/RCI%20-%20Domaine%20foncier%20rural.pdf

13 Hartman, *op. cit.*, p.14

14 Article 1 Loi relative au domaine foncier rural

However, this law states that non-Ivoirians can access land through rental agreements or long-term leases.¹⁵

The law also provides guidance on the conversion of customary rights into statutory rights. Specifically, it states that land ownership is established through land registration and obtaining a land certificate (and later title), which can be an individual or collective document. Unfortunately, this is, almost without exception, not implemented.¹⁶ For example, until December 2014, only 107 certificats fonciers (land certificates) had been issued in the Montagnes district.¹⁷

The law establishes village land management committees (*Comités Villageois de Gestion Foncière Rurale*) to investigate land claims. However, they only exist in certain places, and are often non-functional.¹⁸ In addition, the committees are not representative, generally lacking guidelines for composition of membership and there are no quotas for women, *autochtones*, *allochtones* and *allogènes*.

Unfortunately, the 1998 Rural Land Law has not prevented land sales, extra-legal land allocation, or the allocation of land under flexible or unclear terms. Overall, land registration has proved to be a huge challenge in Côte d'Ivoire and not only because the conflict disrupted the process. While the government had hoped to register all land by 2013 (later extending the deadline to 2023), this target is unlikely to be achieved because of insufficient local resources.

WIDOW DENIED INHERITANCE

TH¹⁹, a 43-year old mother of four living in Guinkin village in the sub-prefecture of Guiglo was widowed in 2010. She is fighting to save a three hectare plantation she inherited from her husband. His cousins now claim that they merely allowed her late husband to use the land but she asserts that when he was alive they never claimed the property. After his death, they sold the plantation to a buyer who started using it without obtaining her permission. She disputed the legality of the purchase but received no support from the village leadership. As a result of intervention by ICLA staff, the village leaders ruled in her favour. However, in the face of threats and other pressures, they have again blocked her attempts to regain possession. She says "I am alone, with four mouths to feed, while my husband's cousins enjoy the fruits of the sale of his land".

15 This means that a non-Ivoirian who has made a customary land purchase may not have this purchase transformed into a title deed. At best, s/he can expect to obtain a long-term lease with favourable conditions, but which still imposes the payment of rent for land that he considers his/her own. The non-Ivoirian who is a beneficiary of a customary transfer may enjoy a long-term lease if a "statement of continuous and peaceful existence of customary rights" is made as part of an application for a land certificate, and if his guardian considers the non-Ivoirian to be in good faith. However when non-Ivoirians were already bearers of formal title deed prior to the enactment of the law, the law allows the title deed to be retained in a personal capacity. See McCallin, B., & Montemurro, M. (2009). *Whose land is this? Land disputes and forced displacement in the western forest area of Côte d'Ivoire*, p.7 <http://www.internal-displacement.org/publications/2009/whose-land-is-this-land-disputes-and-forced-displacement-in-the-western-forest-area-of-cote-divoire>

16 Hartman, *op. cit.* p.14.

17 Les directions départementales et régionales de l'agriculture du district des Montagnes

18 Hartman, *op. cit.* p.16.

19 Names have been changed



LAND DISPUTE RESOLUTION

Ninety eight per cent of land in western Côte d'Ivoire is governed by customary laws and institutions.²⁰ The vast majority of HLP disputes are handled through arbitration overseen by customary authorities, lineage chiefs and elders.²¹

NRC's work corroborates previous research findings that conflict and displacement have impaired the operation of these customary authorities and undermined their legitimacy.²² According to NRC's experience, currently in western Côte d'Ivoire there are several authorities (individuals and forums) to which land disputes can be taken. In addition to the multiple forums for resolving disputes, there is not always a clear hierarchy or appeal system linking dispute resolution mechanisms.²³ This creates opportunities for manipulation and forum shopping which officials at prefecture and sub-prefecture levels are trying to address. Land disputes in this region reflect not only the weakness of land administration, but also on-going tensions between indigenous communities and migrants.

NRC's experience confirms other studies that have found rural people do not see statutory law and institutions as accessible mechanisms for resolving disputes, instead perceiving them as "a last resort after exhausting all customary and informal dispute resolution procedures."²⁴ Thus statutory courts play a small role in land dispute resolution in Côte d'Ivoire, especially in more remote, rural areas. When plaintiffs do manage to take their cases to court, they face significant financial costs. According to a 2013 study commissioned by the US Agency for International Development "the judicial system is at best slow, expensive, ineffective and ineffectual; in recent years it simply stopped functioning at all."²⁵

ORPHAN ADMINISTERS LAND FOR YOUNG BROTHERS

OA²⁶ has two older sisters and two younger brothers. Before he died in 1994 her father asked her to help to ensure that her mother could continue using her land, as his brother did not live in their village. When her father died in 1996 she was the only unmarried daughter and thus returned to help her mother manage the land. In 1998 OA's uncle returned and claimed ownership of the land. The ensuing interfamilial dispute was brought to the village chief who ruled that OA was entitled to manage the land until such time as her brothers were old enough to do so. When asked whether she would consider trying to register the land in her own name she stressed that her role was simply to be a guardian of the land for her small brothers.

20 International Crisis Group. (2014). Côte d'Ivoire's Great West: Key to Reconciliation, p.4. <http://www.crisisgroup.org/en/regions/africa/west-africa/cote-divoire/212-cote-divoire-s-great-west-key-to-reconciliation.aspx>

21 USAID. (2013). Country Profile: Property Rights and Resource Governance: Côte d'Ivoire, p. 13. http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Cote_d%27Ivoire_Profile.pdf

22 McCallin & Montemurro, *op. cit.* p.25.

23 Hartman, *op cit.* p.17.

24 International Crisis Group, *op. cit.*, p.4.

25 USAID, *op. cit.* p.14.

26 Names have been changed

4



NATIONAL LEGAL PROVISIONS RELEVANT TO WOMEN'S HLP RIGHTS

EQUALITY IN THE CONSTITUTION

4.1

The **2000 Constitution of the Republic of Côte d'Ivoire**²⁷ guarantees all people the right to property²⁸. It also affirms rights set out in the 1948 Universal Declaration of Human Rights and the 1981 African Charter on Human and People's Rights, both of which assert equality between women and men.

RESPONSIBILITY FOR MARITAL PROPERTY IN STATUTORY MARRIAGE

4.2

Until 2013, the Civil Code in Côte d'Ivoire stated that men were the head of their family, and could choose where the family lives. The head of the family also had the right to manage and to dispose of marital property.

The 2013 revision of the code states that marital property is managed jointly between spouses.²⁹

Despite the amendments to the law, NRC has observed that husbands continue to administer marital property. This is due to the lack of awareness and understanding of the new law, as well as women's reluctance to request more control over marital assets. Most significantly, this law only applies to statutory marriages³⁰, which are the minority, particularly in rural areas. Thus in most households the ownership and management of property, by custom, falls to men.

INHERITANCE LAW

4.3

Under the inheritance law, both girls and boys have right to inheritance, regardless of sex.³¹ In terms of order of succession, according to the 1964 inheritance law, the surviving spouse is not the primary heir. Inheritance mainly passes to descendants (children and grandchildren), ascendants (father, mother and grandparents) and *collatéraux*

27 http://www.gouv.ci/doc/textes_fondamentaux/CONSTITUTION%20AOUT%202000.doc

28 Article 15 of the Constitution affirms that: "Le droit de propriété est garanti à tous. Nul ne doit être privé de sa propriété si ce n'est pour cause d'utilité publique et sous la condition d'une juste et préalable indemnisation."

29 Art. 69: " Le mariage a pour effet de créer entre les époux une communauté de biens à moins que ceux-ci ne déclarent expressément opter pour le régime de la séparation des biens ". La Loi 2013-33 25 janvier 2013. http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legal-framework/en/?country_iso3=CIV

30 Art. 19: "Seul le mariage célébré par un officier de l'état civil a des effets légaux. Le mariage coutumier n'a donc pas d'effet légal". Ibid.

31 La Loi n° 98-750 du 23 décembre 1998 relative au domaine foncier rural. Art. 5: Il n'y a pas de condition d'exclusion liée au sexe. "La propriété d'une terre du Domaine Foncier Rural se transmet par achat, succession, donation entre vifs ou testamentaire ou par l'effet d'une obligation". And Loi n° 64-379 du 7 octobre 1964 relative aux successions, Art. 22: Les enfants ou leurs descendants succèdent à leurs père et mère, aïeuls ou autres ascendants, sans distinction de sexe ni de progéniture et encore qu'ils soient issus de différents mariages ou nés hors mariage". http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legal-framework/en/?country_iso3=CIV

(siblings, aunts and uncles).³²

The law on inheritance refers to a “surviving spouse” as women in statutory marriages. Therefore as with the marital property law, the vast majority of women, married under customary law do not benefit from inheritance provisions.³³

4.4

CUSTOMARY LAW EXCLUDES WOMEN

In Côte d'Ivoire customary “land ownership” is most accurately described as a permanent use right that is transferred from one generation to the other through inheritance to male family members. Men hold these permanent use rights exclusively; women have no customary “ownership” right.³⁴

This is primarily because, according to certain customs, women cannot inherit land. Land is passed from men to their brothers or eldest sons, so that it remains within the male lineage. Women are expected to marry and leave the family. Customary law thus prevents land from passing to her husband's family. Despite the fact that statutory law states that all children can inherit land, in practice this is not respected in rural areas where only boys are considered heirs of deceased relatives.

Women may have access to land if their husband concedes a portion for the purpose of growing food or she may receive a plot of land as a wedding gift. Upon the death of their husband, women are either driven from their portion of land or are given a plot of land if they agree to marry a family member of their late husband. Thus, when women claim their rights with customary authorities they are very often rejected as they apply customary law.

WIDOW FORCED TO LEAVE NEW HUSBAND'S VILLAGE TO DEFEND HLP RIGHTS

During the events of 2003, OB³⁵ lost her husband and was forced to leave Koulaéou, village in the sub prefecture of Zou in the department of Bangolo with her eight-year-old son. When living conditions become difficult, she decided to return to the village only to find an *allogène* was working her husband's plot without authorisation. After approaching the village chief, an agreement was reached which confirmed OB's entitlement to the land but which allowed the *allogène* to work and maintain the land and to keep a proportion of the harvest. OB decided to re-marry, relocating to Duékoué with her new husband. Her brother-in-law then objected to OB continuing to receive any benefit from the land, claiming her entitlement had ceased when she had left the village and had joined another family. Only if she returned to the village, he insisted, could she rightfully claim a share of the harvest. Reluctantly she did so, seeing no other way to maintain her HLP rights and ensure the education of her son.

³² Article 8 of inheritance law states that “Les successions sont déferées aux enfants et descendants du défunt, à ses ascendants, à ses parents collatéraux et à son conjoint survivant, dans l'ordre et suivant les règles ci-après déterminées”.

³³ Law 64-379 of 7 October 1964 relating to inheritance provides that: “seul le mariage célébré par un officier de l'état civil a des effets légaux.” <http://www.loidici.com/Successions/successions.php>

³⁴ USAID, *op. cit.*

³⁵ Names have been changed

THE 1998 LAND LAW REINFORCES CUSTOMARY LAND OWNERSHIP BY MEN

The 1998 Rural Land Law broke new ground by recognising customary rights as the basis for future rural title deeds. It sets out the terms and conditions for the recognition and transformation of customary rights into private ownership. In order to transform a customary land right into private ownership, the land holder needs to submit a request for the issuance of a land certificate. This land certificate is not a land title but is part of the process of land registration.

However, the fact that customary land rights are part of the process of land registration³⁶ creates challenges for women. In the areas where NRC works, women do not have customary rights over land and are thus essentially excluded from the land registration process.

Article 5 of the 1998 Rural Land Law states that “ownership of land is transmitted by purchase, inheritance or donation during the donor’s lifetime or by will or following an obligation.” The law also recognises equality between women and men.³⁷ However, because the law is based on customary land tenure, which discriminates against women, the equality provisions are undermined.

Another challenge is the fact that there are no provisions about the representation of women in the *Comités Villageois de Gestion Foncière Rurale*.³⁸ These committees are responsible for the validation of land surveys and the resolution of land conflicts arising from requests for land certificates. The fact that women are not members means their needs are often not prioritised or understood. In addition, this lack of representation makes it more difficult for women to access these mechanisms and challenge discriminatory rulings.

36 Section 8 of the law makes custom an essential element in the delivery of the land certificate by introducing the principle of “peaceful and continuous existence of customary rights”: Article 7 : Les droits coutumiers sont constatés au terme d’une enquête officielle réalisée par les autorités administratives ou leurs délégués et les conseils des villages concernés soit en exécution d’un programme d’intervention, soit à la demande des personnes intéressées.

Article 8 : Le constat d’existence continue et paisible de droits coutumiers donne lieu à la délivrance par l’autorité administrative d’un Certificat Foncier collectif ou individuel permettant d’ouvrir la procédure d’immatriculation aux clauses et conditions fixées par décret.

37 Art. 5: Il n’y a pas de condition d’exclusion liée au sexe.

38 Décret n°99-593 du 13 octobre 1999 portant organisation et attributions des Comités de Gestion Foncière Rurale (CGFR) et par l’Arrêté n°041 MEMID/MINAGRA du 12 juin 2001 relatif à la constitution et au fonctionnement des Comités de Gestion Foncière Rurale . Aux termes dudit article, les CVGFR sont créés par décision du Sous-préfet.

Composition L’article 5 du décret susvisé dispose que « les chefs de terres sont obligatoirement membres des Comités Villageois ». En dehors de cette disposition, aucune indication ne nous permet de déterminer les autres membres des Comités Villageois de Gestion Foncière Rurale . Cependant, il serait souhaitable que le Comité soit représentatif de la typologie du village.

5



MAIN CHALLENGES FOR WOMEN'S HLP RIGHTS IN CÔTE D'IVOIRE

As in many other developing countries, women's access to HLP is limited and often depends on their relationship with a man. Despite the fact that women are not prevented from owning land in statutory law, in practice, very few do so. Custom prevents women in Côte d'Ivoire from having direct control of land: they cannot dispose of it, sell it or inherit it. Men handle all formal land negotiations, apart from instances such as women asking neighbours for use of a small piece of land. Women, having no official customary land governance roles, also have no land allocation power. They cannot decide who should receive land and what land should be given.³⁹

Women have largely borne the brunt of the country's conflicts and its protracted displacement crises. Sexual and physical violence against women has left a lasting impact, for many deeply affecting their sense of personal security. According to a survey carried out by NRC in 2012, 63 per cent of female Ivoirian refugees in Liberia stated that security concerns (rather than political constraints) made them unwilling to return to Côte d'Ivoire. The remaining 37 per cent stated that their main reason for not returning was because their house had been destroyed.⁴⁰

Women's already restricted HLP rights have thus been further limited by conflict and displacement and they are now more vulnerable to land disputes and risk of losing their land. The main challenges for displaced women and refugee returnee women in claiming their HLP rights are described below.

LAND REGISTRATION PROCESSES EXCLUDE WOMEN

5.1

As set out above, land registration processes reinforce discriminatory customary land rights, which are exclusively reserved for men. According to the 1998 Rural Land Law, the registration process starts with the issuance of a land certificate that can be individual or collective. However, the law makes custom an essential element in its delivery. In the area where NRC works, rural women do not have customary rights over land, essentially excluding them from land registration.

Furthermore, in cases where women try to gain title to land, both the cost and the process of land registration are prohibitive.

39 Maiga, Mariame. (2010). *Gender, AIDS and Food Security: Culture and vulnerability in rural Côte d'Ivoire*, pp. 51-54. A thesis submitted in fulfillment of the requirements for the degree of doctor at Wageningen University, The Netherlands. <http://edepot.wur.nl/150456>

40 Hartman, *op. cit.*, p.26.

WIDOW THREATENED WITH LOSS OF LAND

After her husband's death, a widow and her four children were asked to leave the property she had cultivated with her husband since their marriage. Male in-laws sought to repossess land they had lent her husband to grow cocoa. As a result of NRC mediation, customary leaders ruled in favour of the widow and her children. However, she continued to receive threats. Under pressure from her in-laws, the decision was reversed.

5.2

A WIDOW'S FATE IS NOT HER OWN – DISCRIMINATORY INHERITANCE PRACTICES

As a result of the war, many women are now heading displaced households, but their right to inherit from their husbands is not recognised in customary law, particularly if they have no male children. One of the primary issues is that when inheritance laws refer to a 'surviving spouse' they mean a woman married under civil law.⁴¹ Women married under customary law are therefore at risk of losing their homes and land if their husband dies or following divorce. However, even women in statutory marriages are not the primary inheritors and risk losing access to their husband's land.

Most vulnerable of all are widows, divorced and abandoned women who are often forced to leave their deceased or former husband's land or to remarry a relative or another villager in order to remain in their community and with their children.

Thus a widow's fate is not her own. Her in-laws and other community members make decisions about whether or not she is allowed to stay on her deceased husband's land. These decisions may be made based on factors such as the widow's migration status, socio-cultural identity, parental status (and the age of her children) and judgements about her personal behaviour.

If children are very young at the time of their father's death, they will remain with their mothers, even if she returns to her home village. However, if they are older, their paternal relatives may take them to be brought up by paternal uncles' families. If the male children are able to defend their rights to their father's land, they will eventually inherit. However, their father's male relatives may refuse to grant them their portion of the inheritance.

⁴¹ Article 39 of succession law states the following: "Seul le conjoint survivant non divorcé et contre lequel n'existe pas de jugement de séparation de corps passé en force de chose jugée, prend part à la succession comme il est dit aux articles 25, 28 et 35. A défaut de parents au degré successible, il succède pour le tout."

HARD CHOICES FACING MANY WIDOWS: LEVIRATE MARRIAGE OR EXPULSION

Women from all communities stated that the death of the husband is often taken as an opportunity for the widow's in-laws to take back land. They report women may be forced to return to their villages of origin should their husbands die.

NRC found several instances in *allogèneic* and *allochthonous* communities of levirate marriage – in which a widow marries a brother of a deceased husband. Widows are reportedly 'offered' such unions only if in-laws judge they have been 'good' – submissive and hard-working – wives. Informants indicated that widows have the right to refuse but that this generally entails having to leave the community.

As one woman noted: "If a widow was good while her husband was living, she may become his brother's first wife. But if she mistreated her brother-in-law, if she didn't feed him when he asked for food, or was rude to him, then he will mistreat her. And if you cannot marry him, then you must leave and return to your family."

Widows forced to return to their communities of origin face challenges. Some respondents reported that widowed daughters would be welcomed back and provided with use rights to land. Others, however, reported that returning widows may face serious resistance from their brothers, particularly in regions experiencing land scarcity.

Migrant women often have the burden of being double migrants because they have left both their families and also the community into which they married. Their rights as widows or abandoned women are particularly precarious. Many migrant women (especially first generation migrants) expressed uncertainty about what would happen if their husbands died.

DIVORCED AND ABANDONED WOMEN LOSE ACCESS TO LAND AND LIVELIHOODS

5.3

Women in Côte d'Ivoire continue to live with the consequences of violent acts committed against them during the conflict. According to Human Rights Watch, sexual violence against women has ruptured family and community ties. Some husbands have left their wives because of the shame inflicted by the taboo associated with sexual assault.⁴² With the breakdown of marriage, women are also likely to lose their access to land to farm, putting their livelihoods at risk. According to women NRC works with, divorcees lose all their worldly goods, having no right to claim anything.

Like widows, women in these situations are often forced by their in-laws to leave their homes and land and return home to their families.

⁴² Human Rights Watch. (2007). "My Heart Is Cut" Sexual Violence by Rebels and Pro-Government Forces in Côte d'Ivoire, pp. 94-95. <http://www.hrw.org/reports/2007/cdi0807/cdi0807web.pdf>

5.4

WOMEN LACK ACCESS TO JUSTICE FOR HLP RIGHTS VIOLATIONS

Women's scope for action to secure HLP rights and their personal security are significantly determined by local power dynamics, their spouses origins and who displaced whom during conflict. Many young women have had their education disrupted by the conflict and thus are not aware of relevant legislation and lack the skills and confidence with which to negotiate male-dominated systems.

Customary authorities

When women experience land-related disputes, they must (according to social customs) first take their case to the *grande famille* (extended family) to be resolved. In rare instances *autochthonous* women may refer disputes that are not possible to resolve within the family to an *autochthonous* customary authority or to the village land management committee. In addition, women can also try to resolve a dispute through the *Comités Villageois de Gestion Foncière Rurale*, although as noted above, women are often not represented in them.

Both *autochthonous* and migrant women stated that they experience extreme bias when attempting to resolve their land disputes, with unsatisfactory results. Even serious issues such as widows being forced from their land, were described as being dismissed by *autochthonous* leaders as "little matters," compared to larger-scale inter-community conflicts.

Statutory courts

Women who are aware of their rights and the gender equality enshrined in statutory law can fear physical retribution or social exclusion if they attempt to seek help from NGOs or statutory courts. If they, nevertheless, risk the consequences and attempt to take a dispute to the statutory justice system (or even to local community based organisations) they have to shoulder the additional cost of transport to the court, food and lodging for themselves and witnesses and, in some cases, administrative fees. Neither can they generally rely on customary justice systems to resolve intra-familial HLP disputes in their favour.

Women who have the courage to assert their right of access to land and plantations left by their husbands are rare. When they do so they can be ostracised and stigmatised by their communities.

PRACTICAL BARRIERS RESULTING FROM SOCIO-ECONOMIC DISADVANTAGES

NRC's experience shows that there is also a range of practical barriers to women's access to land.

Financial barriers

Poverty and lack of financial resources mean that women cannot access HLP rights independently from men in western Côte d'Ivoire. Despite the important role played by women in the rural economy, rewards are very small because men are the exclusive owners of the means of production. They remain the main decision-makers for the farming process from planting to selling.

The fact that rural women have difficulties in accessing land and have restricted sources of income has a negative impact on their ability to claim and enforce their land rights. Referring land issues to conflict resolution mechanisms has a cost whether at customary or judicial level. In the areas where NRC works submission of cases to customary authorities ranges from 2,000 to 10,000 CFA (the main currency used in west Africa, equivalent to US \$3.5-17). The costs of visiting the contested plots during the conflict resolution procedure are additional.

Recourse to the courts is even more problematic. They are often located far from villages; repeated hearings require time and financial resources for travel. The fees to register a complaint must also be taken into account. A widow who claims a land plot will have no source of income to pay for the procedure.

With regard to land tenure security, it is even more difficult to achieve for women. The land registration procedure provided for by the 1998 Rural Land Law is expensive.⁴³ Costs include the purchase of documents, payment for inquiry commissioners and members of village committees, demarcation costs and stamp fees. All of these are serious obstacles to realisation of women's HLP rights.

Illiteracy and lack of awareness of rights

Low literacy further impedes women's understanding of the law and their ability to claim HLP rights and acquire land in accordance with the 1998 Rural Land Law. In rural areas the rate of female illiteracy rate is high, for reasons related to their social status and limited education and income. The burden of domestic and agricultural work leaves little time for rural women to learn to read, write and calculate. Tradition and poverty are key factors in the selection of which children should be educated and the preference is given to boys.

⁴³ A case study showing the amount paid to obtain a land certificate is available on the NRC CDI website www.ivorycoast.nrc.no

6



CONCLUSION

Civil strife has exacerbated women's insecurity and inability to access their land and also increased tensions between *autochthonous* and migrant communities, further threatening migrant women's rights to land. Widows, divorced, and abandoned women are perhaps the most vulnerable, often being forced to leave their deceased husbands' land, or to remarry an in-law or another villager in order to remain in their community and with their children.

While the statutory land tenure framework does not exclude women from legally owning land, very few do. Under the customary system women are prevented from owning and inheriting land, which results in their exclusion from land registration processes.

As inter-community conflicts continue to simmer, women's intra-family disputes over inheritance and succession tend not to be resolved in unbiased and favourable ways within customary justice systems. Most women lack the means to access the statutory justice system, given the cost, time required and distance necessary to travel. This situation will only intensify over time. Already customary authorities in rural areas are complaining of land scarcity, saying, there is no more land to give. In such a context, women are viewed as just some of the many actors competing for a valuable and essential resource.

Despite the heavy cultural constraints, post-conflict recovery offers Côte d'Ivoire an opportunity to re-imagine the ways rural men and women share and manage natural resources and to build sustainable livelihoods not dependent on land. Research shows that when women have secure rights to land, they and their households realise many other benefits. These include improved nutrition and health, decreased vulnerability to domestic violence and increased involvement in household decision-making.



RECOMMENDATIONS

RECOMMENDATIONS FOR THE GOVERNMENT OF CÔTE D'IVOIRE

In accordance with its obligations under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)⁴⁴ the Government must not only repeal discriminatory laws but also work towards the elimination of prejudices and customary practices which discriminate against women.⁴⁵ The Government should therefore:

1. Mention explicitly the participation of women in institutional land management committees both at community and statutory level. In particular, ensure and systematically encourage the representation of women in the *Comités Villageois de Gestion Foncière Rurale*.⁴⁶
2. Include the name of both spouses on rural land documentation, rather than simply the head of household. This would support women's claims to land when divorced or widowed.
3. Reduce the costs and the procedures for rural land registration so as to allow women to secure their land rights.
4. Raise awareness about the equality of men and women in statutory marriages so that the law is applied in practice.
5. Revise the marriage law to recognise customary marriages and provide women in those marriages rights equivalent to those enjoyed by women in statutory marriages.

RECOMMENDATIONS FOR NGOS AND CIVIL SOCIETY

1. Sensitise rural communities about the rights women already have to land and encourage families to register land in the names of both spouses.
2. Support community-based organisations that assist women going through the statutory legal process in order to mitigate stigmatisation, threats, and violence that women face when they bring cases to court or other formal channels.
3. Humanitarian and development organisations should take into account specific challenges that women face when claiming their HLP rights in order to promote equitable access to land.
4. Campaign for the recognition of women's land rights under customary law. Advocacy should target women, customary and administrative authorities. Training and coaching should be provided.
5. Continue programmes to provide free legal assistance and support for women to claim access to justice for HLP rights.

⁴⁴ CEDAW (<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>) was ratified by Côte d'Ivoire in 1995.

⁴⁵ Article 5(a) obliges States Parties to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".

⁴⁶ Internal Displacement Monitoring Centre, 2012, *op. cit.* p.21.

BIBLIOGRAPHY

Aline Aka, (2001) Analyse de la nouvelle loi de 1998 au regard de la réalité foncière et de la crise socio-politique en Côte d'Ivoire, Cahiers d'anthropologie du droit, p.117. <http://a.c.a.j.free.fr/AKA.html>

Crook, Richard, Simplicie Affou, Daniel Hammond, Adja F. Vanga, and Mark Owusu-Yeboah. (2007). The Law, Legal Institutions and the Protection of Land Rights in Ghana and Côte d'Ivoire: Developing a more effective and equitable system. <http://www.ids.ac.uk/files/Rr58.pdf>

Hartman, A. (2012) Land Conflict and Food Security in the Liberian-Ivoirian Border Region, NRC. http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Cote_d_Ivoire/files/HLP%20AoR/Land_Conflict_and_Food_Security_Liberian_Ivoirian_Border_Region_2012_EN.pdf

Human Rights Watch. (2007). My Heart is Cut: Sexual Violence by Rebels and Pro-Government Forces in Côte d'Ivoire. <http://www.hrw.org/reports/2007/cdi0807/cdi0807web.pdf> (HRW 2007)

Internal Displacement Monitoring Centre, 2012, Atelier de réflexion: Foncier rural et solutions durables en Côte d'Ivoire Logement, terre et biens en situation de déplacement, p.21. https://www.nrc.no/arch/_img/9175942.pdf

International Crisis Group. (2014). Côte d'Ivoire's Great West: Key to Reconciliation. <http://www.crisisgroup.org/en/regions/africa/west-africa/cote-divoire/212-cote-divoire-s-great-west-key-to-reconciliation.aspx>

Maiga, Mariame. (2010). Gender, AIDS and Food Security: Culture and vulnerability in rural Côte d'Ivoire. A thesis submitted in fulfillment of the requirements for the degree of doctor at Wageningen University, The Netherlands. <http://edepot.wur.nl/150456>)

McCallin, B., & Montemurro, M. (2009). Whose land is this? Land disputes and forced displacement in the western forest area of Côte d'Ivoire, Internal Displacement Monitoring Centre <http://www.internal-displacement.org/publications/2009/whose-land-is-this-land-disputes-and-forced-displacement-in-the-western-forest-area-of-cote-divoire>

USAID. (2013). Country Profile: Property Rights and Resource Governance: Côte d'Ivoire. http://usaid-landtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Cote_d%27Ivoire_Profile.pdf



NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS



UKaid
from the British people