



# ASSESSMENT OF DISPUTE RESOLUTION STRUCTURES AND HLP ISSUES IN BORNO AND ADAMAWA STATES, NORTH-EAST NIGERIA

March 2018

NORWEGIAN  
REFUGEE COUNCIL

**NRC**



The **Norwegian Refugee Council** is an independent humanitarian organisation helping people forced to flee.

Prinsensgate 2, 0152 Oslo, Norway

#### **Authors**

Majida Rasul and Simon Robins  
for the Norwegian Refugee Council, September 2017

#### **Graphic design**

Vidar Glette and Sara Sundin, Ramboll

#### **Cover photo**

Credit NRC. *Aerial view of the city of Maiduguri.*

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Queries should be directed to [info@nrc.no](mailto:info@nrc.no)

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# Contents

<b>Executive summary .....</b>	<b>5</b>
Methodology .....	8
Recommendations .....	9
 <b>1. Introduction .....</b>	 <b>10</b>
1.1 Purpose of the assessment.....	10
 <b>2. Background and key terms.....</b>	 <b>11</b>
2.1 Background to north-east Nigeria and the Boko Haram conflict.....	11
2.2 Key terms.....	13
2.3 Methodology.....	16
2.4 Profiles of research sites.....	17
 <b>3. Framework for analysis .....</b>	 <b>19</b>
3.1 Public international law.....	19
3.2 Access to justice and formal and customary justice.....	25
3.3 Considerations for a human rights-based approach.....	27
 <b>4. HLP issues in north-east Nigeria.....</b>	 <b>29</b>
4.1 In locations of displacement.....	31
4.2 In places of origin/on return .....	34
 <b>5. Dispute resolution in northern Nigeria .....</b>	 <b>35</b>
5.1 Nigerian domestic law (federal law) .....	35
5.2 Customary structures.....	39
5.3 Customary dispute resolution processes .....	45
5.4 State structures .....	50
 <b>6. Women and dispute resolution.....</b>	 <b>55</b>
6.1 Female community leaders .....	56
6.2 Intra-family disputes.....	57
6.3 Quality of process for women .....	58
 <b>7. Conclusions: Supporting dispute resolution in north-east Nigeria .....</b>	 <b>61</b>
7.1 Recommendations: A potential support programme for dispute resolution in north-east Nigeria .....	64
 Annex 1. Summary of data collected .....	67
Annex 2. Tenancy Agreement.....	69
 Endnotes.....	70

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## Acronyms

<b>ACHPR</b>	African Charter on Human and Peoples' Rights
<b>ADR</b>	Alternative Dispute Resolution
<b>ASC</b>	Amicable Settlement Corridor
<b>CDR</b>	Collaborative Dispute Resolution
<b>FG</b>	Focus Group
<b>FOMWAN</b>	Federation of Muslim Women's Associations of Nigeria
<b>HLP</b>	Housing, Land and Property
<b>ICC</b>	International Criminal Court
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICLA</b>	Information, Counseling and Legal Assistance
<b>IDP</b>	Internally Displaced Person
<b>IHL</b>	International Humanitarian Law
<b>IHRL</b>	International Human Rights Law
<b>JTF</b>	Joint Task Force
<b>KI</b>	Key informant Interview
<b>LAC</b>	Legal Aid Council
<b>LGA</b>	Local Government Area
<b>NBA</b>	Nigerian Bar Association
<b>NGN</b>	Nigerian naira (currency)
<b>NHRC</b>	National Human Rights Commission
<b>NRC</b>	Norwegian Refugee Council
<b>SGBV</b>	Sexual and gender-based violence
<b>UI</b>	User Interview
<b>UNHCR</b>	United Nations High Commissioner for Refugees



## Executive summary

Armed conflict between Boko Haram and the Nigerian State in the north-east of Nigeria has resulted in significant displacement, with a total of 1.75 million internally displaced persons (IDP) in the region, over 90 per cent of whom are in the Borno, Adamawa and Yobe states.<sup>1</sup> Disputes between IDPs and host communities around housing, land and property (HLP) issues have increased in frequency, with a particular impact on the most vulnerable among the displaced, such as widows and women in general. The most prevalent issues are challenges in paying rent leading to eviction and inappropriate treatment of tenants by landlords, such as arbitrary eviction and failure to maintain properties. This assessment represents an effort to understand both how dispute resolution structures in the concerned regions address such disputes, and what interventions by the Norwegian Refugee Council's (NRC) information, counselling and legal assistance (ICLA) programme could support them to function more effectively and better advance the HLP rights of the vulnerable.

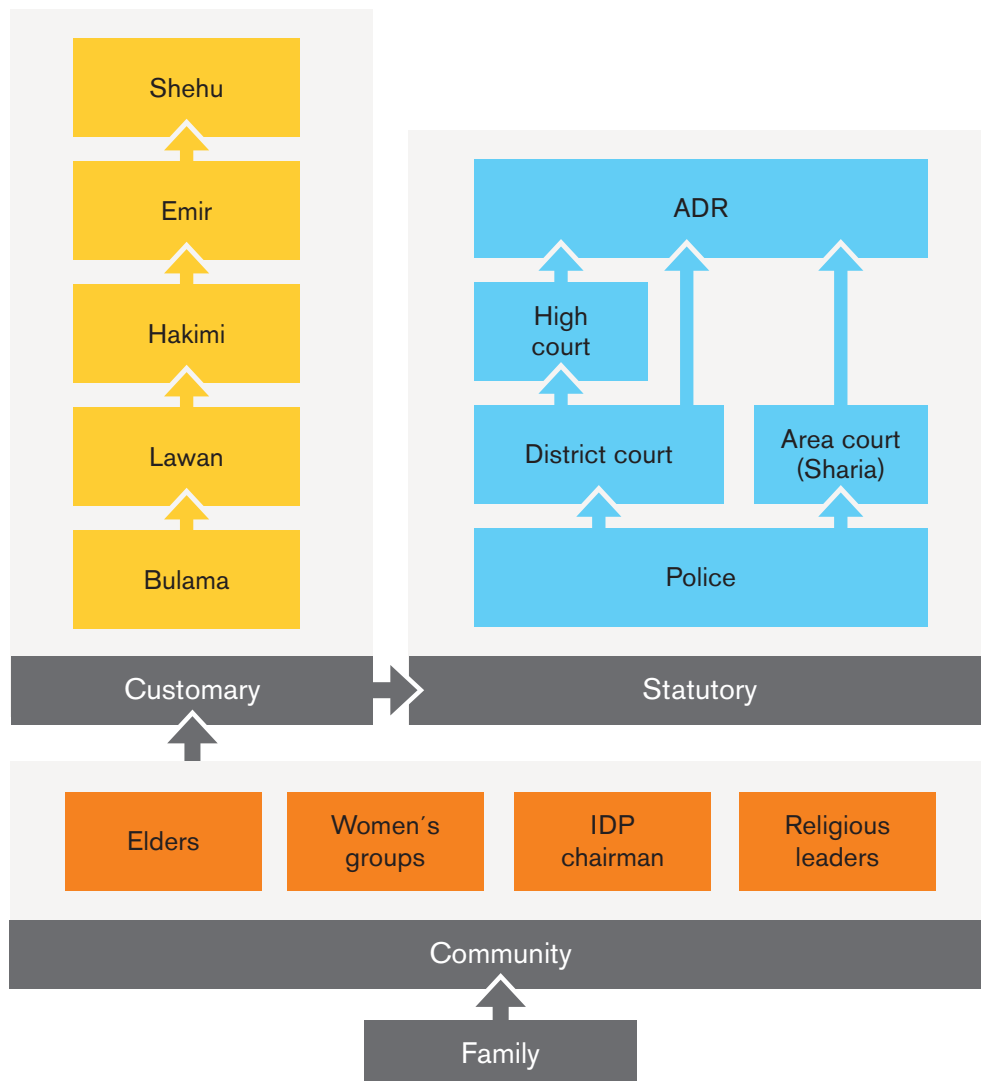
Dispute resolution in the region has three different approaches with three broad options available for dispute resolution. First, at the level of the family and community, there are those with no designated role but who are broadly trusted, including religious figures. Second, customary leaders with governance functions who also receive complaints and engage in dispute resolution and mediation, most notably ward leaders ('Bulamas' or 'Mai Anguwa') and village heads ('Lawans' or 'Mai Jimila'). While the customary sector is acknowledged in elements of statute (see below), its effectiveness emerges from its legitimacy and credibility in communities. Third, the statutory legal sector, comprising the police and courts, where federal and state law engage with identification, investigation and resolution of disputes or complaints, as well as any state-provided service such as alternative dispute resolution (ADR) or legal aid services. There are also other actors such as women's organisations that work on issues connected with dispute resolution but cannot properly be considered to offer dispute resolution themselves. These may be referred to as supportive actors. While the family, religious and customary forms of dispute resolution are primarily defined and enforced through their social legitimacy, the last has a legislative mandate. Islamic legal principles inform all three forms in north-east Nigeria, with the legal sector including an Islamic ('Area') Court.

The assessment indicated that HLP disputes limit IDPs' access to agricultural land and shelter, inhibiting self-reliance following the loss of homes and livelihoods. IDPs remain at risk of forced eviction and further displacement. Most IDPs are now living in unfinished buildings or renting houses from private owners and their HLP rights within host communities are uncertain. Vulnerable households cannot afford to pay for legal advice or representation to realise their rights. IDPs face insecurity of tenure, including forced eviction, as a result of poverty, the actions of landlords, challenges to ensure that rented homes were properly maintained, as well as issues linked to inheritance and divorce. In the mediation of disputes over such issues, IDPs often perceived that, as guests, they were not entitled to challenge the decisions of landowners taken in respect of their own land and as such did not pursue dispute resolution. There was also a perceived gender dimension with women believing they were discriminated against when seeking to resolve such disputes, in terms of both not being welcome to represent themselves to relevant structures and of not being treated fairly when they were heard. Whilst IDPs were often displaced as entire communities and thus had access to their own traditional leaders, these were disempowered by the fact that they were on territory where other leaders had authority. The impotence of displaced customary leaders was a huge frustration to them.

It became clear that there were also HLP disputes emerging in areas of IDP return due to the period of displacement. As return increases there will likely be a corresponding rise in such dispute, emerging from land and property having been left by owners for a period and others – sometimes themselves displaced – using those assets.

In developing a typology of dispute resolution structures, we note that these exist within the family and community, alongside the religious, customary and statutory regimes. As such, we define three categories of dispute resolution structure:

- Actors in the community who use their position to support dispute resolution, including elders, religious leaders, and IDP and women's representatives. These are structures whose function is driven both by the respect they have in the community and by tradition, and often gendered and age-based structures that privilege older men.
- Customary structures defined by tradition and accessing local leaders with long family histories of governance roles that are highly formalised but unofficial. These structures include a hierarchy in which local customary leaders defer to those at a higher level constituting what resembles an appeals system. Whilst such leaders are acknowledged in statute, the system is independent of the legal system.
- The statutory system, including the courts and official alternative dispute resolution.



*Figure 1. A map of the structures, community, customary and statutory in Borno state, and how a particular dispute can pass through them.*



The data revealed that both IDP and host populations – and both men and women – generally have great confidence in the customary dispute resolution structures, much more so than the statutory legal system. Customary structures link traditional governance at the ward and village level, with leaders close to the communities from which they come, to senior emirs. Dispute resolution involves the local leaders bringing the parties together, collecting evidence and talking with witnesses and making a decision that the disputants can choose to accept or not. This is framed by the Hausa term *sulhu* representing reconciliation and deriving from a community-based consensual process, in contrast to the adversarial approach of the statutory legal system. If either party is unhappy with the decision it can be taken up to the next level of traditional governance, analogous to an appeal process. There is interaction however between the statutory and customary systems with courts giving weight to decisions of the Bulamas and Lawans.

A novel element of the legal system is the Amicable Settlement Corridor (ASC) in Borno state, which offers services in mediation, arbitration and the use of *sulhu* – the latter the most commonly used and based on Islamic law. ASC services are free, in contrast to most use of statutory courts where lawyers' fees must be paid and often additional charges through endemic corruption.

*Displaced families living in classrooms inside a school in Galtimari.*

PHOTO: INGRID PRESTETUN



An important element to the analysis offered is the way in which disputants and complainants navigate between the three major forms of dispute resolution (familial/community-based, customary and statutory). This reflects both the decision-making behaviours of persons to whom a range of options are available, but also the interconnected nature of dispute resolution in Nigeria. Like in many other former colonies, the well-established customary governance structures were kept in place and allowed to continue to operate, with statute (imported by British colonial powers) recognising elements, but not the entirety, of their authority, legitimacy and powers. Resolution of some forms of community-level disputes were part of this recognised authority and is reflected in some provisions. In addition, the ‘repugnancy test’, applied by British courts in a number of colonies, introduced a way in which the decision of customary leaders could be subject to the review of statutory structures. While the colonial history of the repugnancy test is not without difficulty, its residual effect appears to have allowed a continuing conversation between the various forms of dispute resolution. In the contemporary landscape of dispute resolution in north-east Nigeria, it offers an important route to ensuring that the options available to disputants and complainants both serve their interests but also are consistent with their rights.

The customary system was cited by most as their preferred route to dispute resolution, with one advantage being the ease of physical and financial access the structures offer: it was reported that ward and village leaders were readily accessible and did not demand fees, in contrast to the demands of the statutory system – in terms of both bribes and legal fees. Limitations on the perception of women of actual options available to them did arise, however, from senior family members and community elders potentially seeking to prevent women approaching such structures, with married women in particular expected to be represented by their husbands. The extent to which the quality of process offered by the customary structures was appropriate for women was disputed, with some arguing that male leaders are fair to women and others reporting that discrimination was routine. Given that the customary system is embedded in a patriarchal system, in which Islamic law is often misrepresented and governed entirely by men, it is unsurprising that cases were heard in the assessment of women not being treated fairly in dispute resolution.

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## Methodology

This assessment took a qualitative approach, collecting data from those who had been exposed to HLP disputes, with an emphasis on the displaced and women, and actors from organisations who were engaged either directly or indirectly with dispute resolution. This included religious leaders, customary leaders, civil society actors and those working within the legal sector.

Research sites were chosen from areas where NRC had experience of implementing programmes, largely in providing shelter assistance, and where significant displaced communities had settled.

Thirty-four focus groups, more than half of which were with women, corresponding to over 150 people, were conducted with both displaced and host populations and with customary, religious and community leaders. Interviews were conducted with individuals who represented cases of interest in terms of dispute resolution and with key informants who occupied roles of interest in understanding dispute resolution. Focus groups and interviews were led by members of NRC’s ICLA team, supported by senior NRC staff and the consultants, with the aim of ensuring a capacity-building element for the team.



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## Recommendations

The assessment makes a number of recommendations that could drive an NRC programme of support to dispute resolution around HLP issues in the region. To support displaced women and vulnerable members of society to be able to address their HLP disputes:

- 1.** Paralegal representation in the community to support access to customary structures: train and support female paralegals from both IDP and host communities who can work with those facing obstacles to access through the provision of information, solidarity and support. The goal is to create an informed, empowered cadre of individuals who can support community members to seek dispute resolution at the informal, customary and formal levels.
- 2.** Training in law and rights for those leading informal and customary dispute resolution: enhance the knowledge of those engaged in dispute resolution of Islamic law and human rights, including customary leaders, religious leaders, and those with influence in the community from both displaced and host communities.
- 3.** Training in human rights and humanitarian law to the NRC ICLA team to enhance their capacity to lead rights-based advocacy around dispute resolution in the region.
- 4.** The more effective mainstreaming of protection in NRC activities through sensitisation and training, including on collecting data from affected individuals. This will allow the shelter and ICLA teams to be aware of a broader range of protection issues and to create SOPs that allow referral pathways to address them, including identification and response to sexual and gender-based violence (SGBV) and sensitisation for dispute resolution and support actors on the interlinking relationship between SGBV and violations and abuses of women's HLP rights.
- 5.** Seek to increase female participation in dispute resolution structures to increase women's representation and influence. One route to this is through the creation of committees to support traditional leaders that would not threaten the legitimacy of traditionally male structures but allow women to have input.
- 6.** Supporting a greater role for displaced customary leaders so that IDPs are better represented in such structures. This can be done in consultation with customary leaders as a part of the broader training on rights and law.
- 7.** The assessment to be used as a platform for the shelter team to engage more with CDR structures in their programming, including potentially in managing agreements between landlords, tenants and NRC, and for understanding the respective roles of the ICLA and shelter teams in this.

# 1. Introduction

The Norwegian Refugee Council (NRC) is an independent humanitarian organisation helping people forced to flee. NRC works in crises across 31 countries helping to save lives and rebuild futures. In north-east Nigeria, NRC is implementing programmes in the areas of competence of water sanitation and hygiene, food security and livelihoods, education, shelter as well as information, counselling and legal assistance (ICLA) in Yobe, Borno and Adamawa states. NRC Nigeria ICLA activities are primarily focused on two thematic areas; housing land and property (HLP) rights, and legal identity including obtaining civil documentation necessary to access rights and services.

Since the mid to late 2000s, NRC has worked with conflict-affected communities to resolve land disputes through what is known today as the ICLA programme's Collaborative Dispute Resolution (CDR) approach.<sup>2</sup> NRC has developed a set of global tools that are available to guide the introduction or improvement of the CDR approach by practitioners in different countries of operation.<sup>3</sup>

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## 1.1 Purpose of the assessment

In the context of large-scale displacement in Borno and Adamawa states,<sup>4</sup> the potential of significant return, and the reality of secondary displacement or 'return' to places other than areas of origin continuing in the near future, disputes over housing, land and property are likely to continue to grow in number and complexity in north-east Nigeria.

The purpose of this assessment is to support NRC in advancing the HLP rights of displaced women and vulnerable groups in the two states through the implementation of relevant, effective and sustainable programming interventions around dispute resolution processes. One of the objectives of the assessment was to map and analyse existing dispute resolution processes that dealt with HLP-related matters, to understand their areas of competence and expertise, their thematic focus and standard procedures. A further objective was to understand how various dispute resolution processes are accessed, used and viewed by displaced women and vulnerable groups. In order to understand the fuller landscape of dispute resolution practices in north-east Nigeria, the assessment also considered how the processes interact with one another, if at all.

The goals of this assessment were to understand how dispute resolution structures operate, what stresses they are put under given current conditions of mass displacement, the extent to which women have effective access to them both as decision-makers as well as users, and the extent to which they receive a fair hearing from them. The statutory system is also an object of inquiry, in terms of how it is perceived and experienced and what barriers to its use women and vulnerable groups confront.



## 2. Background and key terms

### 2.1 Background to north-east Nigeria and the Boko Haram conflict

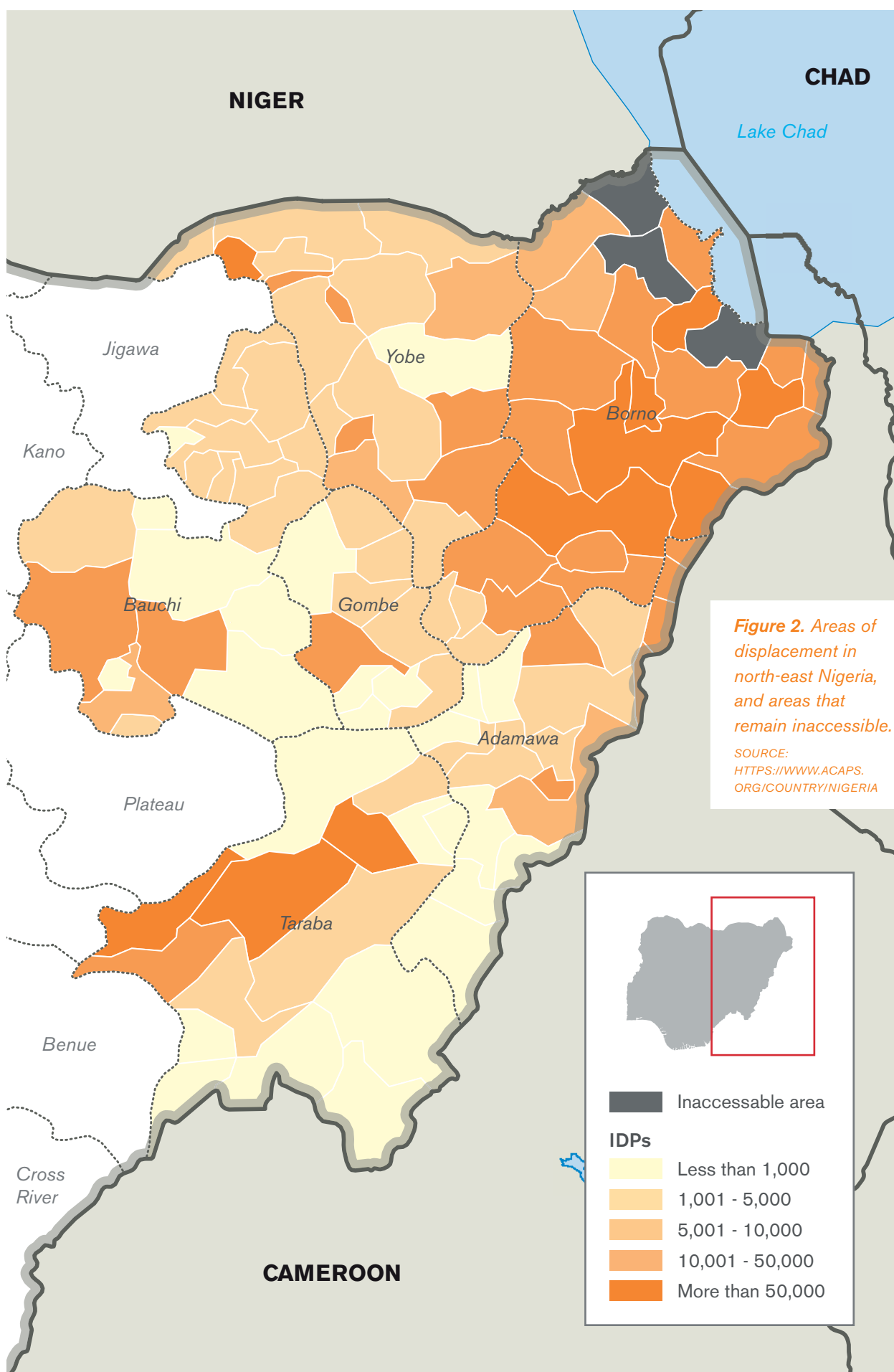
Religious identity has been at the centre of conflict in Nigeria since before independence, typically leading to violence between Muslims and Christians – who each constitute around half of Nigeria’s population<sup>5</sup> – particularly in regions where populations are highly mixed. In the predominantly Muslim northern states of Nigeria, Islam has long been a strong source of political identity for many and the recent revival of Islamic religious values, that has led for example to the institution of Shari’a law in most northern states, has had political implications.

Starting as a revivalist Islamic group, Boko Haram began engaging in violence in 2009 in response to investigations and arrests by the authorities, which ultimately led to many hundreds of deaths in clashes between fighters and security forces. In the years since, the armed conflict has seen significant displacement in the states of the north-east (Borno, Adamawa, Yobe), suicide bombings in the capital, Abuja, as well as attacks on churches and massacres in communities.

The abduction of over 270 young female students from Chibok in Borno in 2014 saw the conflict gain an international profile and presaged Boko Haram gaining control of multiple districts and several towns and mounting a sustained attack on the city of Maiduguri in January 2015. Over the following months the Nigerian security forces took back 11 of the 14 districts previously controlled by Boko Haram, forcing the group back to the Sambisa Forest, with the authorities claiming that this represented a fundamental defeat of the group. In the two years since, the conflict has continued with many districts of the north-east remaining highly insecure and Nigerian government control limited. Boko Haram attacks, on both military targets and using suicide bombs against civilian populations, have continued.

At the time of this assessment, the authorities were seeking to encourage the many displaced from conflict-affected districts to return to their homes, with officials stating in April 2017 that 310,000 IDPs had returned in Borno, with 100,000 remaining in Maiduguri.<sup>6</sup> It should also be noted that some returns are not to areas of origin, but tend more toward secondary displacement.<sup>7</sup> However, a survey of IDPs undertaken by UNHCR at the same time suggested that many remained unsure of the security situation in their home districts, as well as concerned about the state of their homes and access to humanitarian assistance, livelihood and basic services.<sup>8</sup>

This assessment thus reflects the situation of IDPs at a time when return is being considered, but the situation in much of the north-east remains uncertain. Figure 2 shows displacement in the region in May 2017 and the regions of northern Borno that remain inaccessible. At the time of the assessment, some LGAs that were accessible could only be accessed by helicopter and with military escorts.





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## 2.2 Key terms

Several terms are used throughout this report to describe dispute resolution practices and actors both in general and specifically in north-east Nigeria. First, it is helpful to outline NRC's own terminology, which defines the categories of religious, customary and statutory dispute resolution.

Here, in the light of the context and the structures that exist we take a slightly different approach. We note that dispute resolution within the family and community constitute an additional category alongside the religious, customary and statutory regimes. We also note that faith-based actors are considered very much community mechanisms, separate from the highly structured – but still community-based – customary system.

As such, we define three categories of dispute resolution structure:

- Actors in the community who use their position to support dispute resolution, including elders, religious leaders, and IDP and women's representatives. These are structures whose function is driven both by the respect they have in the community and by tradition, and often gendered and age-based structures that privilege older men.
- Customary structures defined by tradition and accessing local leaders with long family histories of governance roles. Such roles are highly formalised but unofficial and include a hierarchy in which local customary leaders defer to those at a higher level constituting what resembles an appeals system. Whilst such leaders are acknowledged in statute, the system is independent of the legal system.
- The legal system, including the district courts, high court and Area court (subject to Islamic law) and official alternative dispute resolution.

### *Housing, land and property*

HLP is the umbrella term relating to all issues concerning housing or accommodation, land and property on any land. 'HLP rights' describes all rights or entitlements – legal and non-legal – that arise out of an individual's or group's relationship (occupation, ownership and/or use) with housing, land and/or property.

NRC's work on HLP takes the following approach:

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 organisations providing protection and assistance to persons affected by crisis should respect the human rights, including HLP rights, of affected persons at all times, and advocate for their promotion and protection to the fullest extent.

The concept of HLP includes the full spectrum of rights to housing, land and property held according to statutory or customary law or informally, both public and private housing, land and/or property assets (NRC, 2014d).

HLP rights include:

- The right to adequate housing;
- The right of access to natural resources, such as land and water;
- The right to security of tenure and protection against forced eviction; and
- The right to non-discrimination in accessing HLP rights, which entails special protection for the most vulnerable and marginalised.<sup>9</sup>

#### Collaborative dispute resolution

Collaborative dispute resolution (CDR) is a term developed by NRC to describe procedures used by individuals and groups to deal with disputes, in particular relating to HLP. The descriptor ‘collaborative’ is intended to signal a departure from legal orthodoxies that might tend toward an adversarial<sup>10</sup> or inquisitorial<sup>11</sup> process of handling disputes. It is also intended to clearly encompass a whole range of practices from formalised, legal processes to community-based and/or ‘ad hoc’ processes to resolve disputes. By contrast, ‘collaborative’ dispute resolution suggests a more fluid approach to the resolution of disputes and on the basis of NRC’s literature on this, tends more toward conflict management.<sup>12</sup> In addition, NRC chose not to use the more usual term ‘alternative’ because in many of the contexts where it works, dispute resolution is not an alternative to statutory systems, because the latter are not there in the first place.

In north-east Nigeria, the area under study for this assessment, the Hausa term, *sulhu* is used as the translation for ‘CDR’. *Sulhu*, and its Arabic root, *sulh*,<sup>13</sup> however, translate to ‘reconciliation’, ‘conciliation’ or ‘pacification’. In this report, a distinction is made between the Hausa term for ‘reconciliation’ and ‘CDR’.

#### NRC and HLP CDR

NRC’s global policy and programming activities on CDR are set out in a series of documents.<sup>14</sup> Its objectives for CDR interventions in respect of HLP are a human-rights based approach to enhancing individuals’ enjoyment of HLP rights. While NRC’s CDR interventions are intended to be a means to strengthen the protection and enjoyment of HLP by displaced persons, they can also contribute to an improved environment for the protection of rights of displaced persons and host communities as a whole.



*IDPs living with host families in Galtimari.*

PHOTO: INGRID PRESTETUN

### Interoperability of resolution processes

This report refers, for ease of understanding and analysis, to three contexts in which dispute resolution takes place: i) the familial or community context, usually by people who do not have designated dispute resolution functions or responsibility, and including religious leaders; ii) the customary context, in which customary leaders who have designated governance functions also receive complaints, engage in dispute resolution and mediation; and iii) the legal context, in which persons or bodies mandated by state or federal statute engage with identification, investigation and resolution of disputes or complaints. The defining criteria for whether a process fits into one or another of these categories relate to what the basis of the process is (e.g. social legitimacy, legislative mandate); the functions designated to the persons carrying out dispute resolution, if any; the existence and form of guiding principles or frameworks by which disputes are resolved (e.g. state law on property rights, Islamic legal principles); and the effect or consequence of decisions reached (e.g. sanction for breach of agreement or social censure or ostracism). However, it emerged clearly in the data that customary and community-based actors understood that they must refer any case involving criminality or violence to the statutory sector. Despite this, it was also clear that some types of case, involving violence within the family for example, would not always be treated in this way.

Much of the literature on dispute resolution practices uses terms like, ‘formal’ and ‘informal’, with traditional or customary practices and structures taking a backseat to legal processes. This assessment purposely avoids this sort of perceived hierarchy of dispute resolution processes that privileges legal over customary or community-based approaches to dispute resolution for two major reasons. The first is that it has come to be well understood that the majority of disputes globally are resolved outside the legal system.<sup>15</sup> The second is that, while this report broadly talks about three major ‘types’ of dispute resolution processes, these processes in north-east Nigeria, perhaps more so than in other comparable contexts, are extremely interconnected with users jumping between the three and sometimes using multiple systems in parallel.

### Familial/community-based dispute resolution processes

Familial or community-based dispute resolution tends to be drawn from social structures around people with complaints or disputes and can include religious leaders whose social position gives them authority to resolve disputes. The people involved are not generally designated by anyone other than the complainant or disputant as having particular powers to adjudicate over a matter. There is not a clear and discoverable framework by which decisions are reached, although decisions are considered to be influenced by – or based upon – religious frameworks and principles. The effects or consequences of failing to adhere to an outcome from familial or community-based dispute resolution are limited to social ones.

### Customary dispute resolution processes

Customary dispute resolution is carried out by customary leaders. Customary leadership in north-east Nigeria, as in most of Nigeria, is largely hereditary, holds significant social importance and, to some degree, is recognised and upheld by statute. While the full extent to which statute recognises, empowers and reinforces the role of customary leaders requires detailed and dedicated legal research and analysis, the assessment has yielded some indication that various pieces of domestic legislation make reference to and recognise, empower, or create processes that rely upon the functions and authority of customary leaders. The actors involved in customary dispute resolution (for the purposes of this assessment, ward and village heads and more senior leaders – see Table 1 on page 45), perform governance functions, part of which is also pronouncing on disputes or complaints. There is no clear framework by which decisions are reached, with a good



amount of discretion lying with the individual decision-maker, but there is some belief that customary leaders decide according to fairness and, to some degree, religious rules. While the effects of failing to adhere to outcomes of customary dispute resolution are mostly social, they are significant because of the role and status of the customary leaders. Customary decisions can also be given legal consequences or effects, such as when a court notes that a particular decision has been taken by such structures or calls a customary leader as a witness.

#### Statutory dispute resolution

Statutory processes are all those that have a foundation in statute (both state and federal). The persons engaging in legal dispute resolution are legally empowered to do so. The framework of these processes tends to be found in law or religious law. Failure to abide by outcomes of legal dispute resolution are usually legal and can include sanctions such as fines.

#### Islamic legal principles

Islamic legal principles are the basis for Islamic ‘religious frameworks’ for dispute resolution. There is no single, universally agreed system of ‘Islamic’ or ‘Shari’a law’. Islamic legal principles apply in a few different ways around the globe and in Nigeria. One is where Islamic legal principles, rules or concepts taken from Islamic scholarship are injected into the formal law of a State; they are rarely if ever transposed directly and wholesale into national law. Usually, they provide only the principled or conceptual basis for a national legal rule. It is important to note that the rule then becomes a rule of national law rather than one of Islamic law. A second way is by decision of Islamic law courts or authorities. These tend to refer not to national law, but sources of Islamic scholarship for the basis of specific rulings. A third important way is by socially enshrined practices that have some foundation in Islamic principles. These can vary widely in the degree to which they are consistent with the rules discerned in Islamic legal scholarship, but have significant legitimacy with persons who consider themselves bound by these rules.

It is important to note that there are several schools of thought within Islamic legal scholarship with their distinguishing features including the sources that they recognise, the methodology for discerning specific rules (their jurisprudential approach), and some fundamental principles.<sup>16</sup> These distinctions result, practically, in some different substantive rules.

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## 2.3 Methodology

A qualitative approach was taken to this assessment to understand the challenges faced by those seeking to resolve HLP disputes in north-east Nigeria, with a focus on the most vulnerable, notably women and the displaced. Locations for research were chosen on both the basis that they contained significant displaced populations and that they were areas with which NRC was familiar, as well as subject to security constraints. While the initial intention was to explore all three states of the region, it was not possible to collect data in Yobe, beyond some interviews with key informants, due to delayed access clearance for NRC to start implementing activities. Research sites in Borno state comprised Galtimari in Maiduguri, a city to which many of the displaced have fled and where IDPs live among the host community, and Bulabulin in Maiduguri city centre. In Adamawa state, research was conducted in Yolde Pate, South Yola LGA, and Saminaka.

In addition to an understanding of HLP disputes and how they were resolved, the research aimed to provide evidence for potential interventions that could address the challenges structures face in the light of conflict and displacement. As such, the

methodology used was driven not only by a need to collect data, but by a desire to build the capacity of the NRC ICLA team in the region to understand the constraints on dispute resolution. Teams were trained and supported to conduct focus group discussions with a range of representatives of the populations of interest. A workshop supported the ICLA team to develop a semi-structured research instrument that could be adapted to the range of communities being met. This was then used in the field, with teams being supported by both the consultants and senior ICLA staff.

Populations targeted by the research included: members of IDP and host communities, married men and women, and divorced and widowed women. Participants in focus groups were identified with the help of local traditional leaders and 34 such discussions were held in total, of which half were with women, corresponding to over 150 people. The data collected is summarised in Appendix I. Individuals who had experienced HLP disputes were interviewed about the nature of their dispute, their perception of the potential dispute resolution mechanisms available to them, and their strategies for navigating a conclusion, whether successful or not. This enabled the study to reveal the links and overlaps between the apparently independent approaches of community-based process, customary leadership structures and the statutory legal system of the police and courts.

Additionally, focus groups were held with actors concerned with customary dispute resolution, including: village and ward heads (Lawan / Bulama / Mai Anguwa in Kanuri and Hausa languages – see Section 5.3), religious leaders, and community leaders. Where such actors appeared to have experience or case studies of interest, they were interviewed separately. Key informant interviews were conducted with a range of individuals and organisations involved or with an interest in dispute resolution in Borno, Adamawa and Yobe states, including representatives of the Legal Aid Council, Nigerian Bar Association, women's organisations etc. These are listed in Appendix I.

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## 2.4 Profiles of research sites

The four research sites are discussed here in terms of their characteristics and why they were selected.

### 2.4.1 Galtimari, Borno

Galtimari is a ward which is partly in Maiduguri Metropolitan Council, and thus on the edge of the city, and partly in Jere LGA. It has about 30,000 households out of which 16,000 households are IDPs, largely from Bama, Gwoza, and Damboa but with minorities from Konduga, Dikwa and Mongonu.<sup>17</sup> The general population is Muslim with a small Christian minority. IDPs live largely in rented accommodation, mixed with the host community with whom relationships are cordial and marriages between the two communities are common. The selection of this as a site for study was motivated by:

- A well organised and respected local dispute resolution structure consisting of one Lawan and eight Bulamas, IDP committees, religious leaders and women leaders;
- NRC is working in the community on shelter interventions and has established a good rapport with the community;
- A large IDP population living alongside the host community, which can generate HLP disputes.

#### **2.4.2 Bulabulin, Borno**

Bulabulin is a ward located within Maiduguri Metropolitan Council in the city, with three Lawans and a number of Bulamas. Bulabulin contains about 35,000 households with a significant population (about 40 per cent) of IDPs, largely from Bama, Benisheik and Kaga LGAs with smaller numbers from Dikwa, Damboa and Jere LGAs. The general population is mostly Muslim with a Christian minority. The reasons for selecting this site for study include:

- A large IDP population;
- No organised dispute resolution structure on the ground – most disputes are resolved through litigation – the Lawan, Bulama, IDP committees, religious leaders and women's leaders are mostly just figureheads. The court system appears preferred to the customary structures;
- NRC has implemented activities in the community.

#### **2.4.3 Saminaka, Yola South, Adamawa**

Saminaka is in Yola South LGA, near Yola city in Adamawa state, with a population of 27,000, mostly from the Fulani tribe, Muslim and working in farming or trade. Saminaka has more IDPs (1,200 households and about 6,400 people) than anywhere else in Adamawa, most of whom live in private rented accommodation. IDPs are mostly from Madagali LGA in Adamawa state and Gwoza LGA in Borno State and most arrived at Saminaka in 2013 and 2014. IDPs are both Muslim and Christian, but with a Muslim majority. The reasons for selecting this site for study include:

- A community containing IDPs from both Adamawa and Borno states and of different religion and tribe;
- NRC is working in Saminaka and a good rapport has been established between NRC and the people living in Saminaka, both IDPs and host community;
- When NRC has conducted information sessions, the people of Saminaka have reported HLP issues.

#### **2.4.4 Yolde-Pate, Yola South, Adamawa**

Yolde-Pate is situated in Yola South LGA, near Yola city, and has a host population of 30,000 persons and 530 households from various tribes including Fulani, Laka, Higgi, Marghi, Kilba and Bachama. Yolde-Pate has 3,700 IDPs, mostly from Gwoza (Borno), Madagali LGA (Adamawa) and smaller numbers from Askira Uba and Chibok, both in Borno. The host population is evenly divided between Muslims and Christians, while most IDPs are Muslim. IDPs typically live among the host community, renting private houses. The reasons for selecting this site for study include:

- A host community made up of various Adamawa tribes with different cultures and norms;
- The community contains IDPs from both Adamawa and Borno states and of different religion and tribe;
- NRC is working in Yolde-Pate and a good relationship has been established between NRC and the population;
- HLP disputes have been reported during information sessions in Yolde-Pate.



## 3. Framework for analysis

### 3.1 Public international law

Public international law broadly governs the behaviour of States. Traditionally, it has focused on the behaviour of States toward other States. With the introduction of human rights, in the middle of the 20th century, and the development of the protection of civilians within the law of armed conflict, public international law also governs States' behaviour towards individuals. At around the same time, international treaties relating to refugees, which set standards and obligations for States' behaviour toward individuals in the particular circumstances of international displacement were adopted, with international frameworks relating to IDPs being developed much later.

Combined, these areas of international law provide rules and standards relevant to HLP, to women's access to and enjoyment of HLP rights, to the resolution of disputes, and to seeking remedies for rights violations and abuses. This section outlines the international legal rules and standards relevant to the assessment and which inform its framework for analysis. These standards and rules are drawn mostly from international human rights law (IHRL) (including regional human rights law), but are based also on international standards contained in other areas of public international law including international humanitarian law (IHL) and the rules relating to the treatment and status of IDPs.

It is important to note, at the outset, how a State's IHRL and IHL obligations translate into practice. Broadly speaking, IHRL and protection of civilians rules within IHL oblige a State to do or not to do something: they set requirements on the State's behaviour towards individuals (and/or other parties to a conflict in the case of IHL). Within IHRL, the general structure of these requirements is that the State must take legislative, administrative and other steps to recognise and absorb these standards of treatment in law and policy, and then ensure that the standards are implemented. This is sometimes referred to as the 'Respect, Protect, and Fulfil' framework.<sup>18</sup> The obligation to respect requires that the State and its agents refrain from improperly interfering with or curtailing the exercise of rights by individuals. When an interference or curtailment is attributable to a State (including through its agents), this is called a 'violation'. The obligation to protect requires States to protect individuals and groups against human rights abuses. Human rights 'abuses' are interferences with and curtailments of human rights occasioned by any person or entity other than the State. The obligation to fulfil means that the State must take positive action to ensure that individuals can enjoy their (fundamental) human rights. In IHRL there is a difference in the structure of States' obligations between civil and political rights on one hand and economic, social and cultural rights on the other. According to the orthodox view, IHRL cannot bind non-State actors.

In respect to IHL, these rules bind State and non-State actors alike in times of armed conflict. The rules relating to the protection of civilians require prohibition in law and guidance for militaries, as well as incorporation into the domestic law of prohibited acts, and implementation of these rules by parties to armed conflict, as well as accountability for failure to adhere to them.

### 3.1.1 International human rights law

International human rights law is often invoked as the basis for humanitarian operations and specific interventions: a State has an obligation to provide certain protections and humanitarian organisations will usually assist the State in meeting these obligations or otherwise fill gaps in the State's ability or willingness to meet these obligations in humanitarian situations. IHRL then, performs a few functions. First, it provides a set of standards to which States' (and humanitarian actors') acts must adhere. Second, it obliges States to take actions to implement these standards. Third, it provides a framework for accountability for failure to meet these obligations.

A crucial element of international human rights law is not only to expound the details of a substantive right but also to provide for a framework by which any violations or abuses are remedied. While the focus of this assessment is not primarily on identifying the substantive HLP issues faced by IDPs in north-east Nigeria, it is important to be able to identify what substantive right is threatened or violated in order to know what needs to be remedied.

Nigeria has ratified all nine of the core international human rights treaties.<sup>19</sup> It has also ratified a number of substantive optional protocols to those treaties. It has generally refrained from accepting the individual complaints procedures under these core treaties, with a notable exception in the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) providing for individual complaints, and the Convention on the Rights of Persons with Disabilities (CRPD).<sup>20</sup> Nigeria has accepted inquiry procedures for the Convention against Torture (CAT),<sup>21</sup> the International Convention for the Protection of all persons from Enforced Disappearances (ICPED),<sup>22</sup> the Optional Protocol to CEDAW,<sup>23</sup> and the Optional Protocol to the CRPD.<sup>24</sup> It has not accepted the inquiry procedures relevant to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC). Nigeria is also party to a number of relevant African Union human rights treaties.<sup>25</sup>

Nigeria's international human rights obligations provide for: i) the protection, respect and upholding of the right to an adequate standard of living, ii) the duty to ensure non-discrimination and equality before the law, and iii) the duty to provide an effective remedy.

#### The right to an adequate standard of living

International human rights law requires the following:

- The State recognise that all persons have a right to an adequate standard of living,<sup>26</sup> which is made up of:
  - legal security of tenure;
  - availability of services, materials, facilities and infrastructure;
  - affordability;
  - habitability;
  - accessibility;
  - location appropriate for the purposes of accessing employment options, health care services, school, childcare centres and other social facilities; and
  - cultural adequacy.<sup>27</sup>

- The right to adequate housing also implies:
  - protection against forced eviction and arbitrary destruction and demolition of one's home;
  - freedom from arbitrary interference with one's home, privacy and family; and
  - the right to choose one's residence, to determine where to live and to freedom of movement.<sup>28</sup>
- The right to the protection of the law against interference or attacks on *inter alia* homes, privacy and family.
- The State provide assistance to parents and carers of a child to implement a child's right to an adequate standard of living in particular in respect of housing.<sup>29</sup>

In contrast to the right to an adequate standard of living, of which housing land and property rights are elements in international human rights law, the African Charter on Human and Peoples' Rights (ACHPR) directly protects a right to property stating expressly that it may, "only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws".<sup>30</sup> In this way, it goes beyond the protections in general IHRL, but of course complements them.

#### Non-discrimination and equality before the law

The State is bound by the principle of non-discrimination, which requires that the right to an adequate standard of living as expounded above is realisable for all persons without discrimination.<sup>31</sup> Discrimination on the grounds of race, origin, ethnicity and gender are all prohibited in respect of enjoyment of the right to an adequate standard of living.<sup>32</sup> As such, the State is bound to take all measures, including legislative, administrative and other measures to prohibit all forms of discrimination.<sup>33</sup>

Although connected with the principle of non-discrimination, the requirement that the State recognise the equality of all persons before the law is a different matter. The right to equality before the law, moreover, is not tied to the substance of the right that is invoked – it is a standalone right.<sup>34</sup> The ACHPR requires that every individual be equal before the law of Nigeria, as a State party to that treaty, and that every individual be entitled to the equal protection of the law.<sup>35</sup> Importantly, equality before the law does not necessarily equate to like treatment, such that all cases are treated in the same manner, but that the ultimate objective is equal.

#### The right to an effective remedy

IHRL recognises the right to an effective remedy and requires States to provide means by which effective remedies may be secured by individuals who have suffered violations or abuses of their human rights. In respect of civil and political rights, the State is required to ensure that any person whose rights have been violated has an effective remedy, even if the alleged violation was committed by an official, and that a person claiming such a remedy has the right to have it determined by "competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State".<sup>36</sup> It does not conceive of an effective remedy that can be determined by a non-State system. Under the ACHPR, which does not distinguish between civil and political rights on one hand and economic, social and cultural rights on the other, every individual has the right to have his or her cause heard, including the right to appeal to competent national organs against acts violating fundamental rights.<sup>37</sup>



The Committee on Economic, Social and Cultural Rights has stated that it considers Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) on the right to an effective remedy to be a right in itself that applies when rights, not only civil and political, are violated. As such, the right to an effective remedy is considered to apply to HLP violations and abuses.<sup>38</sup>

The right to an effective remedy is part of the ‘respect, protect, uphold’ framework of States’ obligations in international human rights law. States are required to respect human rights, by refraining from violating them through their own acts or the acts of their agents, protect individuals’ rights from abuse by actors other than the State, and uphold in cases of actual or attempted violation or abuse.

International standards relevant to the right to a remedy require the national law of a State to recognise a broad concept of ‘victims’ of human rights violations as follows:

*Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term ‘victim’ also includes the immediate family or dependants of the direct victims and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.*

International standards also contain a definition of victims of crime and abuse of powers.

*‘Victims’ means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violation of national criminal laws but of internationally recognised norms relating to human rights.<sup>39</sup>*

### 3.1.2 IHRL and armed conflict

Some elements of the IHRL framework are impacted by armed hostilities in a manner that affects the ability of the State and other actors to ensure realisation of these rights. In this regard, it is important to note two points. First, although the State is entitled to derogate<sup>40</sup> from some of its human rights obligations, IHRL continues to apply during an armed conflict. Second, in the light of the existence of an armed conflict in Nigerian territory, to which the State and Boko Haram (a non-State armed group) are parties, the rules of international humanitarian law apply (on which, see below).

Under the ICCPR, among non-derogable rights are the prohibition of imprisonment on the basis of inability to fulfil a contractual obligation<sup>41</sup> and the right to recognition everywhere as a person before the law.<sup>42</sup> Although the ICESCR, which is where the right to an adequate standard of living is enshrined, does not contain a list of non-derogable rights, interpretive guidance from the ICESCR treaty body sets a minimum core obligation to ensure, at the very least, minimum essential levels of the rights contained in the ICESCR including essential basic shelter and housing, sanitation and the right not to be arbitrarily evicted from one’s house.<sup>43</sup>

The prohibition of discrimination applies in all circumstances.

### 3.1.3 HLP in international humanitarian law

A non-international armed conflict is ongoing in Nigeria, to which the government armed forces and Boko Haram are parties.<sup>44</sup> Accordingly, the rules of IHL apply to the behaviour of both parties in all parts of Nigerian territory. Nigeria is party to the four 1949 Geneva Conventions and the 1977 Additional Protocols I and II. Nigeria is also a party to the Rome Statute of the International Criminal Court (ICC Statute).<sup>45</sup>

The protection of civilians is a central element of IHL and includes not only physical protection of civilian persons and material assistance to civilians and people no longer engaged in combat, but also civilian objects including properties. Pillage is prohibited by Additional Protocol II, which provides for the protection of civilians in non-international armed conflict.<sup>46</sup> The ICC Statute classifies pillage as a war crime in non-international armed conflicts even when a town or place is taken by assault.<sup>47</sup> Pillage is defined in the Elements of Crimes of the Statute of the International Criminal Court as appropriation of property for personal or private use.<sup>48</sup>

An important distinction between the IHRL and IHL frameworks outlined here is that the latter imposes binding and enforceable obligations on the State and on non-State armed groups (unlike IHRL according to the orthodox view of IHRL and its applicability to non-State armed groups). IHL also provides a framework for criminal accountability for violations of inter alia the rules relating to HLP.

*A makeshift shelter in Shuvari El Miskin, an informal settlement in Maiduguri, Borno state, and home to over 5,000 IDPs.*

*PHOTO: ROSALYN VELDS/NRC*





### 3.1.4 International standards relevant to IDPs

In addition to general human rights law, which applies to IDPs in the same manner as all other persons within the territory of a State, several international documents and legal instruments are relevant to HLP rights of IDPs.<sup>49</sup> Their combined effect is to set various standards, including the following:

- IDPs, like all persons, have the right to non-discrimination, equality of men and women, protection from displacement, privacy and respect for the home, peaceful enjoyment of possessions, adequate housing, and freedom of movement;<sup>50</sup>
- IDPs have the right to be free from arbitrary deprivation of properties and possessions;<sup>51</sup>
- IDPs 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 HLP that is factually impossible to restore as determined by an independent, impartial tribunal”;<sup>52</sup>
- All HLP restitution procedures, institutions, mechanisms and legal frameworks are fully compatible with IHRL, humanitarian law and related standards and the right to voluntary return in safety and dignity is recognised therein;<sup>53</sup>
- States should establish and support, “equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims” and may integrate alternative or informal dispute resolution mechanisms into these processes, insofar as all mechanisms act in accordance with IHRL, humanitarian law and related standards, including the right to be protected from discrimination;<sup>54</sup>
- States should ensure that the HLP rights of IDPs (and refugees) are recognised as, “an essential component of the rule of law”, including the legislative means;<sup>55</sup>
- Recognition of the rights of tenants and other non-owners and extension of protection to secondary occupants.<sup>56</sup>

Importantly, Principle 18 of the Guiding Principles on Internal Displacement states as follows:

- All internally displaced persons have the right to an adequate standard of living.
- At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
  - (a) Essential food and potable water;
  - (b) Basic shelter and housing;
  - (c) Appropriate clothing; and
  - (d) Essential medical services and sanitation.
- Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.



Other standards include the right to voluntary return in safety and dignity, the accessibility of restitution claims procedures, adequate consultation and participation in decision-making, the provision of systems for HLP records and documents, prohibition of arbitrary and discriminatory laws, enforcement of restitution decisions and judgments and the provision of compensation.<sup>57</sup> Accordingly, while State-provided or legal processes are considered to be the primary vehicle for ensuring that return is voluntary and safe,<sup>58</sup> and for providing HLP restitution and compensation, international standards contemplate the use of non-State processes, as long as they are in line with international standards particularly in respect of the principle of non-discrimination.

International standards define IDPs as:

*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 generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.*<sup>59</sup>

Principle 25 of the Guiding Principles states that, “the primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities”, that international humanitarian organisations and other relevant actors have a right of initiative and that authorities are required to grant and facilitate free passage to actors offering humanitarian assistance to the internally displaced.

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### 3.2 Access to justice and formal and customary justice

Access to justice is a fundamental element of any functioning system that aims to protect rights and interests of individuals; if a right or interest is recognised in theory but not enforceable in practice and a person is not able to pursue its enforcement, it can have little or no effect. The idea of access to justice is usually discussed in the context of statutory, or court-based, legal proceedings, is an element of the ‘rule of law’ and has several technical elements. It is a central element of the analysis presented in this assessment that access to justice as part of the rule of law provides a set of standards equally applicable and valuable for customary justice as it is to statutory justice processes.

There are two routes to connecting access to justice to customary dispute resolution. The first, and the one that tends to be favoured in justice-related literature analysis, is that strengthening customary justice practices in the direction of human rights and formalised rule of law promotes access to formal justice; customary justice becomes a means to the end of statutory justice. The second, and one that is argued to be more sustainable, is that applying these to both customary and statutory justice processes also allows for any analysis to be sensitive to the reality that users often navigate between the two tracks, sometimes simultaneously. Using a similar framework for analysis allows for analysis of all justice-related responses as a whole, rather than individual disconnected processes or interventions, which is consistent with the usages of the two tracks of dispute resolution observed in this assessment. The fluidity with which users navigate between the forms of dispute resolution raises an important question of when, if ever, one type will not be appropriate for a particular type of dispute. While the issue of sexual and gender-based violence was rarely raised by assessment participants, it is important to note that there are real difficulties with ensuring satisfaction and full protection to survivors if the matter is dealt with only through customary processes.

Broadly speaking, then, there are a number of elements to the rule of law, which may not yield the same analysis for statutory and customary justice processes, but are a valuable tool for assessing the fairness of the structures and processes and the systems of rules and norms by which disputes and complaints are settled. One framework offers eight principles as follows:

- The law must be accessible and, so far as possible, be intelligible, clear and predictable;
- Questions of legal right and liability should ordinarily be resolved by application of the law and not by exercise of discretion;
- The law should apply equally to all, except to the extent that objective differences justify differentiation;
- The law must afford adequate protection of human rights;
- Ministers and public officers at all levels must exercise the powers conferred on them reasonably, in good faith, fairly, for the purpose for which the powers were conferred, and without exceeding the limits of such powers and not unreasonably;
- Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve;
- Adjudicative procedures provided by the state must be fair and independent;
- There must be compliance by the State with its international law obligations.<sup>60</sup>

Clearly, these criteria presuppose the formality of the laws under discussion. Another, more universal set of principles are as follows:

- Accountability – the government as well as private actors are accountable under the law;
- Just laws – the laws are clear, publicised, stable and just, are applied evenly, and protect fundamental rights, including the security of persons and property and certain core human rights;
- Open government – the processes by which the laws are enacted, administered, and enforced are accessible, fair and efficient;
- Accessible and impartial dispute resolution – justice is delivered in a timely manner by competent, ethical and independent representatives and neutrals who are accessible, have adequate resources and reflect the composition of the communities they serve.<sup>61</sup>

While the rule of law, more broadly, clearly touches upon many matters beyond the scope of this assessment, there is fairly wide agreement that a crucial element is the accessibility of justice, without prejudging the form that dispute resolution takes, beyond that it should be fair and motivated by agreed principles rather than the discretion of one person. These elements are taken into consideration when analysing the CDR structures discussed in this assessment.

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### 3.3 Considerations for a human rights-based approach

The guiding framework for NRC's ICLA programme is, as for many interventions by contemporary humanitarian organisations, international human rights law. This should also always include regional human rights law. An important element of the use of international human rights law as a basis for protection is that it provides a framework for enforceable accountability of the State and its agents, which will often place the rights bearer and duty bearer in an adversarial dynamic. While not strictly dispute resolution, the processes of handling complaints or grievances under a human rights framework tends, therefore, to pit one side against the other. In contrast, customary law and dispute resolution tends to be founded on restorative principles and seeks to bring the perspectives of complainant and defendant into alignment and, in this way, dispel the dispute or complaint often supported by practical concessionary actions.<sup>62</sup> Beyond this, it references not individual rights but the perceived interests of the broader community.

Enforcement is generally collectively carried out, underpinned by social obligation deriving from membership of a particular community. Typically, decisions or solutions reached through customary or community-based processes are respected and adhered to, in part because there is a deeply rooted legitimacy of these processes, and also because the social consequences of non-compliance can be far-reaching and long-term. There are clear challenges in both perspectives presented above. In an adversarial dynamic, the recovery and community building may be undermined, while in a collaborative process, there is a danger of the rights of individuals being subsumed into a broader collective good framework. For this reason, a combined approach is taken in this assessment, which reflects the decision-making and strategising that was observed among disputants and complainants themselves.

Additionally, custom emerges from tradition and culture that typically enshrine patriarchal and other discriminatory understandings, inconsistent with human rights principles. The dilemma when working with customary structures then is managing the tension between a commitment to rights and a desire to respect local structures that have high legitimacy but that often represent and reinforce discrimination, particularly against women.

One approach is pragmatic in acknowledging that since customary approaches in north-east Nigeria claim to enshrine Islamic principles, challenging these is simply ineffective in communities in the region who understand their existence as largely or wholly rooted in Islam.<sup>63</sup> This drives an approach taken in the recommendations of this assessment, that customary norms should not be confronted or refuted, but rather accommodated wherever possible to advance dispute resolution consistent with human rights.

There are however additional reasons for not seeking to define a rights-based approach as in opposition to Islamic frameworks. One is the fact that many of the social practices in Muslim societies have little to do with Islam, but are in fact local cultural artefacts. The most pernicious of these is an ideology of male supremacy that infuses some Muslim societies to the extent that misogyny is projected onto scripture and often religiously sanctioned. Only by contesting such an interpretation of Islam, typically made by powerful men in a community, can Islam itself become an emancipatory discourse that can challenge gender discrimination. Second, in north-east Nigeria, one party to the conflict is actively opposing Western influence: to characterise rights as in opposition to Islam risks both antagonising Muslims and identifying an intervention as in opposition to Boko Haram, challenging perceptions of neutrality. There is a danger that positioning the Quran and Islamic practice against 'universal standards' explicitly distances local practice



from the practice of rights, rather than seeking to find resonances and overlaps between rights and local norms. It is also important to consider the actual and perceived origins of human rights discourse, with roots in the Christian West, that has the hegemony to proclaim its universality by leveraging the economic and ideological power of the world's most powerful States.

An additional strategy in this context is to support the empowerment of those most marginalised by community norms, notably women, as an integral element of programming around dispute resolution. This can entail, for example, putting a commitment to education and peer support for women at the heart of an intervention to increase women's engagement with and participation in such structures.

Above all, when intervening with religious communities one must acknowledge the social facts that exist and not deny that God is a part of individuals' and communities' moral and material universe. Such an approach will acknowledge both the Islamic roots of customary legal systems and that they are resilient and able to adapt to new circumstances. As such, it will be seen that human rights concepts, as well as other discourses – such as an increasingly globalised and homogenous understanding of Islam – continue to influence how dispute resolution operates. A pragmatic engagement with such structures can aid women in both getting a better hearing from them and in becoming a part of them in ways that can impact their future evolution.

*A girl walking through an IDP settlement in Maiduguri, Borno state, north eastern Nigeria.*

*PHOTO: NRC/SIRI ELVERLAND*



## 4. HLP issues in north-east Nigeria

In those areas of Nigeria impacted by the Boko Haram armed conflict, widespread displacement has driven conditions in which housing, land and property disputes limit IDPs' access to shelter and agricultural land. Additionally, some rights and services in Nigeria are only available after producing a certain mix of legal identity documents, which are often lacking for the displaced who may have lost them while fleeing or never possessed them in the first place.

The lack of secure access to land and property is hindering the affected population to become self-reliant and develop effective coping mechanisms to the loss of homes and livelihoods. IDPs remain at risk of forced eviction and further displacement. Most IDPs are now living in unfinished buildings or renting houses from private owners and their HLP rights within host communities are uncertain. Vulnerable households can be understood in various ways. Most notably, they include those with livelihood challenges who cannot afford to pay for legal advice or representation to realise their rights.

Because of gendered social relations, women will generally find it harder to secure their livelihood and are more likely to be the sole providers for children, through husbands lost to the conflict or abandonment.

The situation is complicated by the fact that a significant number of LGAs in Adamawa and Borno states have limitations to access characterised by limited or no humanitarian presence, limited civilian governance infrastructure, and poor infrastructure as a result of ongoing active conflict. Over five million people living in the three north-eastern states of Borno, Adamawa and Yobe remain highly food insecure and in need of food assistance. This study was unable to collect any data from affected populations in Yobe state due to practical obstacles.

While non-state mechanisms are most accessible and most frequently used, IDPs may be subjected to unfair decisions due to poor knowledge of the laws and rules applied and limited capacity on the part of duty bearers. Cultural norms mean that women and minority groups are particularly likely to face challenges, in particular the differential impacts of insecure tenure and eviction. It became clear, however, that where individuals did not have their communities with them, their access to dispute resolution was impaired. While all women are disadvantaged by such norms, the displaced will see the intersection of gendered impacts and those exacerbated by the shrinking of social support that displacement creates.

Minorities include Christians who are often displaced – and indeed live – in Muslim majority areas and ethnic minorities who are present in smaller numbers than the dominant Kanuris. This assessment however focused on women and the vulnerable rather than on minorities in particular. Here, the issues raised by both the displaced and by members of host communities are discussed on the basis of empirical data collected in Borno and Adamawa states.

There are some differences in HLP issues raised between sites. For example, in Bulabulin, no temporary shelters had been constructed for IDPs by humanitarian agencies and so they are residing in rented properties. Accordingly, the majority of HLP issues observed in Bulabulin relate to landlord and tenant relationships. There are nevertheless a number of HLP issues that were observed across all sites:

- Insecurity of tenure based on informal, short-term and/or temporary arrangements;
- Insecurity of tenure caused by inability to pay rent and the connection between poverty and insecurity of tenure. The tensions between IDP and host communities can also increase insecurity of tenure;
- Housing shortages;
- Lack of lease or licence agreements and poor understanding of the distinctions and consequences;
- Non-compliance by the landlord with the terms of a tenancy agreement;
- Imperfect ‘tenancy agreements’, such that normal enforcement mechanisms may not be available;
- Absence of commercial terms for use of land or property and a resulting over-reliance on charitable contributions of land or property by landowners that undermines the security of tenure;
- Confusion as to the status of and title to shelters provided by NRC and other humanitarian actors;
- Multiple/secondary displacement;
- Forced eviction or perceived threat of forced eviction;
- Refusal by landlords to repair rented houses;
- Lack of means to repair rented houses;
- Necessity of occupying homes in disrepair or inhabitable structures because of an inability to rent appropriate housing;
- Inheritance of land or property;
- Settlement of property upon dissolution of marriage or separation of spouses.

Some of these issues were considered by assessment participants to require action by complainants or disputants and others were believed to be so clearly provided for, especially in Islamic principles on inheritance, that action was rarely taken. In addition, those disputes that occurred between IDPs and host community landowners were less likely to be challenged to the full extent possible through non-state and state-provided dispute resolution processes; a generally held view is that, as guests, IDPs are not entitled to challenge to a very great extent the decisions of landowners taken in respect of their own land.



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## 4.1 In locations of displacement

Tensions between the host and incoming communities underlie many of the disputes that arise in areas where significant numbers of the displaced have settled. In all contexts where interviews were conducted evidence of such tensions emerged. In Borno, members of the host community articulated this in several ways, complaining about the behaviour of the children of the displaced:

*[IDP] Children are not respectful – they are from the village, they are not like ours. They are out of control, not in school. (FG02)*

One IDP confirmed that following a dispute between her children and the neighbours the family was evicted from their rented home. Others from host communities were more direct, saying in Adamawa that IDPs:

*[...] cause problems. People are being led to drink and drugs. They are threatening our way of life. (FG02)*

In turn, IDPs feel stigmatised as a result of who they are and where they come from:

*Sometimes we face a kind of stereotype from some of the people in the host communities calling us Boko Haram. (FG22)*

*We also have the problem of the host communities pointing accusing fingers at us when there is any little misunderstanding and, as such, we restrict the way we associate with the host communities. (FG23)*

This provides the context in which disputes occur and in which they must be resolved, in an atmosphere not only of tension in difficult times for all in the region, but in an environment where IDPs are disempowered by their displacement, not least through the diminished role of their own customary leaders who are subordinated in displacement to those of the host community.

In those places where IDPs have settled, most disputes concern IDP efforts to secure housing in a situation where costs are high and their economic situation often remains extremely weak. The situation is complicated by the response to the humanitarian crisis, in which shelter assistance has become an additional source of tensions, particularly where temporary housing is built on land that landowners have offered rent-free to the displaced. Here, we seek to provide an overview of the disputes over housing, land and property, predominantly in areas where the displaced have arrived in the last year or two.

The most common living situation for IDPs in urban areas is either to pay to rent a room or rooms in a private house, or to live in a temporary shelter provided by a humanitarian organisation that is constructed on land donated for the purpose by the landowner, typically without remuneration. Both situations have led to disputes and these are discussed below. The data here were collected from members of both host and IDP communities who reflected on their own and their neighbours' experience, as well as from focus group discussions with traditional leaders and others involved in customary dispute resolution who reflected on the issues they had been asked to adjudicate.

The economic circumstances of IDPs are typically highly precarious and this is even more true for households headed by women who are usually widowed, divorced or separated. Such women complained that the houses they can afford to rent are often in very poor



condition, but still command rents high enough that they struggle to pay. This is made more difficult still by the expectation that a renter will pay six months or one year rent in advance, a very significant sum for those with livelihood challenges. As such, the most common HLP problem faced in such areas was the threat of eviction for non-payment of rent:

*I am from Katsina state married to a man in Gwoza. We were displaced and fled with my children from Gwoza to Maiduguri (Galtimari). I have been living in a rented house for three years now. From last year to be precise I started having issues with the landlord as I was not able to pay my rent on the promised date. He threatened to throw my things out of the house I pleaded with him but to no avail. That was when I rushed to the Lawan. He came and intervened on my behalf and resolved the issue. (Woman displaced in Galtimari, Maduguri)*

*We are all single mothers with a lot of responsibility and insecurity. Our husbands divorced and abandoned us with the responsibility of their children and re-married younger girls because some of us gave birth to female children and we have not given them any male child. [...] Because we don't have the security of our men the moment our rent expires – in fact before it expires – the landlords without any notice start to harass us that we must either renew our tenancy or leave their house. (FG24)*

While it was not, perhaps, surprising that (female) disputants or complainants themselves did not identify a connection between impairment of women's HLP rights and sexual and gender-based violence, it was notable that actors engaged in dispute resolution, including women's organisations, did not immediately connect risk or increased risk of SGBV with HLP violations and abuses, especially insecurity of tenure. The connectivity of SGBV and HLP should be the subject of further, longer-term analysis, and sensitisation amongst decision makers and supportive actors. This assessment did not discover how SGBV is manifested, and to what extent, in relation to HLP abuses and violations.

A number of other tenancy issues were also raised. Notable among these was the poor state of much of the rented housing available to the poorest, with landlords declining to repair or maintain homes and threatening to evict tenants if they were not happy with the situation.



*NRC focus group discussion.*

*PHOTO: OKOYE UZOMA*

*When we complain to the landlords to fix the house, or when it is damaged and it's affecting our living condition, the landlords don't do anything about it and they tell us that if we are not satisfied with the house we should pack and leave. But because we don't have anywhere to go to we continue staying in these dilapidated houses. (FG32, hosts)*

Women also understood that there was discrimination against women in renting properties:

*They don't rent houses to females here, I was able to secure accommodation through someone, after that, the landlord then sent us out and with my children, we were crying when the Mai Anguwa<sup>64</sup> heard he intervened. (UI25)*

And an understanding that female-headed households are exploited:

*We try to stay in peace however, we are being treated as nobody even worse as we are widows we don't have any man in our houses to protect us we are being maltreated by these landlords. (FG31)*

Because the research sites were selected from areas where NRC has delivered, or is delivering, shelter assistance, the assessment provided insights into disputes that arise around temporary shelters. When NRC agrees to build a shelter, the landowner signs an agreement with the shelter beneficiary after ownership has been verified by the relevant Bulama.<sup>65</sup> The Bulama always verifies the genuine landowners or their representatives where the owner is not available before signing any tenancy agreement. The legal status of the NRC agreement, however, is unclear, as it appears not to meet the formalities requirement of a transfer of property rights. The Bulama often signs as a witness for all tenancy agreements, however for those with missing land documents (whose legal status is unclear), the Bulama signs as a referee in a separate document which will accompany the tenancy agreement. It is presumed that he knows all landowners within his community. The agreement is understood to be admissible in a court of law.

A number of cases have arisen where landowners decide they no longer want IDPs to live on their land and, as such, the shelter must be moved for the IDP to continue to benefit from it. In other cases, there is an expectation that the shelter will remain on the landowner's land after IDPs leave, as a tangible benefit of his hosting IDPs. Similarly, a landowner can sell his land while hosting IDPs, leaving uncertainty over the obligations of the new landowner to those he hosts.

*Landlords host communities the problem is that some people sell their land, but the IDPs are unaware, they are just settled there. In such a situation we go to the Bulama and explain the situation. The Bulama will bring the buyer and current owner together, then they can go to the Lawan.<sup>66</sup> Papers for the land will be checked to confirm ownership. (FG02)*

It has developed as a policy of the NRC shelter team not to engage with customary dispute resolution structures, a position considered necessary to maintain their independence, even though these are where communities go to resolve such issues.

The understanding among both IDPs and landowners, that humanitarian agencies will offer humanitarian assistance to the displaced, has created expectations among landowners that they should benefit from a share of what IDPs living on their land receive in humanitarian assistance.

*Land owners from the host community will agree to give land for shelter to NRC. When relief started to come, as long as IDPs are using a landlord's land, they say that the IDPs have to give them a share of their relief. Landlords are asking for half of the food distributions. If they refuse, they have to leave the land. (FG03)*

Assistance can then become a lever with which to extract rent from IDPs. It is also important to note that, while NRC does not have a legal relationship with the land, many participants believed that it did, and more than this, has authority over the use of the land and shelter.

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## 4.2 In places of origin/on return

The IDPs met for this assessment all remain displaced. As such, they have not yet encountered the many potential HLP challenges of return and the disputes that can result. Those areas where return is underway are largely where the security situation remains problematic and so data collection was not possible in such regions. Some individuals were met during the study who had either received information about the situation in their place of origin, or who had been able to make temporary visits as a part of the process of evaluating their potential return. These have informed the discussion here.

A dominant perspective was simply that people did not know much about what was happening in their communities of origin. However, in at least one case, it was reported that senior customary leaders were making efforts to protect empty properties:

*Nobody knows tomorrow but God, therefore we cannot talk about likely disputes during return, though we see those that travelled to our hometowns returning with vandalised properties but we cannot lay claim of such. The Shehu<sup>67</sup> of our place has stopped IDPs from occupying the vacated buildings. (FG01)*

Others had heard that new roads were being constructed in their communities and that houses were being destroyed but, in the absence of real information, impressions were being driven by rumour.

HLP disputes in IDP places of origin are invariably linked to the absence of property owners from their communities. IDPs reported that, in their absence, others had encroached on their farmland and housing had been occupied by others, often themselves displaced from elsewhere. Some said that such 'secondary occupation' was not a big problem because most IDPs had been housed in public buildings, such as schools and hospitals. In one case, a farmer displaced from Bama LGA in Borno had rented his house, but the tenant had assumed ownership: he understood that such a dispute would have to be settled by the customary leaders on his return. There was confidence that traditional dispute resolution structures could resolve such issues, notably because traditional leaders could consult documentation, where it exists. Where documentation has been lost as a result of the conflict or sudden departure from homes, or never existed in the first place, there may be some difficulty in proving ownership. However, in the absence of formal documentation, which is not common for land ownership, local witnesses can be called by customary leaders who can confirm ownership of land and property.

It remains highly likely that the frequency of HLP disputes in areas of IDP origin will increase significantly as return increases, and ideally any intervention would seek to acknowledge and address these potential challenges.

## 5. Dispute resolution in northern Nigeria

Three systems of law are practiced in Nigeria: common law, the product of the country's former status as a British colony; customary law, the traditional system practiced throughout the country before colonisation; and Shari'a law, which was introduced in the state of Zamfara in 1999 and subsequently in eleven other northern states, including Borno (in 2001). Prior to this, state governments had operated Shari'a as provided for in the 1979 and 1989 constitutions, which was applicable only to civil proceedings concerning Islamic personal law and among customary structures that claimed to follow Islamic law. In 1999, this was expanded to include criminal matters and, between 2000 and 2003, Shari'a penal and criminal procedure codes were introduced.

The justice sector includes broader traditional structures comprising traditional rulers, religious scholars, family heads, customary and traditional courts, and religious and spiritual leaders.<sup>68</sup> In a number of states affected by the insurgency a militia force has been created, known as the Civilian Joint Task Force (JTF), to fight Boko Haram alongside the police and military, and that was used for dispute resolution by some communities.

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### 5.1 Nigerian domestic law (federal law)

Nigeria is a federal constitutional republic consisting of 36 states. It has a pluralistic common law system, based on the English legal system and incorporating elements of religious law, including Islamic and Christian rules on family and property rights. Islamic legal principles are incorporated into the laws of 12 northern states of Nigeria, and traditional or customary rules are implemented throughout the country, but are not set out in writing and are not consistent throughout Nigerian territory.

*This section is based on an overview of domestic legal instruments and interviews with key informants.*

Nigeria is a dualist legal system, such that international treaties ratified by the State require incorporation into the domestic law by legislation by the National Assembly.<sup>69</sup>

#### 5.1.1 Housing, land and property rights in domestic law<sup>70</sup>

The Nigerian Constitution recognises and protects a right to acquire and own immovable property.<sup>71</sup> While it does not fully enshrine a guarantee against unlawful interference with an individual's property rights, it does provide against compulsory possession of property in any part of Nigeria, except for purposes prescribed by law that require prompt payment of compensation and that give a person claiming such compensation access to a court or tribunal competent to determine his or her interest.<sup>72</sup> Depending on the application and availability of such processes and compensation in respect of IDPs' property, even in the case of mass displacement, this framework tends toward compliance with international standards relevant to IDPs' HLP. It was reported that, despite these constitutional provisions, in cases where property had been requisitioned by the State, just compensation was rarely provided. One case, in which the National Human Rights Commission intervened and advocated for compensation to a group of persons, appeared to be an exception to the rule. It was also repeatedly reported that Boko Haram had



destroyed or appropriated property that IDPs had left behind in their area of origin. In order for the constitutional guarantee of property rights to be compliant with the State's IHRL obligations and international standards on IDPs' property, the State is required to investigate and punish such acts. A much-quoted maximum is that, "whatever is on the land belongs to the landowner, and whatever is under the land belongs to the Government". This is enshrined in the 1999 Constitution of Nigeria.<sup>73</sup>

Domestic law created, in 1973, a Federal Housing Authority, whose functions include the preparation of national housing programmes, to make recommendations on matters relevant to the successful execution of housing programmes approved by the Government, and the execution of housing programmes approved by the Government.<sup>74</sup> The Federal Housing Authority also exercises negotiating functions in respect of payment for compulsory acquisition of land, with detailed rules depending on the type of land to be acquired.<sup>75</sup> The National Housing Fund may also be of relevance.<sup>76</sup>

### **5.1.2 Equality, non-discrimination and women's rights**

Nigeria is party to the CEDAW. Its Constitution guarantees equality of rights, obligations and opportunities before the law to every citizen.<sup>77</sup> It also provides that discrimination on grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited,<sup>78</sup> but omits some of the grounds of prohibited discrimination required by IHRL.<sup>79</sup> The Constitution does not specifically guarantee the equality of women and men, however, and the State is required to ensure to do so, although a closer inspection of the interpretation and application of the general non-discrimination provision in the Constitution would provide a more accurate assessment of the degree of State's compliance in this regard with its IHRL obligations.

### **5.1.3 Access to justice in Nigerian law**

Under the 1999 Constitution of Nigeria, "any person in Nigeria" may bring a claim relating to their own civil rights before the domestic courts.<sup>80</sup> Where there is an allegation of a breach of fundamental human rights, the Constitution provides that the case can be brought by an individual directly to the High Court of the relevant state.<sup>81</sup>

The Code of Conduct for Public Officers General, appended to the Constitution as a Schedule, directly prohibits the acceptance by public officers of bribes "on account of anything done or omitted to be done [by them] in the discharge of [their] duties", and breach of this rule can lead to proceedings before the Code of Conduct Tribunal.<sup>82</sup>

### **5.1.4 Interaction between customary and state/federal laws**

Statute and case law both evidence a complex interconnectedness of customary and state/federal law. For example, the 1978 Land Use Act acknowledges and appears to accept customary law and customary leaders in the governance of land. For example, statute recognises the land-based functions and authority of what it terms, 'chiefs' or 'leaders of the community', in the sharing out of compensation payments in respect of acquisition of property, and in accordance with customary rules.<sup>83</sup> This was, however, only an example of a specific rule. The extent to which statute recognises and/or governs the exercise of customary authority should be examined in further detail.

The practice of domestic courts shows a dynamic interaction between the legal mechanisms (i.e. courts) of the State and customary rules and practices relating to HLP. A 2000 case before the Nigerian Court of Appeal, Enugu Division, brought the question of whether inheritance rules within a particular customary tradition were compatible with the Constitution and other laws of Nigeria. The court's decision was based on an analysis of two customary traditions against the principles of natural justice, equity and equality as enshrined in the Nigerian Constitution and with reference to the CEDAW.<sup>84</sup> In this way,

there is evidence that the legal mechanisms first, fully accept the operation of customary rules, and second consider them to be subject to the same rule of law requirements as positive law (or State law).

A similar case was reported by the Nigerian Bar Association, in which the Supreme Court held that, contrary to customary rules and practice, women are entitled to inherit and this must now be implemented by traditional structures. If they do not, then there are grounds to challenge the decisions of customary structures through legal avenues.<sup>85</sup> While this strikes as general non-discrimination within Nigerian law, it is also an important example of statutory structures acting as a reviewer of customary decisions. It has been noted that, even where the national courts of Nigeria have previously upheld discriminatory customary rules (of several groups in Nigeria), an important route to challenging these is through testing their constitutionality before the Supreme Court.<sup>86</sup> A broad outline to the route by which customary decisions can be brought before a court is discussed below.

While these cases show a remarkable symbiosis of the non-State and State-provided processes, especially in respect of providing checks and balances on discrimination against women, they do raise some questions. One of these is, if customary structures are to be expected to implement the rulings of the Supreme Court, but they are not necessary legally trained, how is this to occur, and how can it be ensured that the rulings of the courts are communicated to customary structures?

#### **5.1.5 International humanitarian law in domestic law**

Elements of the State's obligations under the Geneva Conventions and its Additional Protocols are incorporated into Nigerian domestic law by the 1960 Geneva Conventions Act. It appears to include recognition of appropriation of property as a punishable act and thus provides the legal basis for investigation and punishment by the State of such acts.

#### **5.1.6 Principles of Islamic law**

Some observers have noted how in northern Nigeria the introduction of Islamic law principles has had the effect of enabling women to more effectively use the law to address their needs. Whilst being perceived through a rights lens as having reduced the formal rights of women, by referring to legal Islamic texts, women are beginning to challenge the social and cultural discrimination against them that the traditional and informal dispute resolution system enshrined:

*Women in the north have been able in fact to increase their participation by the reduction of their seclusion and greater awareness of their rights based on Islamic legal texts. Many of the ways that women were dominated and excluded from participation in the past were not Shari'a-based, and under Islamic law, women have many rights.<sup>87</sup>*

This demonstrates how women were victims of approaches that are not consistent with Islamic principles and can thus use greater reference to Islamic law in a positive way that increases respect for their rights. Whilst Islamic frameworks have helped to codify the discrimination that already existed, it also provided a legal way for women to fight back and an opportunity for greater engagement. This demonstrates how, in a highly patriarchal environment that claims to be compliant with Islamic law but actually reflects socio-cultural norms, increasing adhesion to Islamic law can be positive for women.

Non-State decision makers and users, alike, observed that Islamic law principles on, for example, inheritance, are so clearly set out in Islamic sources that they are not subject to debate across the schools of law and there is thus little room for disputes to arise. Some disputes were reported, however, by the Amicable Settlement Corridor in Borno state,

but the substance of these was not discovered. Participants engaged in dispute resolution at the community level, and customary leaders discussed the clarity of property-related rules within Islamic frameworks. Part of the reason that, for example, Islamic inheritance was described as not giving rise to many problems in the dispute resolution process is that, “the Quran is clear” (FG04).

The Quran contains three verses (Q 4:11, Q 4: 12, Q 4: 176) giving specific details of inheritance and the share for family members, in addition to a few verses that deal with testamentary power. The framework also relies upon Prophetic teaching. Combined with the writings of Islamic jurists, these sources have provided a clear framework in respect of inheritance. Despite it being consistently reported that the Islamic frameworks were clear and not generally subject to challenge, its specific rules were not discoverable. Assessment participants stated that the Quran was clear and so the relevant provisions are produced here:

*Allah chargeth you concerning (the provision for) your children: to the male the equivalent of the portion of two females, and if there be women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then the half. And to each of his parents a sixth of the inheritance, if he have a son; and if he have no son and his parents are his heirs, then to his mother appertaineth the third; and if he have brethren, then to his mother appertaineth the sixth, after any legacy he may have bequeathed, or debt (hath been paid). Your parents and your children: Ye know not which of them is nearer unto you in usefulness. It is an injunction from Allah. Lo! Allah is Knower, Wise.*

*And unto you belongeth a half of that which your wives leave, if they have no child; but if they have a child then unto you the fourth of that which they leave, after any legacy they may have bequeathed, or debt (they may have contracted, hath been paid). And unto them belongeth the fourth of that which ye leave if ye have no child, but if ye have a child then the eighth of that which ye leave, after any legacy ye may have bequeathed, or debt (ye may have contracted, hath been paid). And if a man or a woman have a distant heir (having left neither parent nor child), and he (or she) have a brother or a sister (only on the mother's side) then to each of them twain (the brother and the sister) the sixth, and if they be more than two, then they shall be sharers in the third, after any legacy that may have been bequeathed or debt (contracted) not injuring (the heirs by willing away more than a third of the heritage) hath been.*

and

*They ask thee for a pronouncement. Say: Allah hath pronounced for you concerning distant kindred. If a man die childless and he have a sister, hers is half the heritage, and he would have inherited from her had she died childless. And if there be two sisters, then theirs are two-thirds of the heritage, and if they be brethren, men and women, unto the male is the equivalent of the share of two females. Allah expoundeth unto you, so that ye err not. Allah is the Knower of all things.<sup>88</sup>*

While the actual shares prescribed in Islamic sources appear on the face to discriminate against women, it is to be assessed within the broader framework of women's property rights, including married women's property. Islamic sources require that fathers and husbands provide for the females in their family, and married women's property remains their own property, thus the differential between male and female shares in inheritance are understood to be balanced out by the greater burden, in Islam, on male family members.<sup>89</sup>

While customary and community-based dispute resolution actors rarely apply the pure rules of Islamic law, there is room for these to be applied to cases in a more formalised manner. The Shari'a Court of Appeal for the Federal capital territory in Abuja was established by Section 260 of the 1999 Constitution of Nigeria and Section 275 also provides for the right to establish Shari'a Courts of appeal for any state who desire to have it. In Borno state there is Shari'a Court of Appeal, Area courts and Shari'a courts that decide matters related to Islamic personal laws including inheritance matters. The relevant legislative materials include the 1971 Area Court Civil Procedure Rules; the 1968 Area Court Act; and the 2000 Borno state Shari'a Administration of Justice Act.

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## 5.2 Customary structures

As in much of the world, and most of Africa, the vast majority of disputes in Nigeria are resolved using traditional, customary approaches.<sup>90</sup> Here, we review the existing structures that are accessed in collaborative dispute resolution, with a focus on Adamawa and Borno states, where primary data were collected.

Studies in Nigeria, that included the north, have shown that “everywhere traditional and religious leaders were the most trusted to resolve individual disputes”.<sup>91</sup> Such leaders are considered to be close to the people, familiar with their problems and their values, and more likely than statutory justice mechanisms to find lasting solutions, since they seek restorative outcomes rather than allocating blame.<sup>92</sup> It was also clear however that traditional and customary institutions often lacked inclusiveness: youth and women were reported as playing minor roles in mediating conflicts, generally doing so, if at all, only within their own circles. Whilst members of women's organisations would mediate disputes between their members, only a small number of women were mentioned as operating within the mainstream institutions. Similarly, young people were hardly ever represented in community conflict mediation forums, with traditional bodies in Nigeria made up predominantly of older men. Typically, women of all ages are excluded, as well as young men.

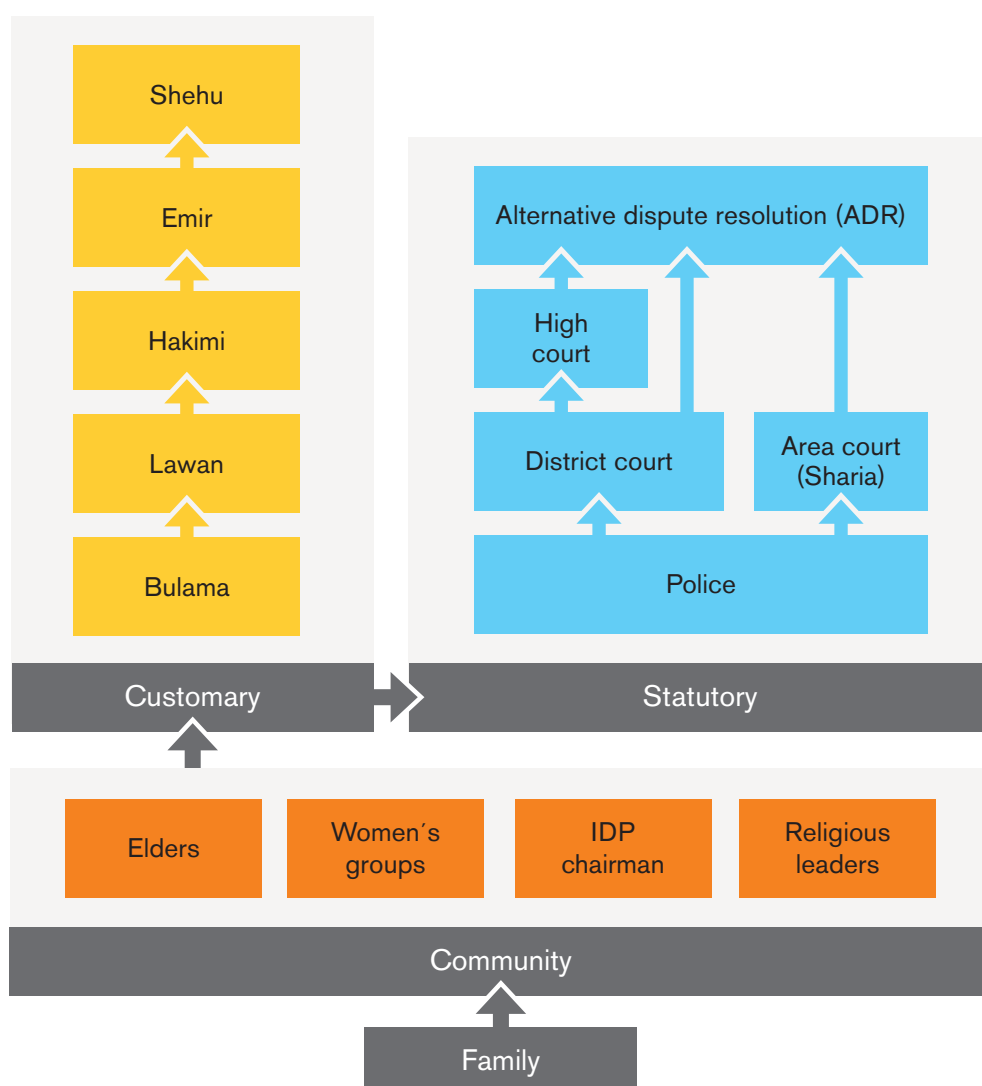
Here, the structures that people access to resolve disputes in Borno and Adamawa states are discussed. Both structures and approaches in the two states studied are similar in nature, but the traditional structures and the individual actors within them have different titles in the two states. The structures can broadly be divided into the following categories:

- **Familial/community-based processes:** For intra-family disputes and for most disputes with outsiders, the family is the first structure that will be consulted. There are also those who lead and represent IDP communities, typically called ‘chairmen’, and a number of less formal actors, such as community elders and women's groups who represent and advocate for women in a community. Assessment participants in Adamawa considered the JTF militia to be relevant and effective as resolvers of disputes. Although NRC traditionally treats religious leaders as a separate category of dispute resolution actor, this assessment found that religious leaders bore more hallmarks that resembled the familial/community-based dispute resolution actors than the customary or statutory dispute resolution actors. Religious leaders operate in a complementary manner to the customary leaders. Muslim and Christian religious leaders tend to be involved in disputes between those who share the same faith in all contexts: religious leaders can be called upon to support familial/community-based, customary and statutory processes through the provision of their opinion.



- Customary structures: A strong and respected set of dispute resolution structures exists that is rooted in well-established custom that holds a great deal of legitimacy for communities. These structures are recognised as having some powers, especially in respect of land administration, as discussed above. They constitute a hierarchy that begins with the local community leader at ward level and continues to the customary ruling emir at the state level. All levels of this structure are engaged in consensual dispute resolution with a tradition of appeal from a lower to a higher level.
- Statutory processes: These are any dispute resolution processes that have a foundation in statute and include investigation by police, seizure of a matter by a court, including the Shari'a court, and the multi-corridor court including the Amicable Settlement Corridor (discussed below).

Family is considered the building block of society in north-east Nigeria and, as such, family hierarchy serves both to resolve disputes within the family and to provide a representative of the family to mediate in disputes with those outside the family. This is the responsibility of the head of the household, typically an older male. For disputes between family members, such as inheritance or marital disagreements, all efforts will be made to resolve it without discussing family business in the wider community, “if it is a family issue the elders are meant to resolve it because we will not want to expose ourselves, but if the dispute can’t be resolved then we take it to the Bulama” (FG17).



*Figure 3. A map of the structures, community, customary and statutory in Borno state, and how a particular dispute can pass through them.*

The family is the first step at which women in dispute will face gendered understandings of their role and rights. If a woman has a dispute with her husband, or is widowed (increasingly common given the casualties of the insurgency) or divorced, then she is obliged to get the consent of the family before taking an issue to traditional structures. In the Islamic culture which dominates the north-east, a woman will be presumed to be unable to represent herself before dispute resolution structures and will be assigned a *wakil*,<sup>93</sup> a representative or agent, from within the family, or a *wali*,<sup>94</sup> or ‘guardian’ who would be a legal guardian. The latter suggests reduced capacity or delegated capacity to the *wali*, while *wakil* is less suggestive of limited agency for the woman.

While, in Muslim communities, Islamic law will traditionally be claimed as the source for all decisions made by all actors, in practice many of those involved in adjudication – especially at the family level – will not be well aware of Islamic law. As a result, traditional gender relations tend to be asserted, with women ceding decision-making power to older male relatives and often faced with illiteracy and a lack of education as barriers to contesting their disempowerment. A married woman would be expected to permit her husband to take the issue to the traditional dispute resolution structures, with some reporting that a woman going herself would be stigmatised.

### 5.2.1 Community structures

Additional to the longstanding traditional customary structures that represent the principal local system of informal dispute resolution (see below), are individuals who have standing in their community and who can use this to effect resolution between parties to a dispute. These are most obviously community elders who command respect, typically men, but who may not have any formal role or title. In the context of displacement, IDP communities will usually have a chairman to represent them to host communities and authorities, whether they are living in a camp situation or in a community. Such figures will be a natural way for those who lack longstanding links to an area to access dispute resolution when they have issues that involve a landlord or other individual from a host community, and to access traditional structures in that community.

There are also spontaneous efforts where women resolve disputes through their personal authority as elders or community members who are otherwise respected, including as IDP leaders.

*We prefer a woman to help resolve our disputes so we can resolve our disputes amongst ourselves because there are certain things we are not comfortable discussing with men, but if it were a woman we will comfortably do that. And we prefer the elderly women amongst us to be our mediators. (FG28)*

Having women lead dispute resolution has obvious advantages for a more equitable gender basis for resolution, although some reported that men were unwilling to submit to resolution being made by a woman. Women reported that they were unable to take a leading role in traditional, male-led, dispute resolution structures, although one notable exception was found in terms of female Bulama (see box below).

In Adamawa, the Joint Task Force, a state supported militia raised to fight Boko Haram, is also respected as a resolver of disputes. One focus group member said, “the vigilante leader is kind and he attends to everyone nicely and everyone respects him” (FG31).

While individuals involved in familial or community-based dispute resolution are not usually purposely designated adjudicative functions by anyone other than the disputants or complainants themselves, their function is sometimes recognised by the Amicable Settlement Corridor (on which, see below).

### 5.2.2 Religious leaders

Religious leaders play both a supportive and a parallel role to customary leaders and the state-provided dispute resolution processes (particularly the Amicable Settlement Corridor). Religious leaders participating in this assessment did not seem to be ‘appointed’ in any sort of formal process and did not tend to have to meet specified criteria of education or proficiency in Islamic law. It seems there is a distinction between community religious leaders and scholars, although the latter category of persons was not engaged in this assessment. Religious leaders are distinguished from judges sitting in Shari’a courts largely by their education, qualification, the manner of their appointment and the basis for their mandate: whereas judges sitting in the Shari’a Courts are mandated by statute, community religious leaders have a social mandate.

#### Muslim religious leaders

Islamic religious leaders are known as ‘*ulamaa*’, which is the Arabic term for ‘scholars.’<sup>95</sup> It is not clear how a person is appointed or recognised as an ‘*aalim*’ and what training is given to those seeking to be an ‘*aalim*’. Only Islamic religious leaders were identified and engaged in Borno state. Muslim religious leaders appear to depart from the practice observed amongst Bulamas and Lawans, insofar as they do not appear to entertain every dispute or complaint brought to them. While the attitudes of religious leaders to women’s role and involvement in dispute resolution varied significantly between the three research sites, it was consistently reported that disputants or complainants prefer to go to community leaders (including customary and religious leaders) rather than to the police or courts, and they consistently exhibited suspicion of the legal processes themselves, stating, for example, “We don’t have anyone to report to, we simply let it go because in court you will always end up losing” (FG27).

Religious leaders in Galtimari were reported to exhibit gender bias against women, giving the example that women can come to them directly with complaints, but that they should not because their account may be unreliable:

*If a woman comes to us, then she will embellish the details so we have to be careful. We tell her to exercise patience – life is not fair, the economy is not good. (FG09)*

The Galtimari Muslim leaders stated that for day-to-day problems people go to them and, in these cases, they will deal with such a matter on one side’s complaint, without calling the husband (FG09). In the specific case of marriage-related matters, they invite representatives from both sides, and the religious leaders decide who is at fault and tell the representatives their decision. If the matter is above them – i.e. they feel unable to make a determination – the Muslim religious leaders send the matter to the Bulama and thereafter the Lawan.

Religious leaders in Yolde Pate shared similar suspicions and censure for women who brought domestic disputes outside the family. In response to a question about perceptions of women who seek justice by approach to any of the available CDR structures, it was stated:

*Such women have no moral decorum and patience, because in some cases they do not listen to their husbands and to us religious leaders. They proceed to the police station or to court. (FG27)*

In this way, women who seek assistance beyond even their families – at least in Yolde Pate and in the view of those religious leaders – are seen as deviants. While this is not inconsistent with observations in many countries and communities where customary justice practices are the norm, it is of significance when considering that most users and

even dispute resolution ‘practitioners’ or decision makers viewed the panoply of dispute resolution options as a tapestry rather than a linear set of mutually exclusive processes. So, where a woman takes a complaint or a dispute to legal structures and this is viewed by her community as an aberrance from the social customs, this could deprive her of the community-based support and enforcement of peripheral or accompanying processes. In this way, it can be that women have to make the decision as to whether they pursue a less suspicious, potentially fairer treatment of a complaint through the legal processes, at the risk of losing in part – even wholly in extreme cases – the social support system.

The substantive frameworks applied by religious leaders are along the lines of Islamic law, especially in those areas that are clearly established within religious sources. The religious leaders acknowledged that women have housing, land and property rights within Islamic law and stated that, on this basis, they intervene to assist women in securing their rights. In the view of the CDR structures, however, religious leaders do not apply Islamic legal rules in their proper sense. This is in part because there is limited formal Islamic education of the religious leaders (KI08) and even if people know the technical Islamic legal principles, custom usually prevails (FG04).

There was notable variation between groups of religious and community leaders in respect of the use of legal dispute resolution processes. While many suggested that they rejected this, or that formalised processes and written decisions were actually counter-productive to dispute resolution (FG03), some suggested that their position of responsibility for the people under their care requires them to do anything it takes to achieve peace – even go to the courts (FG09).

#### Christian religious leaders

Christian religious leaders were identified and engaged in Adamawa state and a representative was engaged in Borno state.

In addition to their preaching and worship-leading activities, Christian preachers also engage in situations where there are disputes. Like Muslim and customary leaders, Christian preachers tend to counsel parties to a dispute to be patient and they couch their counsel in terms of Christian teachings. Substantively, Christianity is reported to teach shared property, such that a husband and wife become joint owners of all property. However, this tends not to be implemented and husbands take control of property. A crucial difficulty arises in respect of settlement of property upon dissolution of a marriage because “there is no divorce in the teachings”.



*NRC focus group discussion with displaced widows.*  
PHOTO: OKOYE UZOMA



### Religious leaders and mixed cases

Religious leaders were one of few types of actors that identified and discussed their engagement in mixed cases where there was a dispute between people of different faiths. In such cases, religious leaders of both (or all, depending on sect/school of thought) are brought together and this can be done by the customary leaders (Bulamas, Lawans), the religious leaders themselves, or the Amicable Settlement Corridor. It is not clear what happens in cases where the rules or teachings of Christianity and Islam are in conflict and how that conflict of 'laws' is resolved as no specific cases were discussed by participants.

In Yolde Pate, Christian and Muslim religious leaders suggested that they would navigate between Christian pastors and Imams, whereas religious leaders engaged in other research sites tended to talk only of the processes of their own religion.<sup>96</sup>

### Religious organisations

There are two major religious organisations that engage in dispute resolution in the areas under study. The Muslim organisation is the Federation of Muslim Women's Associations of Nigeria (FOMWAN) and the Christian organisation in Borno is the Christian Women's Association in Borno State. FOMWAN operates in both Borno and Adamawa.

#### **FOMWAN**

The mode of FOMWAN's engagement in HLP matters is signposting to other services and intervention and advocating on behalf of individuals and families. This is especially so in Borno state where FOMWAN personnel engage with women and girls to assist them in securing particular outcomes. While FOMWAN Borno had an awareness of some sexual and gender-based violence, the connection between SGBV and HLP insecurity did not seem to be brought into the work of FOMWAN. Part of this is poor reporting of SGBV, which is consistent with many other contexts.

FOMWAN Adamawa dispute resolution-related services seem to be more developed than those of FOMWAN Borno. In Adamawa, FOMWAN has a legal clinic, which handles cases of domestic violence and some cases are referred to the Muslim Council. FOMWAN settles dispute itself and refers them to the Muslim Council or Legal Aid. The importance was agreed by both FOMWAN Adamawa and Borno of advocacy with all types of customary and religious leaders, sensitisation of such actors as well as users (men and women) and capacity building of dispute resolution actors. FOMWAN Adamawa receives many inheritance disputes, and FOMWAN Borno receives many cases relating to landlord and tenant disputes mostly over non-payment of rent.

#### **Christian Women's Association in Borno State**

The crux of this organisation's involvement in dispute resolution appears to be in support to women involved in disputes. Churches work with both spouses, but the function tends to be supportive: preachers counsel prospective couples for three-six months prior to marriage, and the Association advises women to retain control and to avoid the total handing over of property, which could then be diverted to a second wife. It was observed that, in order to avoid the limitations of Christian teaching, people will sometimes opt for a legal marriage, and not a Christian marriage, pushing them outside the assistance of the Church.

While religious leaders clearly play an important role that is perceived as legitimate and binding by users, there are real challenges with the 'grey areas'. For example, mixed marriages and which if any of the rules of either religion should apply. In this sense, comparative training for religious leaders may be of value.

### 5.3 Customary dispute resolution processes

The history of the north-east of Nigeria is one of Islamic kingdoms dating back to the ninth century. Maiduguri, in Borno, for example is the capital of the Kanuri kingdom, founded in the early twentieth century and ruled by the Shehu. While the influence of the emirate has waned (particularly when Yobe state was created from Borno in 1991), and Hausa has become the dominant language in Maiduguri, the traditional leaders maintain Kanuri titles and most are of Kanuri origin.<sup>97</sup> Interviews suggested that the role of traditional leader was passed through the family and that one could only inherit the title. These rulers represent traditional governance in the two states, at the top of a hierarchy that is shown in Table 1.

TITLE	BORNO	ADAMAWA
Ward head	Bulama	Mai Anguwa
Village head	Lawan	Mai Jimila
District head <sup>98</sup>	Hakimi	Hakimi
Emir	Mai <sup>99</sup>	-
Supreme Emir	Shehu	Sarki

*Table 1. The hierarchy of traditional governance in Borno and Adamawa states, where these leaders also constitute the principal traditional dispute resolution structures.*

Adamawa is both an emirate and a state, with the latter also containing Mubi Emirate. Mubi has an even mix of Muslims and Christians and the Emir has been called upon to resolve conflicts between religious groups. The tension between the traditional rulers and human rights has been made evident by the behaviour of the Emir of Mubi, who has ordered the public summary execution of bandits more than once in the last 20 years.<sup>100</sup>

In Table 1, the titles of leaders in Borno come from the Kanuri language, while in Adamawa they are Hausa and Fulani. This hierarchy shows the role that traditional leaders play down to the neighbourhood level and the data collected for this study indicates that such leaders remain the most accessible and favoured route to resolve disputes. The Constitution does not define the role of traditional rulers and yet they occupy an important role in governance and particularly as the most well accessed justice system. While they command considerable traditional allegiance in certain areas, their non-elected status makes them a target for local politicians and other critics. Traditional rulers are often much more responsive to the travails of individuals and have a much stronger investment in the broader harmony of the community than elected politicians.

#### Procedural aspects of customary structures

The procedures undertaken by the traditional leaders over HLP disputes were spelt out in focus groups and interviews. The Bulama will initially call the disputants to present their cases to him in private. In land cases, written evidence will be considered where documentation exists. Decisions of the customary structures are not recorded, but where a decision is made in a land case concerning ownership, this can be registered at the District Office. Whenever land is purchased, the Bulama will be approached as a witness to the transaction and the Lawan will issue a certificate under his own authority (but this certificate is distinct from a Certificate of Occupancy issues by the authorities). It may be that both are governed by elements of domestic legislation and further research and analysis is required on this point. Where duplicate documentation is presented, that which demonstrates earliest occupancy will be privileged. Where there is no documentation, or a dispute over it, witnesses will be called on behalf of disputants who

can testify as to their memory concerning ownership and potentially who witnessed original sale agreements. In tenancy disputes, the Bulama will call witnesses to confirm the detail and length of the tenancy agreement and advocate for those terms to be respected by both sides. Customary leaders demonstrated they put significant weight on formal agreements as evidence of a claim, but felt somewhat inhibited by their lack of fuller awareness of domestic law governing HLP.

The Bulama will make a decision on the basis of having listened to both sides. Any agreement to resolve a dispute must be consensual. Generally, the decisions of the Bulamas are not binding and could be overturned after the settlement. There is then the option to take the dispute to a higher customary authority or into the formal system. A notable element of the processes carried out by Bulamas was the use of attestation by witnesses to a party's claim. So, for example, if a person claims a right to a piece of land or some property, the Bulama will usually call witnesses in addition to consulting any paper evidence that is available. Importantly, written evidence will usually only be consulted in HLP cases, including title deeds or tenancy agreements.

The 'customary' hierarchy beginning with Bulamas and ending with Shehus or Emirs at the top, described in Borno state, performs several relevant functions relevant to HLP disputes. The first is as witnesses to HLP transactions. This practice appears to be deeply entrenched in participant communities and may derive from the manner in which the hereditary line of Bulamas and Lawans is created: it was reported that Bulamas are the descendants of the head of the first family to settle in an area.<sup>101</sup> Accordingly, their very status and authority is inextricably tied-up in the land on which the community has formed. Clearly, this raises some difficulties in instances of displacement, as the legitimacy and authority of Bulamas, especially, is undermined when the land-based authority is removed by departure from the area controlled by Bulamas. This challenge was reported as a significant source of distress and resulted in disempowerment of displaced Bulamas. The interaction between IDP Bulamas and host community Bulamas was one of deference, and it was repeatedly stated by displaced Bulamas and their communities alike, that they were unable to challenge the HLP-related acts of host communities, including their Bulamas and Lawan because they were only guests and they had already received great kindness from host communities. Galtimari, one of the first sites of NRC's shelter and ICLA intervention and with a Lawan who had taken several steps to combat corruption within the area under his control and to make himself and his representatives available, represents perhaps one of the best situations for IDP Bulamas. Their authority over their communities that have become displaced with them is recognised and – albeit to a limited extent – respected. This manifests in the dispute resolution routes of IDPs: they initially attempt familial or community-based resolution, thereafter resorting to their own Bulamas and then to the host community Lawan.

Interviews and focus groups revealed how the Bulama or Mai Anguwa is the preferred initial destination for those seeking to see disputes resolved once they had tried within their own community. This would mean that initially people would approach their own family members, community elders or IDP Chairman, and only if this failed would then go to the Bulama or Mai Anguwa. All of the traditional rulers operate as part of a strict hierarchy: it was understood that one could not usually approach a higher level without first having tried to resolve the issue at a lower level. All participation in dispute resolution is consensual and the process can only be concluded with the agreement of both parties. If, for example, resolution is impossible with the Bulama, the parties can then (and only then) approach the Lawan. The hierarchy of the system makes it more difficult to refuse the proposed resolution the higher up the ladder one goes, with social pressure a key feature of a system that is socially and culturally enforced.

## Extending the Lawan's reach: The five man committees in Galtimari

In Galtimari, Maiduguri, the well-respected Lawan was concerned at the influx of IDPs into his area and the resulting increase in disputes that required his attention. Concerned that he was unable to resolve all disputes effectively he divided his area of responsibility into five zones, and for each created an (all male) committee of five representatives. Each committee was responsible for monitoring the use of lands for temporary shelters, combatting forced eviction and addressing the issue of loans between IDPs and community members in its area. They also had a broader mandate of monitoring who came and went from the community and managing local infrastructure, such as latrines. Each committee includes religious leaders and IDP representatives and reports directly to the Lawan. The committee appears to represent an extension of the Lawan's authority, increasing his reach and, potentially, the representativeness of his decisions. The committee claims to be steered by Islamic law, but members admitted that they were not necessarily well versed in it. Its role is precisely to resolve disputes, including those related to HLP. This appears to represent the customary system evolving a response to a new situation, using the existing principles on which it works, and likely reproducing any discriminatory practices, but in a manner which increases the capacity of the system, in response to displacement.

### Interaction between customary and statutory systems

Whilst there is in principle no interaction between the formal and customary system, in practice both acknowledge the other. If a court hears about a customary decision, it was reported by assessment participants that it will give heavy weight to the customary status quo. It is reported that courts are also empowered to enquire into the merits of a customary decision: the lower courts (magistrates' and Area Courts) apply a 'repugnancy test', whereby a decision by a customary leader must not be repugnant to the rules of natural justice, equity and good conscience. This was a practice of British colonial courts to establish a check over the exercise of customary authority, and in line with the laws and concept of justice in England and Wales.<sup>102</sup> The courts will also consider witness statements as evidence of the decisions of traditional institutions and give those due weight. The remit of the customary structure is only civil cases; the Bulama will refer criminal cases to the police and, in the Criminal Procedure Code, Bulamas have the power to arrest an individual and send him or her to the magistrate's court. Actors traditionally involved with the statutory system, such as the Legal Aid Council and the Bar Association, have acknowledged the role of the customary system, by providing training for customary institutions on dispute resolution techniques and human rights.

Any party can at any point choose to abandon customary dispute resolution in favour of a formal response. The majority of those met were dismissive of the formal system, since it often demanded fees to be paid, either formally – for example through lawyers' fees – or through bribes; it was also less physically accessible, was conducted in English that most did not understand, and demanded paperwork be completed that intimidated many, particularly the illiterate.

Bulamas, according to Section 115 of the Criminal Procedure Code, have the power to arrest an individual and send him or her directly to the magistrates' court, and there is a duty on Bulamas to report criminal matters. In this way, the functions of Bulamas tends towards governance.

The 1968 Land Use Act recognises a role in land administration for customary leaders and also recognises customary rights in land. While it is reported that it has no legal or judicial authority, there is a reported practice that local government can and does issue



certificates of customary rights of occupancy. In practice, this is understood to verify the right of the holder to guard against fraudulent activities. This certificate of a customary right of occupancy can then be used as evidence before the Land Ministry to seek a statutory grant of right of occupancy without following the procedure of allocation by the government before obtaining a grant of a right of occupancy. By so doing, a person in possession of a certificate of a customary right of occupancy can obtain a statutory right of occupancy.

The examples given above are specific instances in which domestic statute recognises, enforces, empowers, and even subjects to a supervisory jurisdiction of the court, the decisions of customary leaders. While these instances seem sporadic, they support a picture offered by participants that dispute resolution is a dynamic process, in which a range of equally valid (as perceived by users) routes are available at all times.

#### Access to customary dispute resolution

Access is the first challenge for dispute resolution, particularly for those, such as women, who are traditionally excluded from particular social roles. In three fundamental ways access for all, including women, appeared to be available:

- All those met were aware that the Bulama was available to resolve disputes;
- There was a consensus amongst those met that the traditional leaders, and in particular those at the lower levels, were physically accessible in the community and open to being approached about disputes;
- The Bulama and Lawan do not demand fees for their services and are thus affordable, but in some cases it was reported that one can give a 'token' to the Bulama for his work.

*We walk to the Lawan's house, we do not pay any money. He is impartial and gives equal treatment to the IDPs. He sympathises with their plight and always willing to give them a listening ear and render assistance the little way he can. We are always satisfied with the decision the Lawan makes, we see it as fair, impartial and always provides a lasting solution. Majority about 90 per cent do agree with the decision of the Lawan, very few don't and at times decide to take it further. We feel it is easier and safer for us to meet with the Lawan to intervene on our behalf to try and resolve the issues, because it is their property and we have no right over it. (FG07)*

Limitations on access came from several sources. First, the presence of informal processes, such as family members and elders, acted as a 'filter' on women accessing customary structures. Generally, married women were not expected to themselves visit the Bulama, but would seek their husband's permission or request their husbands to go on their behalf, reflecting a domestic hierarchy:

*She must tell her husband first before going to the Bulama or else it will be considered as high level of indiscipline. A woman does not disobey her husband, she must obtain permission from her husband before going to Bulama. A woman does not exceed what her husband says. (FG01)*

Women who have disputes with or complaints against their husbands or within a family are generally expected to resolve the issue within the family by calling upon elders or their own relatives. Some assessment participants believed that a woman has no right in society to go directly to the Bulama, while others articulated this as simply being, "better to settle such things at home" (FG02). Another said that, "The community may see her as impatient and may even lead to her husband divorcing her. The Bulama may ask her

about the whereabouts of her husband that she had to come on her own” (FG22). This represents the operation of stigma and social expectation to constrain women’s access to such structures. Another level of control over women’s access to customary structures is the broader family, who may decide that they do not want an issue, for example that may be internal to the family, discussed externally. Where women are single, divorced or widowed, they will typically be represented, both within the family and beyond it, by a wakil, or guardian, most often a male relative. If a woman has a dispute with her husband, then the matter will be referred to the women’s wali (see above), who will represent her in discussions within the family. Such issues can also be taken to other structures, such as the religious leaders or the Bulama.

A second constraint on access concerns IDPs who are living in a community that has its own customary structures, but which will be less well known to the displaced. Disputes will typically be between an IDP and a member of the host community and, in such situations, the lack of authority of the customary structures of the displaced community in that area are visible. Whilst some IDPs praised the impartiality of the host customary structures, others aired the powerlessness they felt in approaching them, creating a fatalism amongst the displaced:

*An IDP does not have the power to engage a member of the host community in any land dispute. An IDP always accepts everything that happens since he is a settler. (FG01)*

Interviews with displaced Bulamas revealed their frustration at not being able to help their community, with one reduced to tears over the issue. The one route that IDPs do use is to request the IDP Chairman to take their issues to the local Bulama if he is unable to resolve the dispute himself.

### **5.3.1 Substantive rules applied in ‘customary’ processes**

A general consensus among both host community and IDP Bulamas, as the first line of dispute resolution, was that they apply neither Islamic law nor custom, but prioritise the maintenance of peace. This appeared to translate into the view of users that, certainly the Lawan of Galtimari, and the customary structures generally, acted fairly. Clearly, these are two different standards. It was repeatedly stated that the Bulamas and Lawans preach patience to landowners, which suggests that IDPs’ HLP rights often are perceived as an inconvenience to be tolerated.

In this way, there are not clear rules or frameworks that are applied by Bulamas and Lawans and, accordingly, it may be difficult for the community to predict whether one act or another will result in censure or support from the customary leaders. While, in practice, the community may come to know the practices and tendencies of a particular Bulama or Lawan, and even the personal allegiances of these actors in cases where they are susceptible to outside influence, the practice as reported by the customary leaders themselves does not suggest that there is absolute predictability: decisions are based on a loose idea of what is fair and, while this may yield fair results that respect the rights and interests of parties to a dispute in cases where the Lawan and Bulama are free from bias and influence, it is not guaranteed. It is in part on this basis that several users suggested that the Bulamas and Lawans be given a salary so as to free them from the risk of bribery to influence their decisions.<sup>103</sup>

A further observation arising out of the lack of clearly specified rules is that the use of the Bulamas and Lawans by users appears to tend more toward governance. Where a complaint is raised, it can be that the Bulamas or Lawans simply decide on whether the complaint is a valid one based on how the community should be operating, rather than the specific HLP rights or interests invoked or threatened in a particular case.

Clearly, for traditional leadership to be effective – in dispute resolution and otherwise – it must be trusted by the community it represents. IDPs in Adamawa complained of corruption among their own customary leaders, such that relief assistance was diverted before it could reach the ordinary people. In one area where focus group discussions were held, the Lawan was relatively new, having succeeded his brother who had been removed from office following allegations of corruption. This both demonstrates that such traditional leadership is not free of the corruption that plagues formal governance in Nigeria, as well as the fact that accountability to the community is still present, at least at some level. In all cases, the manner in which the authority of the Bulamas and especially the Lawans in the areas under study is so deeply entrenched in the structure of the host and IDP communities contributes to the perceived legitimacy of these structures. However, there was a general acknowledgement that there was scope for abuse, and indeed reports of abuse of position by customary authorities.

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## 5.4 State structures

This section does not discuss the courts in great detail but gives a brief outline of the courts and their caseloads. Its focus is on ‘pre-court/trial’ dispute resolution processes that are provided by the State. Across all statutory structures, the issue of accessibility was raised, owing to the language used and the literacy levels of potential users. This is particularly pronounced for women, who are less likely to be educated to the level of having a good command of English, which presents obstacles to their engaging with these processes.

### 5.4.1 The police

Several participants mentioned reporting to the police as a way to circumvent traditional or customary processes and it was consistently reported that, in order to go to the police, a person would have to pay money, usually as a bribe. A discussion of corruption aside, this evidences a notable lack of understanding (and perhaps exploitation of this lack of understanding) that HLP issues would rarely fall under the criminal jurisdiction of the police.

Although distinct from the police, the Civilian Joint Task Force, a government militia, appears to be perceived by users as a comparable body with relevant powers and authority. The JTF was established when armed hostilities were ongoing to assist law enforcement and military agencies in combating Boko Haram by reporting suspicious activities. In this way the JTF resembles a state-sanctioned vigilante group. When settlements were established for IDPs, especially in camps, the JTF was used as a mechanism to maintain law and order, based on its residual influence. The use of the JTF, considering that its ‘personnel’ tend not to be trained and are ordinary members of communities, but who have an elevated influence, is clearly of some concern.

### 5.4.2 Legal Aid Council

The Legal Aid Council (LAC) is a government-sanctioned body that provides services to indigent individuals. The number of such individuals has increased with the conflict and movement of persons, and IDPs fall within the purview of the LAC, which deals mostly with civil cases. Services include dispute resolution to avoid court, conflict resolution centres, and signposting and referrals to other services. Conflict resolution centres were established in Maiduguri in 2008-9, but their operation was interrupted by the armed conflict. LAC also provides free legal advice and assistance if cases do go to court.

Individuals can approach the LAC in three ways:

- Direct approach;
- Court referral;
- Referral by an organisation.

LAC receives an average of 10 cases per month, and they are mostly child abuse or domestic violence related and are brought to the LAC by the victims. In criminal cases, the LAC refers the matter to the police. LAC engages in outreach in the community to sensitise the population to its services. While an attempt was made to set up satellite offices outside the capitals of Adamawa and Borno state, this failed owing to resources and infrastructure. LAC services are otherwise open to all persons in the state, subject to practical or logistical obstacles. The LAC is usually approached by women if they are divorced or if there is an inheritance issue.

The view expressed by the LAC was that, “traditional institutions are a vital part of dispute resolution because they are close to the population”, which accords with the general perception of dispute resolution operating on a spectrum of choice from community-based responses to disputes to legal challenges before courts. A way to improve it was to regularise the decisions of traditional or customary leaders, such that there could be a continuity of enforcement and a route for challenge.

The LAC office in Adamawa described engaging directly in dispute resolution, such that when a dispute is brought to them by a complainant, they invite the other parties to attend the offices or they attend the home of either party. This usually arises in marital issues, inheritance, custody and maintenance, for example. It was stated that, when a settlement is reached, it is usually put into writing and “the notion that it is in writing instils fears into the parties” and they tend to abide by it. In the event that a party does not adhere to the decision and it is a religious matter, LAC refers the matter back to their religious leaders.

Members of the LAC are also involved in the state-mandated Law Commission, which is made up of four justices and 20 lawyers.

The need for resources was noted, as well as mediation training for LAC staff and better connections with the traditional and religious leaders as “it is their job and it is to make it formal”.

#### **5.4.3 Nigerian Bar Association**

The Nigerian Bar Association (NBA) is a professional association for lawyers across Nigeria with local chapters in each state. Within the NBA, there is a human rights committee, a law reform committee and they offer pro bono services for all IDPs. The NBA in Borno appears to be an implementing partner of UNHCR.

The NBA has a programme in Borno, entitled ‘Legal Protection for IDPs’, under which it provided training to traditional, IDP and camp leaders on fundamental human rights and ADR techniques. It has also provided training to the Civilian Joint Task Force. While there are currently no structures in place under the auspices of the NBA to actively resolve disputes, the NBA is working in Adamawa with the Ministry of Justice to create one.



#### 5.4.4 Amicable Settlement Corridor

The Amicable Settlement Corridor (ASC) is one service available to parties to a dispute, offered in the 'Multi-Corridor' High Court. The legal basis for this form of alternative dispute resolution is in the High Court Civil Procedure Rules and practice directions of State High Courts and is triggered at the pre-trial notice stage of formal proceedings.

The ASC provides three types of dispute resolution: mediation (mostly used in Christian matrimonial cases, common law and business matters); arbitration (hardly used in Borno state, but usually used for commercial disputes); and *Sulhu* (for matrimonial, inheritance, land disputes, and business). *Sulhu* is the most commonly used in Borno and applies Islamic law. The ASC is staffed by experts in dispute resolution/mediation and Islamic law experts. *Sulhu* comes from the Arabic term for reconciliation and this is borne out in the process. It is used in many cases, especially in inheritance, when a woman is denied the right to inheritance, and matrimonial cases (mostly complaints about custody and maintenance). ASC services are free. Sessions are held in private with only relatives of the parties present if the parties so wish, and this is part of the reason that some people prefer the ASC to the courts, which has public hearings. As the outcomes reached through the ASC are through consensus, they are usually adhered to by parties. The outcome document is taken to the Area Court (the state Islamic Law court) or the High Court to crystallise the agreement into a Consent Judgment, which then becomes enforceable in the manner that would a court judgement issued by a judge. If the parties request a religious scholar, ASC mediators call a person of the relevant school of thought or faith to which the party or parties adhere.

The ASC in Borno receives at least 30 cases from the whole of Borno every month. Approximately two thirds of these were resolved amicably, showing a decent rate of success for the ASC. When the ASC concludes on a dispute, it can be resolved, resolved with conditions, or referred onward. In the latter case, when the ASC fails to help the parties reach a settlement, it is sent to the Area Court.

Settlement or referral onward is sought to be achieved within five sittings, within two to three months, but is typically reached within two or three sittings.

Following the first approach to the ASC, a statement is taken from the complainant in any language and it is confirmed and signed. The ASC then sends a letter of invitation, which is not a summons and does not have the legal effect of compelling a person to attend. In most cases, the respondent complies with the invitation, but the ASC has no jurisdiction to force respondents to attend. In a small minority of cases, the parties will typically resolve the matter amongst themselves. If there is no response to the initial letter, the ASC will send one more letter of invitation.

A party to a dispute can directly approach the ASC, be referred by the Area Courts, be referred by the magistrates' court, which usually happens in cases of sexual violence, be referred by the High Court or be referred by the International Rescue Committee, which is currently supporting the ASC in Borno through some material assistance and referrals of SGBV cases. If a matter is referred by a court, it is done formally with a referral letter from the judge and the case file.

The ASC was one of several processes engaging in sexual violence matters, in which case they offer counselling and get the perpetrator to agree to non-repetition. Women mediators usually handle such cases. While ASC mediators, like most other dispute resolution actors, emphatically stated the limits of their authority to deal with criminal matters, it became clear that they often engaged in matters that have criminal elements.

In respect of rape cases brought to the ASC, mediators suggested that the more flexible, private nature of mediation by the ASC presented an attractive option for SGBV survivors. ASC intervention often suspended or extinguished the criminal proceedings, and this raises clear concerns in terms of accountability and fuller prevention and punishment of SGBV by the State. It is not clear that the mediation process would meet the obligations of the State in this respect.

In all cases, if an award is made and signed, it is binding between the parties. Thereafter, the burden of proof shifts from the initial complainant to the person seeking to contradict the award.

Currently, there are six female mediators and 17 male mediators.

A notable obstacle to (particularly women's) access to the ASC is considered to be ignorance. There is a culture of obedience to one's husband such that if a wife is told not to take a matter outside the home, she will comply. In this regard, education of women on their rights in Islam and in law were noted to be of great importance, as was financial support for transport costs, training on Islamic law to community-based religious leaders, and messaging through religious leaders.

#### **5.4.5 National Human Rights Commission**

The National Human Rights Commission (NHRC) was established as an independent commission to supervise the application of human rights law in Nigeria. It is mandated by the Constitution of Nigeria to promote and enforce human rights of all persons in Nigeria.<sup>104</sup> In 2010, its mandate was extended and 'recommendations' made by the NHRC now have the legal effect of a High Court judgment and are enforceable in the same manner. They are appealable to the Court of Appeal.

The NHRC is empowered to receive complaints of human rights violations (i.e. allegations against State actors) and abuses (i.e. allegations against individuals). The NHRC appears to define 'non-State actors' as individuals, as opposed to in the sense of non-State armed groups such as Boko Haram. Allegations of human rights abuses tend to be limited to individual disputes and often domestic violence allegations. There is a zonal office in Maiduguri serving six states and state offices in Adamawa and Gombe states. The procedure for lodging complaints is as follows:

- Complaints must be submitted in writing and in English – either by email or by letter. Considering that women are less likely than men in north-east Nigeria to speak English (based on education levels and completion), this presents a gendered obstacle. However, the majority of complaints received by the NHRC are from women;
- Complaints may be anonymous;
- The NHRC investigates the complaint directly;
- NHRC demands specific actions;
- NHRC recommendation is enforced.

If an individual disputes the outcome, the matter can be referred to a court. Sometimes, the matter is resolved by Bulamas. The zonal office in Maiduguri is the only one in six states, and complaints can only be brought in person, which presents significant obstacles

to its reach: only those who are willing and able to travel to the office can access its services. In this regard, financial support for complainants' transport/travel costs were particularly requested. It is believed that women come to the NHRC because it is more comfortable, it is a government structure, it is neutral, there is immediate action and the decisions and recommendations are enforceable.<sup>105</sup>

In terms of procedure, the two male and two female mediators at the Maiduguri zonal office call both parties, hear the complaint and response from both sides and then counsel both parties to reach a common ground. They will additionally engage in individual counselling until they are able to explain to both sides that an agreement has been reached, which in the most common instance of domestic violence brought to the NHRC, is non-repetition and apology. The terms of the settlement are drafted and signed by both sides. Failure to abide by these terms can result in a fine. The NHRC conducts follow-up between two and four weeks after the settlement and produces a report on the implementation of the terms of the settlement.

When a dispute is brought to the NHRC its mediators deal with it immediately. The Commission receives approximately 20 cases a month. The majority of cases are brought by women, who are described as 'lower class', because women of higher classes are less likely to bring a complaint of their domestic situation outside the family or the community.

In respect of the NHRC's advocacy work relating to HLP, it advocates with women to register property in their own names, because of the norm that women's contributions to the household value by purchasing household items, for example, is difficult to evidence and often leads to disproportionate settlement on divorce. The NHRC's land registry-related advocacy is a good example of a significant disconnect between the reality of practice of communities (both displaced and host) and the positions of legal institutions. While the latter expect and recommend more formalised approaches to HLP, this contradicts the intricate balance of entitlement and responsibility that underpins customary land governance, and which was rejected outright by a number of participants.

The NHRC has a team of human rights violation assessors. They conduct field visits to investigate allegations of human rights violations. There seems to be a dearth of understanding or documentation of human rights abuses (i.e. interference with human rights by non-State actors including Boko Haram). As yet, there is little information on the processes that will be established to deal with any violations against individuals by non-State groups including HLP violations and IHL violations. While the human rights assessors have identified looting and destruction of property in areas of ongoing and former hostilities, it is not clear what steps if any are planned in respect of redress for these.

In respect of 'group action'-like situations, the NHRC has engaged in seeking redress on behalf of a large group of persons for requisition of land. Because of its positioning vis-à-vis the government, the NHRC is able to negotiate and advocate with the authorities. In the specific case cited, the NHRC eventually secured compensatory payment, which is in accordance with the domestic law and constitutional protection of property rights. This, however, appears to be an exceptional case.

#### **5.4.6 Ministry of Justice Civil Rights Desk**

It was reported that there is a civil rights desk within the Ministry of Justice. The desk receives complaints from the public in respect of violations and abuses of rights and also relating to the police. The civil rights desk was not engaged for this assessment.

## 6. Women and dispute resolution

The issues that women were likely to bring to dispute resolution processes were perceived to be different from those brought by men. For example, some reported that women never own land in their own right, but will be supported in this by a *wakil*: as such, women will rarely be directly involved in land issues.

Many issues raised by women will be linked to marriage, divorce or inheritance and these were addressed subject to the comprehensive and detailed provisions of Islamic law. The deep links of the customary structures to such issues is demonstrated by the fact that the Bulama will often participate in the wedding ceremony. However, many of the customary actors had a limited knowledge of Islamic law, as in some case they themselves admitted, which compromises their ability to implement its precepts and increases the chance that local cultural attitudes will rather drive process.

A protective attitude toward women and children, whereby they were the object of protection rather than agents in their own rights realisation, was observed among community leaders (particularly religious leaders). It does not seem to be limited to situations of guiding women through ‘public’ processes such as land transactions or dispute resolution. For example, religious leaders in Yolde Pate stated that, “If someone’s wife offends you, you simply report it to the husband”, and that women leaders were limited to handling disputes between other women only, “because no man will allow a woman in his community to resolve his dispute. The woman is under the man in both religion and culture” (FG27). In stark contrast, in Galtimari there is a female Bulama, who leads a group in the same manner as her male counterparts. Although at first her position was usurped by a male relative, she was eventually appointed by the Lawan to the role. While women may be more inclined to seek her out to report issues, or may be have more confidence in approaching her, she performs the same functions as male Bulamas in respect of the population for which she is responsible.

It is clear that women’s involvement in dispute resolution is an important consideration in women’s experience of those processes. This is particularly the case in legal processes, including NCHR mediation and ASC *sulhu*, where matters that are considered sensitive – especially relating to sexual violence against women and girls – are dealt with exclusively by female mediators in both institutions. While the flexibility of the mediators is to be welcomed, it should be borne in mind that there would need to be an appropriate response to sexual violence against men and boys were it to arise, and this should be publicised such that complainants are aware of how their complaints would be met.



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## 6.1 Female community leaders

At the community level, there are women's groups that can mediate disputes and are likely to provide a service that does not articulate patriarchy in the same way as the other informal and customary structures.

*We prefer a woman to help resolve our disputes so we can resolve our disputes amongst ourselves because there are certain things we are not comfortable discussing with men. And we prefer the elderly women amongst us. (FG08)*

In IDP camps and displaced communities, there is usually a senior woman who can represent female IDPs, and they often play a role for example during distributions, supporting interpretation and providing guidance for agencies, and can mediate disputes. There were limits however on what such female mediators could do:

*The type of disputes they [women] resolve are only disputes that involve women not men. [...] Because no man will allow a woman in his community to resolve his dispute. The woman is under the man in both religion and culture. (FG27)*

The customary structures are almost entirely male. However, in Borno one female Bulama was met who operates as an equal amongst a male-dominated hierarchy (see box below). Despite the patrilineal structure of bulamaship, Fatima's story shows how, with the right people in place, these practices can be overridden for a fairer customary structure.

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### Female Bulama in Galtimari

Amongst the many male Bulamas in Galtimari, also sits a female Bulama, Fatima Omar. She has come to be treated as an equal both by her peers and the people under her care, but her appointment to the Bulamaship was complex.

*I am a leader chosen by the people and for the people – both males and females come to me with their problems and, thank God, I usually succeed in settling them. The reason that I said I am a leader chosen by the people is because this title was my father's and after his death, my younger brother of tender age inherited the title, but then the Lawan decided to give it back to me.*

Fatima had studied under her father, preparing to take the title of Bulama when he died, but it passed instead to her brother. She described her disappointment as her father had chosen her, but her family and custom dictated that the title should go to her male relative. Fatima said she exercised patience. The Lawan understood that her position had been usurped by her brother and tried to console her, but she did not respond. Neither did she complain or take her disappointment to others, but members of her community seemed to advocate for her, saying that she was the rightful successor to her father. Eventually the Lawan sent her word that she had shown the behaviours and temperament of a Bulama and that she would be reinstated.

*All of us are the same rank, and there is nothing wrong [with me speaking before the other Bulamas]. All of the categories of people come to me, not minding that I am female, in terms of speciality when people come to you, you have to observe why because each person has their own kind of temperaments. Some are hot tempered and some are not, so you have to understand all this. All of us are humans and we have to do justice.*

Fatima described how she felt comfortable attending the Bulama meetings with the Lawan and other Bulamas. She sometimes sends her son as a representative when she is busy with the community or at home, and there is no problem with this.

*Women feel more comfortable in approaching me, but nevertheless I do not take sides with women because I am one. I try to be as fair and just as I can possibly be.*

Fatima's sense of responsibility was palpable: she stated repeatedly, like many other Bulamas engaged in this assessment, that she would also be judged for her decisions and actions, and this meant she was required to be just and fair. Fatima described handling HLP matters including inheritance and landlord and tenant/squatter disputes.

*I try to preach patience and tolerance to both parties and ask tenants to pay landlords rent. But if they can't afford it, I ask them to find alternative accommodation within a timeframe. For squatters, I try to plead with the landowners to allow them to stay but if they insist, then I cannot force them against their will. I try to find alternative land for the squatters.*

Fatima said that while she had been well prepared by her father, "my only regret is that I don't have formal education". While she knows the basic principles of Islamic rules, she has no knowledge of Nigerian domestic law, but this would be valuable. When there is a complex matter in Islamic law, she calls upon scholars to advise.

#### Female access to CDR structures

At the heart of the challenges women face in benefitting from dispute resolution is the fact that much of the dispute resolution space is considered for men only, and as a result women are poorly informed about possibilities, as well as often denied access: "We don't know how they resolve disputes, it is our husband that usually engages in such things" (FG10). Where women do not have husbands to represent them, others will step in:

*[Widows and divorcees] usually stay with their relations; therefore, the relations are the ones that are involved in their cases. Some of the women are shy therefore they don't take their matter to community leaders. (FG12)*

Women's position in society also has an impact on the information to which they have access, and this was understood as limiting their ability to take part in dispute resolution:

*We as women, and worse as widows, we don't resolve anything we usually have no access to information specially on land and properties the information is limited to male. If we can be enlightened a bit at least we will know how to handle our issues without having to go to Mai Anguwa. (FG30)*

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## 6.2 Intra-family disputes

'Matrimonial' cases are those that relate to disputes between spouses. They can include separation and divorce, claims for maintenance following separation or divorce, but also maintenance and behaviour during the life of the marriage. These appear to be treated as 'intra-familial' disputes, and this is manifested in the practice of calling representatives (usually from the family) of each spouse – particularly by Islamic religious leaders at the community level.

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### 6.3 Quality of process for women

There was no consensus among women met as to there being an intrinsic challenge in seeking to use male-dominated dispute resolution structures. One group of widowed IDPs could not reach agreement, with a majority agreeing that, “There is no gender bias in dispute resolution because the informal structures are mostly guided by the principles of Shari’a. We prefer the male Lawan because women are pompous and cannot respect no confidentiality” (FG17). A minority disagreed, saying we “prefer to go the woman Bulama because she is a lady like me, because of confidentiality and she’ll understand me more” (FG17). Another woman said, “When you have a serious problem the gender of the structures doesn’t matter all you are after is justice to your case” (FG24). Others articulated a tension in disputes between a man and a woman, between discrimination against women and a traditional culture of prioritising, respecting and protecting women. It does however appear likely that patriarchal structures will reflect discrimination of the cultures from which they emerge in dispute resolution.

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#### Case study: Women’s strategies in addressing dispute resolution

A divorced IDP in Yola, Adamawa, found that the room she had rented was in poor condition, but the landlord refused to make repairs or refund her rent:

*After moving into the room, I discovered that the roof of the room was bad and when it rained the roof used to leak and water usually pour down into the room and thereby causing damage to some of my belongings. I then complained to the landlord about the situation, pleading with him to come and fix the roof in order to avoid further occurrence of rain getting into the room, but the landlord refused to do anything about it.*

The woman approached a neighbour, then the IDP leader, before going to the Mai Anguwa and ultimately the police:

*When the landlord refused to neither repair the bad roof nor refund my money, I went to my neighbour (who was also an IDP like me) and complained to him about it but he told me he couldn’t do anything about the dispute. He then advised me to take the matter to the IDP leader, which I did. When I got to the IDP leader, he then took me to the community leader (Mai Anguwa) and after telling the Mai Anguwa what happened, he sent for the landlord to come over so as to find a way of resolving the dispute.*

*When the landlord came to the Mai Anguwa’s place for the settlement process, and after the whole issue was discussed, the Mai Anguwa advised the landlord to either fix the leaking roof or refund the money to me but the landlord was still adamant and refused to heed the advice of the Mai Anguwa.*

*With the failure of this settlement process, the IDP leader then took me to the police in order for the police to intervene in settling the dispute between me and the landlord. At the police station, I had to pay the police some money for them to take up my issue and then they intervened and asked the landlord to refund my money. The landlord eventually refunded my money but in instalments.*

This demonstrates how people navigate different structures until they find one that can address their problem and how social networks support such access.

### Case study: A widowed IDP failed by customary structures

A widow displaced twice and now in Yola, Adamawa, reported how she felt discriminated against by the local leader:

*I was living peacefully with my husband before Boko Haram killed him in 2012. He was very caring towards our children and me. We lived in my husband's personal house in Gulak. [...] After his death in 2012, his brothers asked me to leave the house for them, they said that it belongs to their brother and not to me. I pleaded with them for the sake of our little children, but they refused. They insist that since I do not have a male child, then neither my female daughters nor I will inherit from their brother. [...] Not long after that Boko Haram attacked our village and we all fled. Now people have started returning to Gulak and I also want to return, but I have been told by them (my husband's brothers) that I should not come back to that house, they claim it is now their house and they are living in the house already. That if I must come back I should look for a different house for my children and me. [...]*

*When they asked me to leave the house shortly after my husband died, I was very worried, so I went and told my mother, she is the closest relative I have, my father died since when I was a kid. When I told her, she said I should beg them and try to make peace with them, which I did but to no avail.*

*I reported the issue to our ward head (Mai-Anguwa) he invited all of us to his house, when we all gathered, he did not let me say everything that was on my mind, the men spoke most of the time. When I tried to speak the Mai-Anguwa said I am disrespectful to him and to my in-laws. One of my late husband's brothers even claimed in front of the Mai-Anguwa that it was him and my husband that jointly bought the land on which the house was built and that he lent NGN300,000 to my husband before he died. The Mai-Anguwa said my late husband's assets should be shared amongst us, that it was the best option. However, I did not agree to this.*

*We were still on the process of this when our village was attacked and we fled. We did not meet with any of them since then because they did not come towards Yola. I heard they ran to Cameroon instead. Now that I have been told by the people that went to Gulak that I should not go back to the house I am confused and I do not know what to do. Because I was also told they have occupied the house. [...]*

*I ended up disappointed in the decision of the Mai-Anguwa; I refused to agree with his decision because he was biased. He did not give me a fair hearing as he gave the men, he treated me as inferior to the men. I even suspect that they must have connived to take what belongs to my children and me.*



### Case study: Effective use of customary structures by a widowed IDP

A widowed IDP in Adamawa recounted the challenge she faced in staying in her rented home:

*After staying for about five months in the house, the landlord came and told us to pack out of the house, claiming he wanted to change the doors of the rooms and also repaint the house. I told him we could still remain in the compound while he carries on with the said repairs, as we had no other place to go to. He refused, and then insisted we must pack out of the compound to enable the repairs to be carried out but we told him we had nowhere else to go to. Finally, he got angry and told us he was no longer renting the house to us any more, that we should just pack out and leave the house for him. [...] I started begging him to allow us stay but when he refused, I told him to give us the remaining part of the rent money so I could use it in renting another house but all to no avail.*

She emphasised the importance of women in the community who could provide support and solidarity:

*So, I went to my friend Hajara and told her what was happening and she told me that the local community leader (Mai Anguwa) would be in the best position to settle the dispute since disputes within the community are usually taken to him for settlement. I then asked her to accompany me to report the matter to the Mai Anguwa and she agreed. We went to the Mai Anguwa and I told him what was happening after which he sent for the landlord to come. The landlord came and the Mai Anguwa also enquired from him what was going on, and the landlord told him.*

*After hearing our stories, the Mai Anguwa advised the landlord to allow me stay in the compound while the renovation of the compound is being carried out. Further telling him that since I am a widow and an IDP with nowhere else to go to, it would be unfair for him (the landlord) to throw me out of the house, and more so for the fact that my rent had not expired.*

*The landlord did not agree to the Mai Anguwa's advice at first but the Mai Anguwa persisted and the landlord eventually, though grudgingly and out of the respect he had for the Mai Anguwa, agreed to let me stay in the house while the renovation was on going. That was how the matter was settled and the renovation was eventually carried out. I've been staying in the compound ever since without any problems. [...]*

*I was very happy with the way the Mai Anguwa handled the dispute. To be very sincere, I didn't think the dispute would be handled objectively and with impartiality the way it was handled, so I was very glad and satisfied with the objectivity of the Mai Anguwa in settling the dispute. I thought since the landlord was a member of the community and I was only a widowed IDP, there were possibilities that the Mai Anguwa would take sides with the landlord and thereby decide in his favour. But that wasn't the case because the Mai Anguwa was sincere in his decision.*

## 7. Conclusions: Supporting dispute resolution in north-east Nigeria

There is a great number of practices and processes in the region that provide dispute resolution in respect of HLP disputes, ranging from the courts of the statutory sector to highly formalised traditional governance structures and grassroots actors who derive their legitimacy from roles in community or family, or as religious leaders. The assessment reveals that these structures interact and overlap in complex ways that offer a range of opportunities for dispute resolution through which affected individuals must navigate a path. We see that many of these structures incorporate attitudes and power relations – notably the patriarchal – that permeate society, forming barriers to access for women and the poor that serve to extend the obstacles to equality in their everyday lives into the dispute resolution realm.

Despite these constraints, most people – including women – saw traditional dispute resolution as something that could serve their needs, and this leads the assessment to propose not the creation of a structure parallel to what exists, but to support existing structures to both address some of their deficiencies and to increase the access and influence of women.

The proposed approach seeks to be rights-based, but also to acknowledge the realities of the context and that to be legitimate and credible any normative approach must acknowledge the role of Islam. In so doing, it seeks not to perceive Islamic approaches as in conflict with rights, but to ensure that positive elements of Islamic law and precepts can be emphasised, especially where they overlap with a rights approach, and to seek to ensure the empowerment and participation of women so that they can impact how such structures operate and the values they incarnate.

The barriers women face in seeking effective and equitable treatment from CDR structures derives from both formal norms, such as the use of Islamic law, and from patriarchal customs that are in some cases falsely conflated with Islamic law. These include social obstacles to a married woman directly accessing customary leaders, on the assumption that her husband should represent her and efforts by male elders in the family to prevent some issues from being taken outside the family structures, acting as a filter on women's access. Given that both community and customary structures are entirely male there was a perception among women that they were discriminated against in dispute resolution. However, the patrimonial approach – in which women are presumed to be under the protection of male actors – can be used to provide opportunities to place women in a privileged position of being viewed as requiring greater protection, and thus having their needs prioritised.

In practice, customary, religious and traditional actors engaging in dispute resolution tend to have a wide-ranging discretion, in part because the rules that they apply are not set out, beyond what is generally understood within a community. It is also the case that the way any particular issue is addressed can vary wildly depending on the personality of the decision-maker – something exacerbated by ignorance of the normative frameworks they claim to be using – and sometimes the function that is performed by these actors can tend toward peace-making or even governance, rather than resolution of disputes.



In respect of state-provided processes, there is a remarkable degree of accommodation of customary and traditional processes even in legal processes, and this has manifested in some ways in the institution of the Amicable Settlement Corridor. As in many other comparable contexts, state-provided processes tend to be seen as a route to circumvent the traditional and customary processes and users tend to develop strategies based on their satisfaction with the outcome of various processes.

That said, there appears consistently to be a strong deference to traditional and customary processes, and the personalities involved, to the extent that even courts will attach weight to the decisions of traditional or customary leaders even if there is limited legal basis for this in the particular dispute before them. This seems to strike at the respective perceived legitimacy of each of these processes, as well as a form of pragmatism that is exhibited by women in many patriarchal societies: while the processes most accessible to them may not offer perfect solutions at all times, they are the ones they are both most familiar with and would offer the least adverse consequences.

*Informal settlement with internally displaced people from north eastern Nigeria, now living in Maiduguri (Borno state).*

*PHOTO: NRC/SIRI ELVERLAND*





From the perspective of users, the statutory processes remain remote due to their formalism, the use of English and their expense, due to the need to pay bribes and lawyers' fees, and are widely less preferred to the customary structures. The innovation of the statutory alternative dispute resolution process is a route to addressing this, but it remains focused on state capitals, limiting geographical access.

In the light of the priority given by populations to community-based and customary structures, these should be the target of any NRC intervention. Despite the already existing linkages between structures, those involved in dispute resolution agreed that greater linkages and sharing of information, knowledge and capacity between services was necessary to perform the functions expected of them.

A set of recommendations has been drawn-up for how NRC can best support the creation of an environment for women and the vulnerable that seeks to optimise how the ensemble of dispute resolution processes addresses their needs. To support the most vulnerable in resolving HLP disputes demands seeking to ensure that women in particular have effective access to dispute resolution and that the structures have both the capacity and awareness to address needs impartially.

In general, the customary structures are considered highly accessible and their mediation is widely respected. Even where women were critical of the way some structures addressed them as women, this did not appear to reduce their legitimacy in their eyes. Challenges do however exist, particularly for women, in navigating informal social barriers in family and community, in taking cases to the customary leaders, and in the quality of mediation they deliver for women.

We strongly suggest that the ICLA programme does not seek to intervene directly in terms of conducting dispute resolution. Such an approach can challenge the legitimacy of existing structures, which are observed to be quite effective and will be challenged to be both comprehensive in terms of geographical coverage and sustainable over time. As such, we recommend that an NRC intervention seek to support existing structures and work to make them more effective for women and the vulnerable, particularly in terms of access and equitable treatment.

Most conflict-related HLP disputes encountered during data collection were linked to locations of displacement, consistent with the fact that most IDPs remain displaced. However, return is underway and likely to accelerate in the future. As such, any intervention should explicitly seek to address potential HLP disputes in IDP places of origin linked to disputes over land and property ownership following extended absence. NRC's intervention strategy should seek to build the capacity of customary structures that are currently displaced, pending their return with the populations they serve.

NRC's current engagement with populations is driven by the shelter programme, and the perspective on the role of the ICLA team is driven by this, with a focus on HLP issues. It became clear during data-taking for this assessment however that a range of protection issues are encountered by the vulnerable, both those linked to HLP challenges and others.

There are no NRC standard operating procedures in place, either to frame how the shelter team can be open to understanding broader protection issues, or for the ICLA team to collect data about such challenges. There is a need both for the mainstreaming of protection in other activities, notably shelter, and a more proactive approach by the ICLA team to both understanding and ensuring the addressing of protection issues beyond the narrow focus of HLP issues.



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## 7.1 Recommendations: A potential support programme for dispute resolution in north-east Nigeria

**Recommendation:** Paralegal representation in the community to support access to customary structures

Challenges in access to customary structures derive from social barriers in family and community. To overcome these, we recommend the training and support of paralegals who can work with those facing obstacles to access through the provision of information, solidarity and support. This will focus in particular on women, who face stigma in defying social norms, and IDPs, who as outsiders lack connections to host-community structures. Female IDPs will be a particular target. The goal is to create an informed, empowered cadre of individuals who can support community members to seek dispute resolution at the informal, customary and formal levels.

Paralegals will be drawn from the communities they seek to support and most will be women and IDPs themselves. They will be trained in human rights principles, in Islamic law and in the range of structures that are available for dispute resolution and how they work. They will also be introduced to customary leaders in their communities as part of a process of ensuring they are familiar with the individuals they will need to engage with.

Whilst such paralegals could be useful throughout the north-east, it is likely to be necessary to concentrate resources where they are most needed. As such, priority will be given to areas hosting high numbers of IDPs and areas from which the displaced have fled. As return continues, trained paralegals from among the displaced will be a part of this and will constitute a resource to support the addressing of disputes that arise as a consequence of return.

**Recommendation:** Training in law and rights for those leading familial/ community and customary dispute resolution

It is clear that many of the familial/community and customary leaders lack expertise in the normative frameworks which are claimed to underpin their work, notably Islamic law. It is recommended that a programme of training and support be initiated that can build their capacity. This programme should include, additional to Islamic law, law relevant to HLP issues (such as that concerning tenancy), and human rights principles. Christian religious leaders should be supported to interpret Church teachings in ways that are rooted in human rights. While human rights are not formally a part of what guides customary dispute resolution in the region, it is important that all efforts be made to ensure the compliance of such structures with human rights principles. Such training could also include dispute resolution skills, such as active listening, negotiation and mediation skills, if there is a perception that they are required to increase either the efficacy or credibility of dispute resolution. The training should target:

- Customary leaders involved in dispute resolution at all levels;
- Religious leaders from both Muslim and Christian communities;
- Others in the community who are important actors in dispute resolution, such as elders, and female decision-makers who can have influence.

The geographical areas targeted should duplicate those addressed by the paralegal programme, emphasising both areas receiving IDPs and those from which they are fleeing. Given the experience of local organisations such as the Bar Association and the Legal Aid Council in providing such training, they may be valuable partners in such a venture.

An important first step to conducting training will be producing and making available reference materials on various matters in Nigerian domestic law. These should take the form of legal memos researched by the ICLA legal staff, agreed upon by the entire team and reviewed externally, resulting in information sheets. These are vital documents to any systematic legal programming and topics covered should include:

- The state and federal court system and the rules relating to first approach to such courts and initiation of proceedings;
- The broad legal framework for HLP rights including acquisition of property, of land, and of housing, lease and licence agreements, etc;
- The customary system;
- Access to justice and legal aid;
- Additional areas in which ICLA and others are required to provide assistance.

These should be regularly reviewed and updated.

***Recommendation:*** NRC ICLA staff to receive human rights and humanitarian law training

Any NRC programme of support around dispute resolution will be delivered by the NRC ICLA team in the region. As such, it is crucial that the team has the skills and reflexes to work according to human rights principles. Whilst team members are lawyers, few have a significant background in human rights.

***Recommendation:*** NRC staff to mainstream protection work more effectively

The assessment has noted that protection issues that go beyond the current focus on shelter are not given appropriate attention by either the shelter or ICLA teams. This results in staff not actively seeking to understand the broader protection challenges that vulnerable populations may be facing, both as a result of or independently of their shelter needs. This is likely to demand several forms of intervention:

- The sensitisation of the shelter team, and indeed all NRC staff, on the importance of noting protection needs when they are articulated, including identification and response to sexual and gender-based violence.
- Training or support to the ICLA team on more effective collection of qualitative data from community members using ethnographic methods that allow an understanding of the everyday lives and challenges of the vulnerable, rather than being driven by plans for NRC intervention. There is a need to challenge the narrowness of the frame of interest with which ICLA staff currently approach such individuals, and the assessment began to develop approaches that permit staff to do that.
- The development of referral pathways, in the form of standard operating procedures that allow the ICLA team to refer any potential protection issues raised to actors who can address them.

***Recommendation:*** Increase female participation in dispute resolution structures

Efforts to change the nature of those leading dispute resolution must be approached with caution, but it is clear that a lack of female representation in customary structures perpetuates discrimination in their decision-making. A route must be found to changing such male-only structures without impinging on the very high legitimacy that they enjoy in their communities. An approach is suggested by that taken by the Lawan in Galtimari (see the box on p.46), who created committees to represent him throughout his area of responsibility. During the training of customary leaders recommended

above, a consultation can be made with the leaders around how they could increase the inclusiveness of dispute resolution, and proposing the creation of committees to support Bulamas and Lawans. Such committees could include women and IDPs – both currently almost entirely unrepresented – selected by leaders, who could be called upon as required to advise on and support dispute resolution. However, this will only be effective if such committees can be created with the support of the concerned customary leaders. As such, this is likely to be something that must emerge from a long-term engagement of NRC with the customary structures in LGAs of interest. Gaining support for such an approach from senior leaders, such as the Emirs and Shehu in Borno, may be a route to ensuring that leaders at the lower levels are supportive.

***Recommendation: Supporting a greater role for displaced Bulamas***

The traditional dispute resolution system in the north-east is premised upon territoriality, and this underpins structures in which a Bulama (for example) will know intimately both the individuals and the issues he is asked to address. While the displaced will still approach their own leaders when confronted with a dispute, the data presented here shows that there remain some challenges in how IDPs perceive they are treated by the host community dispute resolution structures. Addressing this demands ensuring a role for the displaced leaders in the community to which they have moved. While the assessment saw that the displaced leaders are consulted by the host Bulamas where necessary, it is important that such an approach is consistently taken, particularly in disputes between an IDP and a member of the host community. Care must be taken not to prescribe a formal role for displaced leaders: this could threaten the legitimacy of the system. As such, it is recommended that during the training of leaders, where host community and displaced leaders will sit together, the importance of local leaders seeking the advice of displaced leaders is emphasised when dealing with disputes involving IDPs. Ideally, such discussion can lead to a consensus among local leaders as to how those who represent IDP communities can be consulted when the displaced are involved in disputes with the local community.

***Recommendation: NRC to engage more closely with customary structures***

To date, in seeking to engage customary structures around the shelter programme, NRC has taken the opportunity to meet informally to build support for and understanding of the programme but has not engaged systematically. It is hoped that this assessment report can provide a basis for the integration of relevant local governance structures into how the shelter programme engages with landlords and tenants. Such an engagement with dispute resolution structures can also support the needs for a future ICLA programme in terms of training and other support.

It will also be necessary to define more precisely how NRC engagement with CDR structures is divided between the ICLA and shelter teams. This will require the development of standard operating procedures that define more precisely than has been possible to-date how such actors can both support NRC's shelter assistance and how they can create an environment to facilitate the effectiveness of that assistance. This will potentially demand a greater role for customary structures in the agreements between both NRC and landlords and between landlords and tenants.

## **Annex 1. Summary of data collected**

<b>BORNO STATE: FOCUS GROUPS</b>		
	Place	Type
FG1	Galtimari	IDP married men
FG2	Galtimari	Host community married men
FG3	Galtimari	IDP Bulamas
FG4	Galtimari	Host community Bulamas
FG5	Galtimari	Host community married women
FG6	Galtimari	Host community divorced & widowed women
FG7	Galtimari	IDP divorced & widowed women
FG8	Galtimari	IDP married women
FG9	Galtimari	Religious leaders
FG10	Galtimari	Widow IDPs #1
FG11	Galtimari	Widow IDPs #2
FG12	Bulabulin	Married men
FG13	Bulabulin	Religious leaders
FG14	Bulabulin	IDP widows
FG15	Bulabulin	Host widows
FG16	Bulabulin	IDP men
FG17	Bulabulin	Host women

<b>BORNO STATE: KEY INFORMANT INTERVIEWS</b>		
	Place	Type
KI01	Maiduguri	Legal Aid Council
KI02	Maiduguri	Nigerian Bar Association
KI03	Maiduguri	FOMWAN Muslim Women's Organisation
KI04	Galtimari	CDR Committee member
KI05	Galtimari	Female Bulama, Galtimari
KI06	Maiduguri	Christian Women in Borno State Association
KI07	Maiduguri	National Human Rights Committee
KI08	Maiduguri	Amicable Settlement Corridor, High Court
KI09	Maiduguri	Protection Sector Working Group Chair (UNHCR)
KI10	Maiduguri	Shelter Social team, NRC

<b>BORNO STATE: INTERVIEWS WITH USERS OF CRD STRUCTURES</b>		
UI01	Galtimari	Man: Illegal land sale case
UI02	Galtimari	Woman IDP
UI03	Galtimari	Widow #1
UI04	Galtimari	Widow #2
UI05	Galtimari	Widow #3
UI06	Galtimari	Widow #4
UI07	Bulabulin	IDP widow



### ADAMAWA STATE: FOCUS GROUPS

FG20	Yolde Pate, South Yola LGA	Widow IDPs
FG21	Yolde Pate, South Yola LGA	Host community leaders
FG22	Saminaka, Yola South LGA	IDP married men
FG23	Yolde Pate, South Yola LGA	IDP married men
FG24	Yolde Pate, South Yola LGA	IDP separated / divorced women
FG25	Saminaka	Married men host community
FG26	Saminaka	Religious leaders
FG27	Yolde-Pate, Yola South LGA	Religious leaders
FG28	Yolde-Pate, Yola South LGA	IDP Married Women
FG29	Yolde-Pate, Yola South LGA	IDP Married Men
FG30	Saminaka	Widows host community
FG31	Saminaka	IDP separated / widowed women
FG32	Saminaka	Married women host community
FG33	Yolde-Pate, Yola South LGA	Married women host community
FG34	Saminaka	IDP Married women

### YOBE STATE: KEY INFORMANT INTERVIEWS

KI40	Yobe	FIDA
KI42	Yobe	N. Bar Assoc.
KI43	Yobe	Islamic Centre

### ADAMAWA STATE: KEY INFORMANT INTERVIEWS

KI20	Yola	N. Bar Assoc.
KI21	Yola	FIDA
KI22	Yola	Legal Aid Council

### ADAMAWA STATE: INTERVIEWS WITH USERS OF CDR STRUCTURES

UI20	Yolde Pate, South Yola LGA	Widow IDP #1
UI21	Yolde Pate, South Yola LGA	Widow IDP #2
UI22	Yolde Pate, South Yola LGA	Divorced female IDP
UI23	Saminaka	Widow IDP #3
UI24	Saminaka	Widow IDP #4
UI25	Yolde Pate, South Yola LGA	Widow IDP #5

## Annex 2. Tenancy Agreement

### TENANCY AGREEMENT

THIS TENANCY AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_ 2016, BETWEEN

\_\_\_\_\_, of Galtimari Ward, Jere LGA (hereinafter referred to as LANDLORD of the one part).  
AND

\_\_\_\_\_, of Galtimari Ward, Jere LGA (hereinafter referred to as the TENANT of the other part).

WHEREAS the Landlord is the beneficial owner of the vacant plot located at Galtimari Ward, Jere Local Government Area of Borno State herein referred to as THE PREMISES. The Landlord agrees to let his premises to the Tenant and the Tenant agrees to take part of the vacant space within the premises for the construction of temporary shelter structures by the Norwegian Refugee Council (NRC) for the purpose of housing internally displaced person resident within Galtimari Ward.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

- That no consideration shall be given by the Tenant to the Landlord and the Landlord hereby lets to the Tenant all the premises to hold for an uninterrupted period of \_\_\_\_ years.
- AND NRC undertakes to financially and physically facilitate the construction of the temporary Shelter Structures.

***The Tenant hereby covenants with the Landlord as follows:***

- Not to use, suffer or permit the premises to be used otherwise than for the purpose to which it was let.
- To permit the landlord or his agent to enter upon the premises for the purpose of inspection thereof.
- To take all reasonable precautions while in the cause of construction to prevent any damage to the premises.

***The Landlord hereby covenants with the Tenant as follows:***

- To let the tenant peacefully hold and enjoy tenancy on the premises without any interruption, further let or hindrance from the Landlord, his heirs, or any person claiming through him.

PROVIDED ALWAYS that either party can terminate the tenancy by giving three (3) months' notice in lieu of the Tenancy.

WHEREOF the parties have hereunto put their hand and seal on the day and year first above written.

SIGNED by the above named LANDLORD	In the presence of witness 1 Name..... Address..... Occupation..... Signature.....	In the presence of witness 2 Name..... Address..... Occupation..... Signature.....
SIGNED by the above named TENANT	In the presence of witness 1 Name..... Address..... Occupation..... Signature.....	In the presence of witness 2 Name..... Address..... Occupation..... Signature.....

THE CONTENTS OF THIS AGREEMENT HAS BEEN READ OVER AND INTERPRETED TO BOTH PARTIES FROM ENGLISH LANGUAGE TO HAUSA/KANURI LANGUAGE AND VICE VERSA AND THEY PERFECTLY UNDERSTOOD SAME BEFORE AFFIXING HIS/HER SIGNATURE.

.....  
INTERPRETER  
Name:

THIS AGREEMENT WAS PREPARED BY

ICLA LEGAL OFFICER, Norwegian Refugee Council

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## Endnotes

### Executive summary

- <sup>1</sup> Internal Displacement Monitoring Centre (IDMC), Nigeria Country Profile, 2017, accessed 18 August 2017, [www.internal-displacement.org/assets/country-profiles/Mid-Year-update-2017/NGA-conflict.pdf](http://www.internal-displacement.org/assets/country-profiles/Mid-Year-update-2017/NGA-conflict.pdf).

### Chapter 1

- <sup>2</sup> Alexandre Corriveau-Bourque, *'Discussion Paper: Global Effectiveness of NRC's Collaborative Dispute Resolution Approaches'*, February 2017.
- <sup>3</sup> The NRC ICLA CDR toolkit is comprised of the following: Housing, Land and Property Handbook on Design and Implementation of CDR; Trainer and Participant Manuals on Design and Implementation of CDR Institutions, Systems and Programmes; Trainer and Participant Manual on Collaborative Dispute Resolution Skills.
- <sup>4</sup> There was an initial intention to include Yobe state in the assessment but this was impossible due to access issues complicated by delayed official clearance.

### Chapter 2

- <sup>5</sup> Nigeria Pew Forum, *'Religious Demographic Profile: Nigeria'*, 2010.
- <sup>6</sup> NAIJ, *'Communities in Borno State'*, March 2017, accessed 18 August 2017, [www.naij.com/1089608-310000-idps-return-liberated-communities-borno-state-nema.html](http://www.naij.com/1089608-310000-idps-return-liberated-communities-borno-state-nema.html)
- <sup>7</sup> There was some suggestion that such movement tended toward forcible movement, but the extent of this was beyond the scope of this assessment.
- <sup>8</sup> UNHCR Nigeria Factsheet, April 2017, accessed 18 August 2017, <https://data2.unhcr.org/en/documents/download/57056>.
- <sup>9</sup> Stronger Cities Consortium, *'Security of Tenure in Urban Areas: Guidance Note for Humanitarian Practitioners'*, 2017, accessed 15 November 2017, <https://reliefweb.int/sites/reliefweb.int/files/resources/10827IIED.pdf>.
- <sup>10</sup> Whereby the gathering of evidence and preparation of a case relating to a dispute is led by two opposing sides, with the adjudicator or decision-maker hearing both sides and reaching a decision.
- <sup>11</sup> Whereby the investigation of a dispute is led by the adjudicator or decision-maker.
- <sup>12</sup> See, C. Moore, *'Collaborative Dispute Resolution Assistance for Refugees, Internally Displaced Persons and Host Communities'*, 2016.
- <sup>13</sup> In Arabic: صلح
- <sup>14</sup> See, for example, NRC, *'Housing, Land and Property: Handbook on Design and Implementation of Collaborative Dispute Resolution'*, [undated].
- <sup>15</sup> UNDP, UNICEF, UN Women, *'Informal Justice Systems: Charting a course for human rights-based engagement'*, 2012, 20, accessed 10 November 2017, [https://www.unicef.org/protection/files/INFORMAL\\_JUSTICE\\_SYSTEMS\\_SUMMARY.pdf](https://www.unicef.org/protection/files/INFORMAL_JUSTICE_SYSTEMS_SUMMARY.pdf).
- <sup>16</sup> See, further, A. Murad, *'Understanding the Four Madhabs: Facts about Ijtihad and Taqlid'* (Cambridge: Muslim Academic Trust, 1999).
- <sup>17</sup> Population and IDP data and those for the other research sites taken from concerned community leaders, such as the Bulamas and Mai Anguwa.

### Chapter 3

- <sup>18</sup> See generally, Human Rights Committee, General Comment No. 31, *'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant'*, UN Doc. CCPR/C/21/Rev.1/Add.13.
- <sup>19</sup> Nigeria ratified the Convention against Torture (CAT) in 2001; the International Covenant on Civil and Political Rights (ICCPR) in 1993; the Convention for the Protection of all persons from Enforced Disappearance (ICPED) in 2009; the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1985; the Convention on the Elimination of all forms

of Racial Discrimination (CERD) in 1967; the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1993; the Convention on the Protection of the Rights of all Migrant Workers and members of their families (CMW) in 2009; the Convention on the Rights of the Child (CRC) in 1990; and the Convention on the Rights of Persons with Disabilities (CRPD) in 2010. See OHCHR Nigeria page: [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN) (accessed 9 July 2017).

- 20 Optional Protocol to the CEDAW ratified in 2004; Optional Protocol to the CRPD ratified in 2010.
- 21 Under Article 20, CAT, in 2001.
- 22 Under Article 33, ICPED, in 2009.
- 23 Articles 8, 9, OP-CEDAW, in 2004.
- 24 Articles 6, 7, OP-CRPD, in 2010.
- 25 Nigeria ratified the African Charter on Human and People's Rights (ACHPR) in 1983; the African Charter on the Rights and Welfare of the Child (ACRWC) in 2001; the Protocol to the ACHPR on the Establishment of an African Court on Human and People's Rights (ACtHPR Statute) in 2004; the Protocol to the ACHPR on the Rights of Women in Africa (PACHPR-Women) in 2004; and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) in 2012.
- 26 Article 11, ICESCR; Articles 5(d)(v), 5(e)(iii), CERD; Article 14(2)(h), CEDAW; Article 27(1), CRC. Article 25(3) of the Universal Declaration of Human Rights also recognises the right of every person to a standard of living adequate for the health and well-being of himself and his family including housing.
- 27 CESCR Committee, General Comment No. 4, 'The Right to Adequate Housing' (Article 11(1) of the Covenant), (1991), para. 8.
- 28 OHCHR, UN Habitat, Factsheet No. 21. Rev.1, 'The Right to Adequate Housing'.
- 29 Article 27(3), CRC; Article 20(2)(a), ACRWC.
- 30 Article 14, ACHPR.
- 31 Article 2(2), ICESCR; Article 2, CRC; Article 2, 14(2), CEDAW.
- 32 See, for example, Article 2(2), ICESCR; Article 2(1), CRC.
- 33 Article 2, CEDAW; Article 2(2), CRC.
- 34 See Article 26, ICCPR; Article 15(2), CEDAW; Article 5, CERD.
- 35 Article 3, ACHPR.
- 36 Article 3, ICCPR.
- 37 Article 7(1), ACHPR.
- 38 Committee on Economic, Social and Cultural Rights, General Comment No. 7, para. 13.
- 39 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), paragraph A.
- 40 There are procedural requirements for a valid derogation, namely that a state of emergency has been lawfully and publicly declared within the State, that the State has notified the depository of the ICCPR and thereby other State parties of its intent to derogate, that derogations are not attempted in respect of non-derogable rights, and that measures taken are only those strictly necessary for the exigencies of the circumstances and are temporary in nature. See Article 4, ICCPR; see also Human Rights Committee, General Comment No. 29, '*Article 4: Derogations during a state of emergency*' (2001), UN Doc. No. CCPR/C/21/Rev.1/Add.11.
- 41 Articles 4, 11, ICCPR.
- 42 Article 4, 16, ICCPR. See also Human Rights Committee, General Comment No. 29, '*Article 4: Derogations during a state of emergency*' (2001), UN Doc. No. CCPR/C/21/Rev.1/Add.11.
- 43 ICESCR Committee General Comments No. 3, 4, 7.
- 44 See A. Bellal, *The War Report 2016* (Geneva: Geneva Academy, 2017).
- 45 Ratified in 2001.
- 46 Article 4(2)(g), Additional Protocol II.
- 47 Article 8(2)(e)(v), ICC Statute.
- 48 Elements of Crimes for the ICC, Article 8(2)(b)(xvi) and Article 8(2)(e)(v), ICC Statute.



- <sup>49</sup> Including the Fourth 1949 Geneva Convention and Additional Protocol II; the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention); UN Principles on Housing Restitution for Refugees and Displaced Persons, (the Pinheiro Principles); and the Guiding Principles on Internal Displacement.
- <sup>50</sup> Principles 3–9, Pinheiro Principles; Principle 6, Guiding Principles on Internal Displacement.
- <sup>51</sup> Principle 21, Guiding Principles on Internal Displacement.
- <sup>52</sup> Principle 2, Pinheiro Principles. See also, Principle 21, Pinheiro Principles; Principle 28, Guiding Principles on Internal Displacement.
- <sup>53</sup> Principle 11, Pinheiro Principles.
- <sup>54</sup> Principles 12.1, 12.3, Pinheiro Principles.
- <sup>55</sup> Principle 18, Pinheiro Principles.
- <sup>56</sup> Principles 16, 17, Pinheiro Principles.
- <sup>57</sup> See, generally, the Pinheiro Principles.
- <sup>58</sup> Principle 28, Guiding Principles on Internal Displacement.
- <sup>59</sup> Introduction, ‘*Scope and purpose*’, 2004 Guiding Principles on Internal Displacement.
- <sup>60</sup> See T. Bingham, *Rule of Law* (London: Penguin, 2011).
- <sup>61</sup> See the World Justice Project: <https://worldjusticeproject.org/about-us/overview/what-rule-law> (accessed 18 August 2017).
- <sup>62</sup> E.g. in the Nigerian case, see: <https://www.britishcouncil.org/voices-magazine/how-traditional-justice-nigeria-changing> (accessed 18 August 2017).
- <sup>63</sup> In practice, the empirical data collected here indicates that customary leaders often have an incomplete knowledge of Islamic law.

## Chapter 4

- <sup>64</sup> The Hausa term for ward head, as used in Adamawa state (see Section 5.3). See Appendix 2 for the NRC Tenancy Agreement.
- <sup>65</sup> The Kanuri term for ward head, as used in Borno state (see Section 5.3).
- <sup>66</sup> The Kanuri term for village head, as used in Borno state (see Section 5.3).
- <sup>67</sup> The Kanuri term for the Senior Emir, as used in Borno state (see Section 5.3).

## Chapter 5

- <sup>68</sup> In some states that introduced Shari’a, a system of religious vigilantes, known as *hisbah*, was set up for the proper implementation of Shari’a. In Borno however, the *hisbah* was never operationalised.
- <sup>69</sup> Article 12(1), Constitution of Nigeria.
- <sup>70</sup> This section does not intend to rehearse the detailed substantive legal rules applicable to housing, land and property in Nigeria. Rather, it outlines the framing and extent of the domestic articulation of HLP rights, including the right to an adequate standard of living.
- <sup>71</sup> Article 43, Constitution of Nigeria.
- <sup>72</sup> Article 44(1), Constitution of Nigeria.
- <sup>73</sup> Article 45(1), Constitution of Nigeria.
- <sup>74</sup> Sections 1–3, 1973 Federal Housing Authority Act.
- <sup>75</sup> Section 10, 1973 Federal Housing Authority Act.
- <sup>76</sup> See 1992 National Housing Fund Act.
- <sup>77</sup> Article 2(a), Constitution of Nigeria.
- <sup>78</sup> Article 15(1), Constitution of Nigeria.
- <sup>79</sup> These are, namely, race, colour, political or other opinion, national or social origin, property, birth or other status under Article 2(2) ICESCR. See also CESCR Committee, General Comment No. 20, ‘*Non-discrimination in Economic, Social and Cultural Rights*’ (Art. 2, para. 2), UN Doc. No. E/C.12/GC/20.
- <sup>80</sup> Article 6(6)(b), Constitution of Nigeria.

- <sup>81</sup> Article 46, Constitution of Nigeria.
- <sup>82</sup> Article 6, Code of Conduct. See also Articles 1, 2.
- <sup>83</sup> Section 9(3)(b), 1978 Land Use Act.
- <sup>84</sup> *Mojekwu & others v Ejikeme & others* (2000) 5 NWLR 402.
- <sup>85</sup> See, for example, *Anekwe v Nweke* (2014) NWLR (Pt 1412), *Ukeje v Ukeje* (2014) 11 NWLR (Pt 1341) 185SC.
- <sup>86</sup> See, for example, E. Obidimma and A. Obidimma, 'Mitigating the Injustice of the Customary Law Relating to Inheritance of Landed Property by Women amongst the Igbo People of Nigeria' *International Journal of Innovative Research and Development*, Vol. 4, Issue 1 (October 2015).
- <sup>87</sup> USAID, 'Democracy and Governance Assessment of Nigeria', 2006.
- <sup>88</sup> Quran, Chapter 4, verses 11, 12, 176, (Pickthall).
- <sup>89</sup> See, generally, M. Radford, 'The Inheritance Rights of Women under Jewish and Islamic Law', *Boston Colleges International and Comparative Law Review*, Vol. 23, Issue. 2 (2000).
- <sup>90</sup> Globally, in less developed nations, 80-90 per cent of disputes are resolved informally: E. Wojkowska 'Doing Justice: How informal justice systems can contribute', Oslo: UNDP, 2006.
- <sup>91</sup> J. El-Bushra et al, 'From Design to Implementation: Addressing the Causes of Violent Conflict in Nigeria', *Stability: International Journal of Security & Development* Vol. 3(1), Issue 1 (2013): 1–18.
- <sup>92</sup> L. Huyse and M. Salter, 'Traditional Justice and Reconciliation after Violent Conflict Learning from African Experiences', Oslo: IDEA, 2008.
- <sup>93</sup> In Islamic law, a *wakil* (وكيل) is a deputy, delegate or agent who acts on someone's behalf.
- <sup>94</sup> *Walī* (ولي) is an Arabic word whose literal meanings include 'custodian', 'protector', 'helper' and 'friend'. In this context, it indicates someone who has *walayah* (authority or guardianship) over somebody else.
- <sup>95</sup> The scholar (singular) is 'a'alim.
- <sup>96</sup> This finding must be contextualised by the fact that Yolde Pate was the only site in which Christian and Muslim religious leaders were engaged together (FG27).
- <sup>97</sup> R. Blench et al., 'The Role of Traditional Rulers in Conflict Prevention and Mediation in Nigeria', DFiD Nigeria, 2006.
- <sup>98</sup> District head was a level inserted into the local system during British colonial rule.
- <sup>99</sup> This is the title of the less senior Kanuri Emirs, under the Shehu.
- <sup>100</sup> Blench et al., see note 97.
- <sup>101</sup> Some Bulamas are also appointed rather than inheriting the position from (usually) their fathers.
- <sup>102</sup> See generally, B. C. Uweru, 'Repugnancy Doctrine and Customary Law in Nigeria: A positive aspect of colonialism', *African Research Review*, Vol. 2(2) (2008): 286–295.
- <sup>103</sup> In fact, Lawans are already in receipt of a salary from their LGA, while Bulamas are not.
- <sup>104</sup> Chapters 4 and 2, Constitution of Nigeria.
- <sup>105</sup> Key informant interview with staff of NHRC (KI07).



NORWEGIAN  
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