

Customary Practices That Dispossess and Displace Women from Their Habitats

Valuating the Impacts of Dispossession from Their Homes and Land

Final Project Report, August 2020



About the Study

This is a collaborative project of Mazingira Institute (MI), Pamoja Trust (PT) and the Housing and Land Rights Network of Habitat International Coalition (HLRN-HIC) within the frame of the project “Valuating the Impacts of Dispossession from Their Homes and Land,” on the nature of impacts on women of evictions due to customary practices in Kenya.

This consortium working on issues of Women, Land and Homes (WLH) had in 2019 applied an analytical tool to measure human rights deprivation to a sample of women potentially affected by evictions due to the development of planned infrastructure. That infrastructure-development study¹ revealed that most of the women sampled had experienced previous evictions.

Review of the data that revealed this surprising result suggested that women’s previous evictions were due to customary practices. The practices relate to the widely-held norm that women and girls should not inherit land or housing, only men and boys. That is, it relates to lack of inheritance rights from either parental or marital families.

To explore the nature of the impacts of these evictions further, this follow-up survey of selected women affected by these practices was carried out in 2020. The women were purposively selected and analysed in the categories used in the previous study, namely single, married, separated and widowed women.

While the customary practices survey continued to apply the framework of human rights deprivation in relation to wealth, well-being and habitat, it focussed primarily on eliciting the women’s personal housing histories to get at the underlying impact of customary practices. Mazingira Institute conducted that survey of 50 women in February 2020.

¹ Mazingira Institute and Pamoja Trust, *Incidents of Infrastructure Development in Kenya that Dispossess People from their Habitats: Baseline assessment of women’s wealth, wellbeing and habitat including potential losses* (Nairobi: Mazingira Institute, 2020), at: <http://www.hlrn.org/img/documents/FINAL%20REPORT%20Infrastructure%20development%20July%202020.pdf>.

Key Findings

Women respondents were purposively selected as having experienced eviction. A key finding is that many, even the single and married women interviewed had been evicted more than once due to customary practices. These evictions were all by family members, either the family of birth or the marital family, or both at different times.

Close relatives had forced most respondents to leave their homes of origin because of being female. Respondents had lost their marital homes due to eviction by relatives in their marital family for the same reason. It is seldom that research comes up with a clear new finding, but this small study has done so. It demonstrates how women routinely suffer forced eviction from land and homes through the agency of those closest to them: their families. Such forced evictions of women and girls, based on them being female, are of a different type from other forced evictions that affect whole communities. They are also mostly violent.

For many casual observers, and even for the interviewers, the findings on women's and girls' loss of their homes of origin may be taken as unremarkable however; women are expected to leave home for marriage or to seek employment since land and homes are customarily not meant for them. But it was found that in many cases this first move was accompanied by distress, sometimes violence, and frequently destitution, with loss of personal belongings and social ties. Most women had moved multiple times, the highest number noted being six.

Brothers were frequent perpetrators of eviction of respondents from homes of origin, also stepmothers. Fathers were also sometimes involved in eviction of their daughters, but some evictions from family of origin occurred after the death of girls' or women's fathers. Mothers were never mentioned in this connection, maybe due to their lack of power over land.

Husbands were the main perpetrators of eviction coming from the marital family, and such evictions were often accompanied by gender-based violence in the case of separated women (who formed the majority). In the case of widows, violence accompanying eviction was perpetrated mostly by both male and female in-laws.

Customary practices were referred to as: "only boys inherit property," "girls cannot own property," "this is part of culture" (e.g., Luhya, Kisii). Cases were found of women who had owned, often bought, land and built housing with husbands, only to be tricked out of it by the husband, usually taking another wife. Polygamy, which is legal in Kenya, is an issue often leading to separations including child, as well as wife, abandonment.

The findings imply that these practices that deny basic human rights are so deeply entrenched that they go unquestioned throughout society, sometimes even by the victims themselves. Even though many respondents experienced emotional distress as they described their housing histories, they usually did not understand these as rights deprivations. They understood them more as loss of their own wellbeing due to customs and social conditions beyond their control. Nevertheless, most went on, when prompted, to suggest that women and men should have equal rights to inherit and own land and housing.

Loss of wealth, all respondents had lost assets at the time of one or more evictions. Detailed data on assets are available from the earlier Infrastructure Development survey for one third of respondents to this study. Those respondents had already lost both assets and livelihoods due to eviction prior to both studies. As a result of losing their means of livelihood, these women had to find other means of support, in addition to having to find a new place to live, almost all of them with dependent children accompanying them.

Loss of wellbeing, almost all the respondents reported suffering violence accompanying forced eviction, the majority experiencing physical violence and others emotional and verbal abuse and stress, often causing ill-health. Food security is basic to wellbeing. A key finding of this survey is that virtually all respondents lost food security at the time of one or more evictions. Many women suffered loss of status and positions in their communities as well.

Loss of habitat, all the respondents had lost their homes including land as a result of one or more evictions, attributable entirely to their gender. The amounts of land lost are described in general terms below as a part of the study findings, along with illustrative examples of the types of housing lost.

Introduction

Customary practices in any society are norms of behavior governing both men and women. Different expectations of the way men and women behave are part of these norms and expectations. The way land and homes are organized and used are intrinsic to societal behaviours, including their ownership and control, especially by individuals as members of households and families. Behaviours are also governed by laws, developed by each society in relation to its norms and expectations of good governance.

Since the 1940s, global norms have been in place, stemming from the Universal Declaration of Human Rights (UDHR), and these are based on normative principles of equality and justice for all of humanity, including gender equality. The United Nations was established, along with its various bodies and instruments, to facilitate implementation of these principles, and for the benefit of humanity.

Societies across the world are in a process of refining their norms and practices as a continuous process of cultural development, through their own institutions as well as through participation in global institutions. Laws, norms and behaviours affecting the ownership and control of land and homes are a part of this process and as such the subject of this study.

Global norms governing matters of gender equality are affected mainly by the 1984 Convention on the Elimination of All Forms of Discrimination against Women (CEDaW), a global agreement that has been subscribed to by many countries. Such global agreements are domesticated into the laws of various states, including both laws governing various sectors and activities, as well as over-arching constitutions that are termed “supreme laws” to which other laws are subordinate. Performance of countries according to these global instruments is monitored by the review and reporting mechanisms of the UN.

Such global agreements are also further elaborated through specific international meetings and consultations that produce subsequent instruments including the Beijing Platform for Action on Women (1995) and the Istanbul Declaration and Habitat Agenda (1996). Both of these agreements in the 1990s contain clauses addressing women’s rights to equal inheritance.²

The countries participating in the Women, Land and Homes Project have mostly domesticated these global principles, as reviewed in a recent webinar organized by Konrad Adenauer Stiftung (KAS) bringing together lawyers from Zimbabwe, Kenya and Zambia.³ The same discussion explored how this legal domestication has not yet reached the majority of the population of these countries, where norms and customary practices limiting the inheritance of land and homes by women and girls prevail.⁴

The findings of this study contribute to understanding the extent of the impacts of such norms and customary practices on women in Kenya. They also chart the way forward for addressing these rights violations, which fall in a different category from most forced evictions since they are perpetrated within families and are mostly violent. This requires a different approach.

² Beijing Platform for Action, Report of the Fourth World Conference on Women. Beijing, 4–15 September 1995. A/CONF.177/20/Rev.1. (New York: United Nations, 1996), p. 23, para. 61(b), at: <https://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>; Istanbul Declaration on Human Settlements [Istanbul Declaration] and The Habitat Agenda, A/CONF.165/14, 14 June 1996, paras. 78 (e), 119 (g), at: http://ww2.unhabitat.org/declarations/habitat_agenda.asp.

³ Women’s Land Rights & Development in Africa: Contesting Normative & Cultural Exclusion, KAS webinar, 20 July 2020, www.bit.ly/WomenLandRights.

⁴ A summary of these findings is contained in “Women’s Land and Home Project Progress,” *Land Times/أحوال الأرض*, Issue 19 (April 2019), at: <http://landtimes.landpedia.org/newsdes.php?id=p2pm&catid=pQ==&edition=pGg=>.

Methodology

The sample for this survey was purposively selected to represent women who have lost their land and homes due to being affected by customary practices. It was a direct follow-up (and is complementary) to the infrastructure development survey in 2019. A key finding of the Infrastructure Development survey was that a high proportion of the women in households selected for that sample (81 percent) had suffered distress as a result of previous evictions. This is a very high proportion, although it cannot be said to be a representative sample for Kenya, especially since it was itself a purposive sample, of households that included women coming from the area affected by planned infrastructure development.

Because customary practices that discriminate against women and girls in terms of their rights to land and housing are widespread in Kenya and other sub-Saharan African countries, orientation of the study team was undertaken as a first step. Discriminatory customs are so deeply entrenched that, for men and women alike, they are taken as integral to society, or even espoused as values. This meant that training of the survey team had to include an orientation to examining human rights in relation to established social norms.

It is very important to note that the framing of the study came about due to the initiative of the respondents during the earlier infrastructure-development survey. When asked what they might suffer as a result of the planned removal from their homes during pre-testing of that questionnaire tool, several women mentioned previous forced removals. It was even suggested by them that an extra question be included on this. This was the question that had caused many respondents distress during that survey.

Since a survey of the impact of customary practices had already been planned, and so many members of the earlier sample had been affected by them, it was decided to link the two studies. It was also reasoned that almost any sample of Kenyan women might be affected by such practices, but that urban women were more likely to have been so affected. It was decided to conduct a largely qualitative study, basing it on women's telling of their housing histories. This is seen as an exploratory study of the subject of how customary practices affect women's land and housing rights.

Again, the interviews were sometimes (or even generally) a deeply emotional experience. This was due to addressing traumas the respondents had experienced resulting from eviction and the losses they had suffered, simply due to being women or girls. The survey team also learned from these experiences.

Organizations and analyses dealing with women's losses of land and homes have sometimes been overly focused on the "widows" category. This has historical roots in addressing the "plight of widows and orphans" dating back to the Victorian era in Britain, where abandonment of widows often occurred. A more systemic way of examining land and home injustices is needed that captures all cases affected by gender inequality.

For these two studies, respondents were categorized as single, married, separated or widowed. This classification was developed for the Infrastructure Development survey, as a convenient lens for looking at women's situation in relation to the institution of marriage or place in society. It has proved very useful as an analytical and comparative tool. However, unlike in the infrastructure-development study, where equal numbers of the four categories were selected in order to compare variables among them, in the customary practices survey these categories were simply used as a descriptive variable.

The classification is recommended for social science comparison and analysis because women's, unlike men's, social position is often predicated on their marital status. In applying the classification, marital

status is a term somewhat loosely used, since the types of marriage in Kenya are variable. Traditional marriages are governed by varying customary practices, many marriages are not legally certified, and long-term partnerships are often termed as marriages. The legality of polygamy compounds the legal uncertainty of many of these partnerships. The term separated is used rather than “divorced,” the latter being a legal procedure seldom used. The widowed category is clear cut, depending upon the death of the husband. The term “single” implies that any partnerships were short-term or indeterminate, even though resulting in the women having children.

Seventeen (17) of the respondents to the infrastructure-development survey held in 2019 were selected also for the customary practices survey in 2020. These were respondents who could easily be located and had been adversely affected by such discriminatory customary practices. A total of 50 women were interviewed, the additional 33 being selected through Pamoja Trust’s and Mazingira Institute’s own contacts and those of other NGOs working with women who have lost land and homes in similar fashion.

The majority were found to be separated (21) and widowed (19), with a minority being married (8) and just two being single women. In terms of spatial distribution, the original 17 (34 percent of the customary practices survey) were living in the low-income urban areas of Kangemi, Uthiru and Kinoo, which locations are affected by planned infrastructure development in Nairobi. The others were drawn from low-income informal settlements with similar characteristics, namely "Deep Sea" squatter area in Highridge, Kawangware, Gitaru and Kabete. The main method used was to probe women’s housing histories and the reasons for their eviction. These were compared qualitatively.

The questionnaire also contained questions on impacts of evictions on wealth, wellbeing and habitat, so that these could be compared with the findings of the previous (Infrastructure Development) survey. The questionnaire survey was designed according to the Evictions, Impacts and Redress Assessment (EvIRA) Tool designed in 2008 to follow up and address post-election violence (PEV) in Kenya in that year. The assessment tool was later adapted for the Women Land and Homes project and applied in the Infrastructure Development survey in 2019. This gendered version of the EvIRA tool is shown as Figure 2.

Figure 2 (at the end of the report) aims to explain the search for gender justice within an overall context of reparative justice. The framework guided tools development and reporting of findings. The three pillars that anchor the framework of measuring human rights deprivation were: wellbeing, wealth and habitat. The types of cases where women’s access to land and homes might be violated are listed on the extreme right of Figure 2. The Mazingira and Pamoja study team identified Infrastructure development and customary practices as those for further investigation. The Wealth, Wellbeing and Habitat Framework of understanding and measuring impacts is shown in the lower part of Figure 2.

The customary practices questionnaire tool was used for preliminary training of the survey team and pre-tested in January 2020. It was adapted accordingly and further training of interviewers carried out, clarifying the relation between gender equality and social norms and customs relating to land and homes. As with the fielding of the Infrastructure Development survey, due to the sensitivity of ongoing disruptions in the communities concerned, respondents were interviewed at a safe site away from their homes. Respondents were reimbursed for transport to the interview site.

Based on the sample drawn in consultations between Mazingira Institute and Pamoja Trust, identification and preliminary contacts were made through the NGOs concerned and respondents’ consent obtained. Appointments were confirmed by phone and 52 interviews carried out in February 2020 by a team of six interviewers. Two cases were dropped after editing due to lack of clarity on the housing histories.

Study Findings

Women's Moves and Evictions

As shown in Table 1 below, the women interviewed came from a number of different regions across Kenya, all regions with high population density and with agriculture the main activity. Only one respondent was born in Nairobi and one came from neighbouring Uganda. People in Kenya generally identify strongly with their homes of origin and most were born there. Figure 1 (page 11) shows a map of Kenya with the different regions marked. These regions are no longer administrative, since 47 counties, with separate elected governments and devolved powers, were created in 2013 under Kenya's 2010 constitution. Regions have been used for convenience for this study to indicate spatial distribution.

Since the sample was purposively selected from women known to have lost their land and home already, we know that they have already been evicted once. The data show us more about these evictions in relation to the life experience of the victims. Due to the wide cultural acceptance of women's lack of rights to inherit land and homes, respondents were asked the reason for their original move from their natal homes. Marriage and the search for work were the main reasons given, but they were also asked if they had a choice in this move. Those who answered "no" were classed as having been evicted.

Taking the average over-all, women in the sample had been evicted more than once, namely 1.7 times. Those in the separated category had been evicted from their homes 1.9 times on average, and the single women twice on average. However, the single women category cannot be considered informative since there were so few cases (2) in the sample.

The findings differentiate between loss of the original or natal home and the marital home. Women in the married category had originally been made to leave their natal homes by blood relatives, but half of them had also been forced out of a previous marital home and had re-married. All respondents in the married category complained of marital or family violence. A number of women had tried to return to their homes of origin but could not remain due to customary practices. Several women described returning to their home of origin more than once but again being forced out.

Violence is a category shown on Table 1 (pages 9–10), as it was so frequently reported in association with eviction.

Table 1: List of respondents by category, showing number of moves and number and type of evictions

Marital status	Region of origin	No. moves	Evicted from home of origin	Evicted from adult home	Violence	No. forced evictions
Single	Central	2	X	X	physical	2
	Western	4	X	X	physical	2
Total	2	6	2 (100%)	2 (100%)		4
Average		3				2

Marital status	Region of origin	No. of moves	Evicted from home of origin	Evicted from adult home	Violence	No. forced evictions
Married	Western	1	X		physical	1
	Western	3	X		death threats	1
	Western	1	X		physical	1
	Western	2	X	X	physical	2
	Rift Valley	2	X	X	physical	2
	Nyanza	4	X		physical	2*
	Western	5	X	X	physical	2
	Western	4		X	physical	2
Total	8	22	7 (88%)	4 (50%)		13
Average		2.7				1.6

Marital status	Region of origin	No. moves	Evicted from home of origin	Evicted from adult home	Violence	No. forced evictions
Separated	Central	6	X	X	physical	2
	Eastern	2	X	X	physical	2
	Western	3	X	X	physical	2
	Nyanza	3	X	X	physical	3*
	Rift Valley	2	X	X	physical	2
	Western	2	X	X	physical	2
	Central	2	X	X	physical	2
	Western	4	X	X	physical	2
	Nyanza	3	X	X	emotional	2
	Nyanza	2	X	X	emotional	2
	Western	2	X	X	physical	2
	Rift Valley	3	X	X	verbal	2
	Western	4	X	X	stress	2
	Rift Valley	3	X	X	physical	2
	Nyanza	3	X	X	emotional	2
	Western	3	X	X	emotional	2
	Central	2		X	emotional	1
	Eastern	3	X	X	physical	3*
	Western	4		X	physical	1
	Central	3		X	physical	1
Western	2		X	physical	1	
Total	21	61	17 (81%)	21 (100%)		40
Average		2.9				1.9

* Had to leave original (natal) home twice. After going back there, she was again evicted.

Marital status	Region of origin	No. of moves	Evicted from home of origin	Evicted from adult home	Violence	No. forced evictions
Widowed	Uganda	4		X	physical	2
	Western	3	X	X	physical	2
	Western	3	X	X	physical	2
	Siaya	2	X	X	physical	2
	Western	2	X	X	physical	2
	Nyanza	2	X	X	verbal	2
	Nairobi	2	X	X	emotional	2
	Nyanza	2		X	emotional	1
	Rift Valley	2		X	emotional	1
	Western	2		X	stress	1
	Nyanza	2		X	physical	1
	Western	3	X	X	emotional	2
	Rift Valley	2	X	X	emotional	2
	Central	2		X	emotional	1
	Western	3	X	X	physical	2
	Western	3	X	X	physical	2
	Siaya	3		X	physical	1
	Western	3		X	None	1
	Western	3		X	physical	1
Total	19	46	10 (53%)	19 (100%)		30
Average		2.4				1.6

	Region of origin	No. of moves	Evicted from home of origin	Evicted from adult home	Violence	No. forced evictions
All %			36 (72%)	46 (92%)		
Total	50	135				86
Average		2.7				1.7



Figure 1: Map of Kenya with the previously administratively regions. Source: United Nations (2011).

Loss of Wealth

It is worth noting that a wealth difference between sons and daughters is embedded in customary practice. Land and homes and virtually everything that pertains to them are passed on in the male line of descent; so, girls born to a family have virtually no entitlements and are expected to leave. Customarily, this would be at the time of marriage. As the responses to both the Infrastructure Development and the customary practices surveys show, in the present day they may also leave their homes of origin in a search for employment. While sons also leave home in a search for employment, they retain their entitlement to the family land, home and wealth according to custom, entrenching a gender split in wealth and assets.

All the respondents to this survey on customary practices had lost both assets and livelihoods at the time of leaving their homes of origin and the majority also at the time of loss of their marital homes as well. The types of assets varied from a few chickens or a cow to incomes from livelihood, ranging from KES 100 per day (USD 1) to KES 8,000 (US\$ 80) per month. They also included personal documents such as certificates, utensils and household items. Some lost vehicles, including bicycles and even one car and a tractor.

Detailed information on the assets of one third of the respondents can be traced through the Infrastructure Development survey which computed the value of assets. Because of the large variation in the types of assets and wealth lost, a few illustrative cases are given below, adapted from some of the women's housing histories.

Loss of Wellbeing

The large majority of women (33 out of 50 or 60%) reported physical violence associated with having to leave their homes. Another 16 reported emotional or verbal abuse or distress (the latter causing illness). This included one married woman who had received death threats from her home of origin. Only one woman in the sample (a widow) specifically mentioned that her in-laws were not abusive but treated her kindly. She nevertheless had to leave her land and home and give it up to them as customary practices require.

It is clear from the housing histories obtained that this violence was inflicted upon them knowingly by close family members. The fact that there was only one exception among the 50 cases where a woman was not abused by her relatives upon losing her land and home is notable.

Looking specifically at loss of the home of origin, the loss was sometimes, but not always, accompanied by physical or emotional violence and distress. This was inflicted most often by brothers or stepmothers, but sometimes by fathers. Looking at loss of the marital home, this was very often accompanied by marital violence, inflicted by the husband. In the case of widows however, physical or emotional violence was most frequently inflicted by in-laws after the death of the husband.

Access to food is a critical aspect of wellbeing, and virtually all the respondents lost access to food at the time of losing their homes. Most often, this was through losing access to land and livestock which are the basis of domestic food production. This occurred in cases of loss of both natal and marital homes, even in cases where the marital homes were in an urban area. It is worth noting that according to custom, women are supposed to feed their households through their own food production. This is not associated with any rights to control the land from which food is produced, although women always had customary user rights over such land, allocated according to their positions as wives and mothers, and also daughters.

These obligations or responsibilities of women prevail in urban areas, where women also sometimes keep kitchen gardens and small livestock, especially poultry. When women are evicted along with their dependent children, the problem of feeding them can become doubly stressful; it affects the women's physical wellbeing through loss of food as well as bringing the emotional stress of not being able to fulfill the obligation to look after their children.

According to our data, some women lost access to food associated with loss of income and assets at the time of losing their homes. Many urban women in Kenya are food traders, and one of the areas studied was Kangemi, a major Nairobi market. Historically, many food items in Kenya have been traded by women from rural to urban areas and several of the respondents were food traders.

For a few of the women in our sample who were gainfully employed at the time of their eviction from the marital home, loss of food was associated with loss of livelihood on having to relocate with their children. This made buying food difficult due to loss of income, but in some cases, it was due to loss of access to a nearby market and social networks of support.

Loss of Habitat

The women in the sample of 50 had been forced to leave either their original (natal) homes or their marital homes, or both. Table 1 attempts to capture these data by listing the women and whether evicted from natal (Column 4) or marital (Column 5) home or both. However, it fails to capture where a respondent had been evicted more than once from either natal or marital home, thus bringing the total number of evictions slightly higher (Column 7). Examples of repeat eviction from the natal home are given in the illustrative cases below.

Land and homes are intrinsic to the individual and cultural identity of both women and men in Kenya. This is a belief underlying customary practices. One's home of origin is central to everyone's sense of self and status in society. It carries spiritual meaning, linking people to their ancestors. Burial customs are linked to ideas about home and they have strong significance in Kenyan and other African lives. Rituals are elaborate and carry social weight.

Burials take place at a person's home, meaning place of birth and origin, especially in the case of men, and rarely in a public cemetery. Cemeteries are becoming more common as a place of burial in recent years due to urbanization. This societal norm is basic to custom. However, a woman is usually expected to be buried at the husband's home. She is customarily believed to belong to the husband's family even in death.

In present times (21st Century) both women and men move more than in the times from which the customs originate, although as pointed out above, men customarily retain the rights to the assets and wealth associated with land whereas women do not. Although many men, like women, also lose access to land due to other factors such as small land size and competition between siblings, infrastructure development, land grabs, and so on, the sense of identity and association with place of origin remains for everyone.

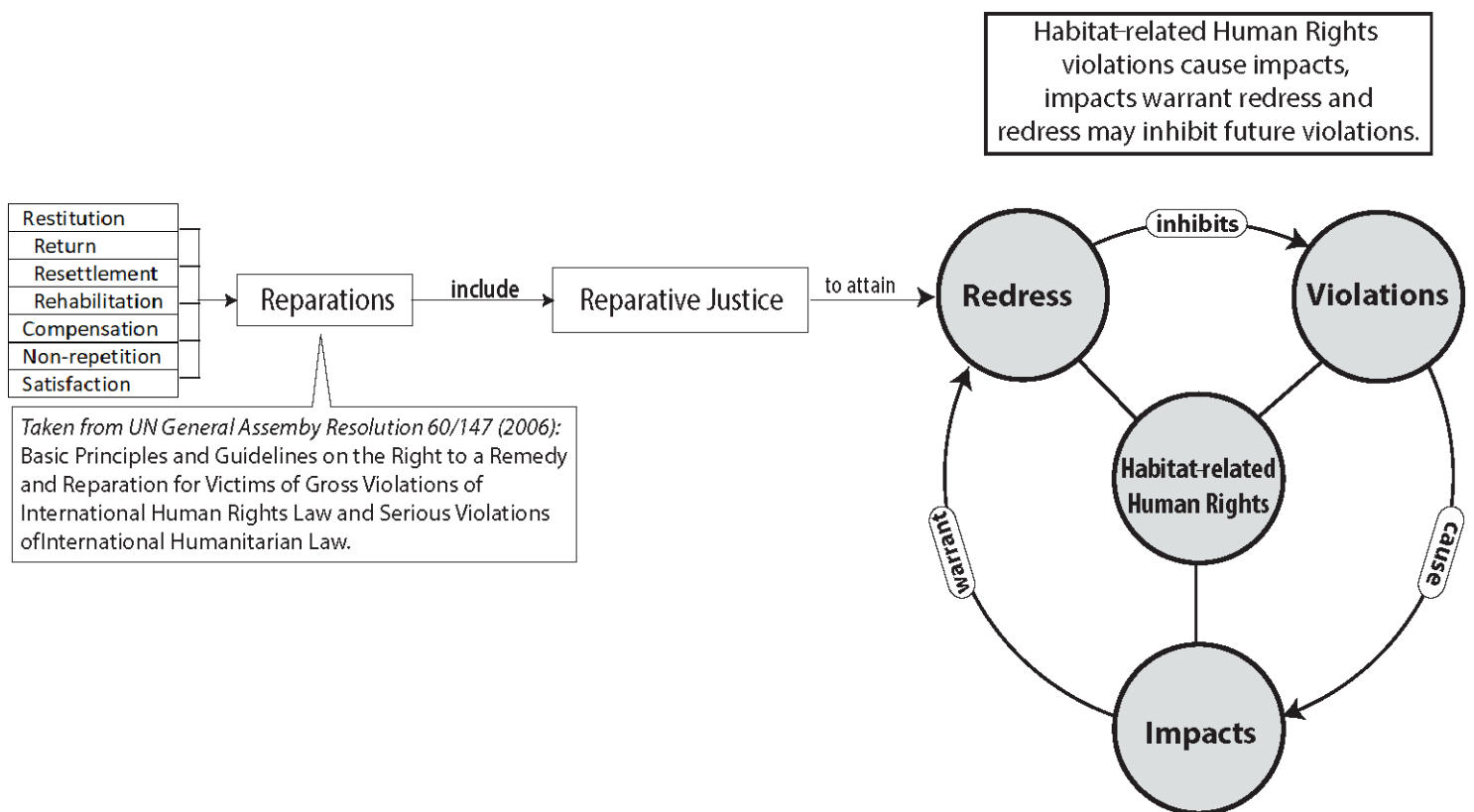
Buying and selling of land has also increased in recent times, as well as land development for alternate uses, along with compensation. This increases the tension between land as asset and its significance as home, and heightens gender inequality. Burial is strongly associated with land ownership and control and thus can be contentious. For example, in July 2020 a court stayed the burial of a woman in a place she had lived for 30 years. She had been employed by a man and also lived as his partner. After his death, she had likewise lived with his son, creating uncertainty whether it was her home.

The amounts of land lost among our customary practices survey sample were not known exactly as many respondents did not have access to the title deeds or were too young to know in the case of rural land. Many were said to be “small” or half-an-acre but some up to fifteen acres. A number, especially separated women and widows who formed the majority, lost land twice, from parental and marital homes.

Houses were lost as well, ranging from “a small mud house” up to 3 or 4-roomed rural dwellings in the case of rural homes lost due to girls not inheriting from the parental family. In some cases, this entailed women not being allowed to return to their homes of origin even when destitute and with dependent children.

In the case of marital homes lost – frequently but not always urban – the amount of land lost was between a quarter to 4 acres and more often known by the respondent. Houses likewise were known to be 2-5 rooms and sometimes included several rental houses, some on different plots of land. Several cases were mentioned of husbands demolishing separated women’s houses upon eviction.

There was a wide variation among the women in our sample in the nature of their loss of habitat. Because of the way the sample was drawn – all the women were residents of low-income urban areas in Nairobi – their backgrounds were different. These varied circumstances are reflected in the illustrative



cases given below.

Figure 1: Graphic illustrating the EvIRA Tool process of understanding human rights from guarantee to redress for a violation.

Illustrative Cases

Mary, a **single** 60-year old with little education lost fifteen acres of land and her house in Central Kenya when she was chased away by her brothers on the death of her father when she was 41 years old. She had two children in school and was farming part of the land which her father had allocated to her. She also lost her livelihood selling clothes, as well as her children's birth certificates and her status in the community as a business woman. She took her cow with her from which she also made money by selling milk but it died on the journey. She settled in a slum in Nairobi but was again evicted by the landlord and used to see her brothers whom she feared so she moved again. Although now living in a tin shack and working as a fishmonger, she has educated her children through high school and they are both now employed.

Thirty-one-year-old Caroline is **married**. She lives with her husband who has a business and their two children who have started schooling. Both she and her husband have only primary school education. She was driven out of her home in Siaya (Nyanza) by an abusive father, first at age 11 to look for work. After working hard in a slum in Nairobi for little pay, she returned home at age 14. She stayed until she was 20 then was again abused and driven out. She says had no choice but to marry. The second eviction from her natal home made her destitute and caused severe distress. She lost all her belongings, birth certificate and her chickens. She said she was "devouring grass" due to hunger and distress.

Edith is unemployed, despite having two years of high school education, and is **married** to a man with less education, also unemployed. They live with three children and two grandchildren in the Kangemi Market area. She is 51 years of age. She was driven away from her home of origin in Western Kenya at the age of 19 by an abusive stepmother after the death of her father, who only had a small piece of land. She had a 2-roomed house there and lost food security. They are poor and lack food.

Salome is another unemployed **married** woman with two years of high school education, 34 years old. At age 19 she left home to get married voluntarily, and for ten years lived in the same area of Western Kenya. Her husband, from a polygamous family with little land but many family conflicts, was abusive. He evicted her but kept the children, so she lost her small mud house. She found work in Nairobi and has remarried with two small children and keeps in touch with her older ones by phone.

Josephine, a **separated** woman in her 40s originally from Western Kenya, with a secondary education, had to leave home in her late teens and find work elsewhere. She moved to Nairobi where she met her husband and they had a child when she was 20 and another when she was 26. They lived in a four-roomed house in a lower middle-income area (Outer Ring). She also had a job as a housekeeper earning KES 8,000 (US\$ 80) per month. But her husband was a drunkard and beat her severely so she ran away with the children. She lost all her belongings, food security and her job and is now unemployed but both her children are in primary school.

Ruth is a **separated** woman in her 30s with two young children. She had to leave home in her early twenties and got married to a man from the same area in Eastern Kenya. They built a house together on his land but he abused her violently and evicted her after four years and she went back to her mother's place for family support. After her mother's death she was again evicted from her natal home. She lost everything from the eviction from her marital home, including food security, semi-permanent house, land and documents, she is now in a rented room on the outskirts of Nairobi doing casual work to survive.

Rachel is a 45-year-old disabled woman from Rift Valley, with two children, a teenage girl and a boy of five. She is **separated** from her husband who was abusive. She had to leave home at 24 years of age, also abused for her disability which is a taboo. She went to live with her sister in town (Eldoret) and said she wanted to be independent and look for work. She got pregnant in her thirties and moved to her husband's house in Nairobi, but he married another woman and abused and beat her for being disabled. He also refused to provide for the children. She could not afford therapy or school fees and

was threatened by the other wife. She lost food security due to lack of income, plus a one-roomed house and now lives in a tin shack near Kangemi Market, trying to care for the children but unemployed.

Wanjiku is another **separated** woman from Rift Valley, a victim of eviction from her natal home due to post election violence (PEV) in 1992 when she was 20. The whole family fled to Nairobi for safety. A year later she got married to a man who had inherited a plot of land in a middle-income area (Kawangware). She built a two-bedroomed house there through her own money and efforts, as well as rental rooms for income, working with a women's group. But he neglected her and refused to support their children as well as beating her severely. In her late 40s he finally forced her to leave. She lost everything including her children, all her belongings, her business selling porridge and tea, and her own food security. She also lost contact with her marital family with whom she had good relations and her social position in the local church

Rebah is a **separated** woman in her late 50s who voluntarily left her home of origin in Western Kenya to get married when she was 15, her husband coming from a village nearby. They moved several times when he bought land elsewhere and she followed him to Nairobi in 2005 when she was in her 40s. They have several children and now grandchildren, some of whom live with her. But he chased her away from the four-roomed house in a lower middle-income area (Kaloleni) and took everything from her as he married another wife and she later found she was HIV positive. He has sold the land they had in Western Kenya without her consent, and she has also lost another plot they bought in Rift Valley that has 20 rental rooms. She has lost food security due to lack of income, several plots of land and houses including the rental property that brings income, plus all her belongings including title deeds, a car, tractor and bicycle. Now she has several health problems due to stress but cannot afford medical costs or school fees.

Beatrice is a typical **widow** in her 50s, now selling clothes in Kangemi. She has secondary education and four dependent children. She lost access to land and home twice due to the deaths of first her father and then her husband. Her father wanted to leave his land in Western Kenya to his children equally but the brothers denied her access although they help her children with school fees. Her in-laws allow her to live on the family land but she has no rights there and they encroach on the land she uses and cut down trees she plants. She used to work in Nairobi and earn good money with which she bought land with her husband in another area in Western Kenya and built their house. Upon his death her in-laws began contesting her right of ownership and are trying to grab it.

Leonida, an unemployed **widow** now in her late forties, left her natal home in Western Kenya when she was in her late thirties. According to her this was voluntary, to look for work. She migrated to a Nairobi slum where she met her husband after one year and moved in with him in the same area. They had one child, but her husband died after four years of being together. He had never taken her to his home of origin or performed any customary marriage duties so his parents came and took everything from her since she only had a daughter and thus no rights to his property. Her in-laws abused her physically and threatened her with death and burning her house. They took everything from her house including furniture, utensils and her daughter's birth certificate, so she now has trouble registering her for school. She became food insecure, distressed and sick, sleeping on the floor with the baby. She has now moved to near Kangemi Market.

Florence is a self-employed **widow** in her late forties who left her home of origin in Nyanza voluntarily at the age of 21, to get married. She moved to Kangemi, in Nairobi with her husband. They had three daughters, two now in high school and one in primary school. She also now has two grandchildren, also girls. She also established a home at her husband's land in Nyanza, but after he died nine years ago, his family kicked her out, together with the girls. She lost food security, one acre of land, a two-bedroomed house and all furniture and belongings. His family told her she had no place in their family, being all female. They even destroyed her crops and threatened her, leaving her without any support for the children.

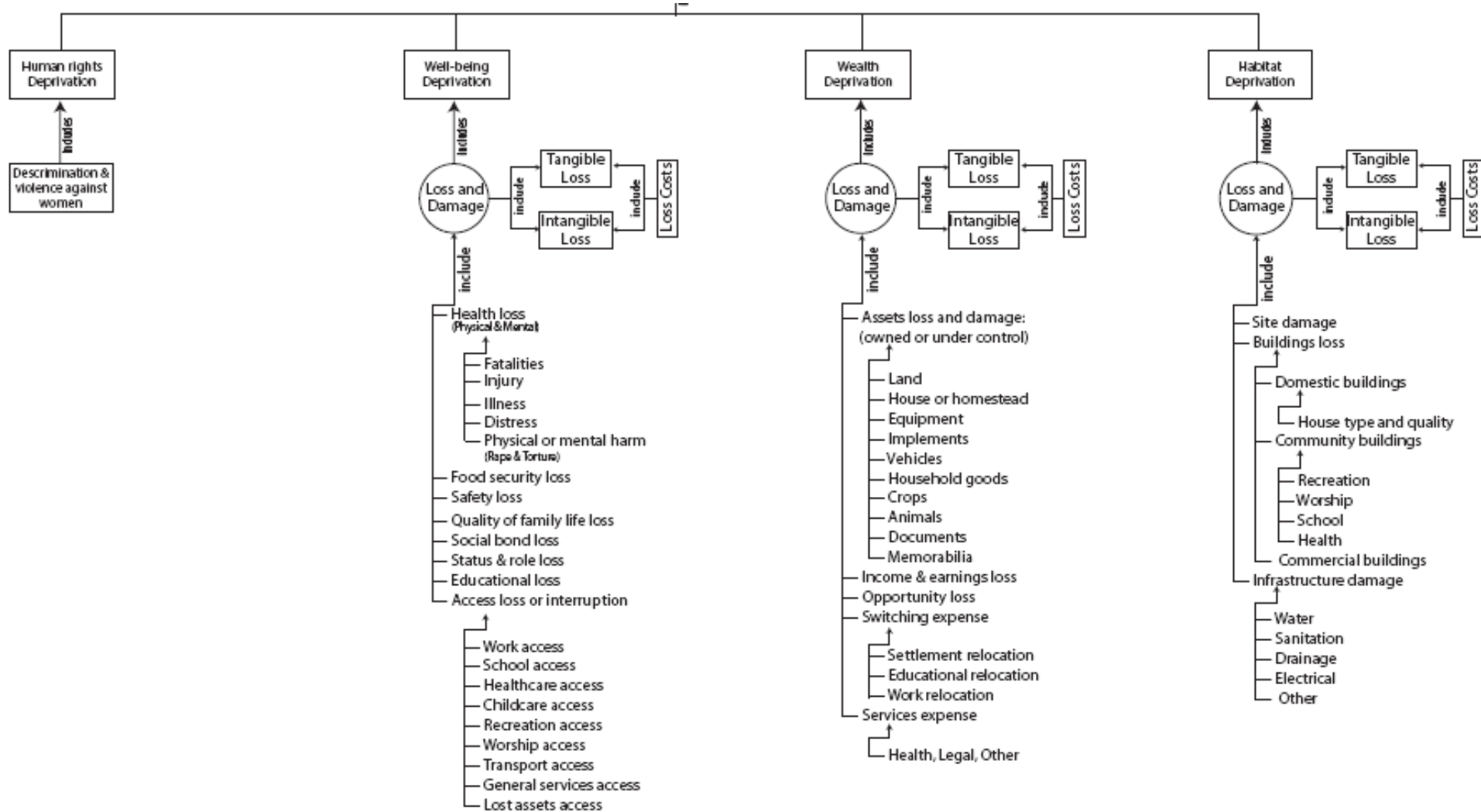


Figure 2: EvIRA Tool index of values at stake in case of a violation of a woman's housing, land and property rights.

Phanice is a 44-year-old self-employed **widow** who had to leave her home of origin in Western Kenya at age 18 due to poverty. She first migrated to a low-income area of Nairobi (Dandora) to look for work. After two years she moved to Kangemi Market area when she met her husband who lived there. They had two daughters who are now in school although one (age 15) also now works as well. Her husband died five years ago when she was not yet 40 years old. According to Luhya custom, she moved house as she could not stay in the place he died. But he had already married a second wife who moved into the house she thought was hers at his rural home also in Western Kenya, while she had lived with him and worked in Nairobi. So, she lost all claim to 3 acres of land and a 2-roomed house, furniture and other goods when he died as she had only given birth to girls. He had threatened to kill them all when he was still alive for the same reason. Her in-laws disowned her and sided with the new wife. Her natal family also would not allow her to go back to the small (1/4 acre) land there after the death of her husband.

Women's observations on what should be done

The following suggestions, taken from about a quarter of the respondents' questionnaires, are more or less verbatim, slightly adapted for readability. They reflect a diversity of views and opinions, although overwhelmingly in favour of changing discriminatory customs. After that, the next section of the report discusses this situation (as perceived by respondents) in relation to current law and government policy:

1. These cultural practices violate the rights of women. Women should be allowed to own land and houses as they are also human beings, just like men.
2. Government should intervene and do away with the customs. Women should have equal say with men. Parliament should do something in regards to women's right to land and property.
3. Daughters should have equal share of land with sons
4. Government should intervene for women to get inheritance whether married or not
5. Government should support equal distribution of property between wives married to the same husband. There should be legislation to protect women's property ownership even if the husband marries again.
6. Government policies should support economic empowerment and child support for separated women
7. Government and NGOs should assist widows and women affected by customary practices, by implementing a law for them to have access to land and other assets.
8. Government should dialogue with communities not to practice such harmful customary practices
9. If women have children, in-laws should allow them to inherit property when the husband dies.
10. Women should have a representative in their area to speak out on land issues. They should hear and determine cases of discrimination
11. Women should be issued with marriage certificates as proof of marriage to the deceased for claiming inheritance. Husbands should also write wills on property sharing.
12. "Society should not change the customary practices, as it may lead to a curse. Leave everything to God. For me as a woman, demanding my own land against an existing tradition would be difficult." (Comment by a traumatized woman).
13. Educate the society on women's rights and build women's capacity to fight for their rights. Women should have equal say with men.

Current Status of Law and Policy in Kenya on Gender-discriminatory Customary Practices

Kenya's 2010 Constitution does not allow the practice of gender discrimination⁵. Other laws, including the National Land Policy (2009) recognize women's land rights. But earlier, during about 65 years of colonization, formal law had been separated from local customs. "Native Tribunals" dispensed a separate form of law to Africans, based on patrilineal custom, which was then entrenched in the post-independence constitution of the 1960s. This is generally typical of African countries, most of which have moved on from colonial law by developing post-independence constitutions based on citizen participation and mandating gender equality.⁶

Colonists also misunderstood and negated the value of African customary law, which recognized women's user rights and was based on principles of justice. The injustice of women tilling 70% of Africa's land yet having no rights to it needs to be addressed by revisiting African customary law through a process of community consultation.

The Kenyan Judiciary has entrenched gender equality in law through decisions of the Court of Appeal in recent times. The Court of Appeal has called for parliamentary review of the Law of Succession Act. This law has some discriminatory clauses. Clause 35 does not allow a woman to retain property inherited from the husband if she re-marries, which is un-constitutional as it is based on gender discrimination. Clause 32 allows certain areas of the country to disallow women's inheritance of land and livestock, bowing to custom. A landmark Court of Appeal decision of 2004, citing CEDaW, asserts equal gender rights to inherit parental (and marital) land.⁷

Kenya's Matrimonial Property Act also does not give clear guidance on division of property at the end of marriage, particularly if there are several properties. It is left to judges to rule on division of property based on different types of contribution to the marriage⁸. Cases are ongoing in the Kenyan courts. Further, most people do not have access to courts and anyway find them alienating and hard to follow. Progressive decisions by courts have recently been rejected by local leaders and have created community backlash on women.⁹

The historical legacy of male inheritance, justified and entrenched by colonial laws, needs to be examined and revised to avoid such injustices as are revealed by this research. Patriarchy has become overbearing and dominant in Kenyan society to the extent of promoting such violations of women's human rights as are documented here.

Kenya's 2010 Constitution also mandates alternative forms of dispute resolution as a means to justice, provided that these are not used in a way that contravenes the Bill of Rights (Clauses 2(c) and 3.)¹⁰ Steps toward realization of these clauses, and especially of justice for all, will follow the Alternative Justice System Policy (AJS) released on the tenth anniversary of the Constitution in August 2020.¹¹ Research

⁵ The Constitution of Kenya (2010), Clause 27. Government of Kenya (GoK), The Constitution of Kenya, 2010 (Nairobi, Kenya: Government Printer National Council for Law Reporting with the Authority of the Attorney General, 2010), at: <https://www.wipo.int/edocs/lexdocs/laws/en/ke/ke019en.pdf>.

⁶ This paragraph and the three following are based on the findings of a webinar organized by Konrad Adenauer Stiftung (KAS): "Women's Land Rights & Development in Africa: Contesting Normative & Cultural Exclusion," 20 July 2020, www.bit.ly/WomenLandRights.

⁷ Judge Oscar Omugo Angote of Kenya's Environment and Land Court, speaking at the first session of KAS webinar, 20 July 2020, *op. cit.*

⁸ Hon. Anyango Yvonne Oyieke of University of Nairobi School of Law, speaking at the second session of KAS webinar, 27 July 2020, *op. cit.*

⁹ Third session of KAS webinar, 3 August 2020, *op. cit.*

¹⁰ GoK, 2010, *op. cit.*

¹¹ *Justice Systems Baseline Policy* (Nairobi: The Judiciary of Kenya, August 2020), at: <https://ajskkenya.or.ke/download/alternative-justice-systems-baseline-policy/>.

leading to formulation of the policy found that only 21% of Kenyans take their disputes to court. Around half already resort to alternative means of resolving disputes.

The policy is framed in human rights criteria, including the duty of the state to respect those rights and to protect abuse sufferers from third parties violating their rights. It also has a duty to transform the administration of justice to achieve implementation of rights. The policy thus envisages the Alternative Justice System (AJS) operating in a didactic way to engage communities on the Constitution and human rights, and to generate knowledge through a system like “customary law reports” that enshrine the wisdom of AJS decisions and practices that bring justice according to the Constitution. AJS will promote reconciliation and mediation according to Clause 159 2 (c), at community level.

This presents an opportunity to carry forward the work of the Women Land and Homes Project in Kenya through active collaboration, partnerships and activities that follow-up the findings of this report on customary practices.

Conclusions and Recommendations

Our survey shows that women who have lost their land and homes due to customary practices suffer deprivation of assets, deprivation of wellbeing (including food security) and deprivation of habitat in the form of land and housing. This is a type of eviction not yet adequately studied. The large majority in our sample had experienced such losses more than once. Almost all these evictions were accompanied by violence. The majority of cases studied were accompanied by physical violence. Emotional and verbal abuse was reported almost universally (98%). These findings strongly suggest that such losses of land and home by women due to customary practices constitute a type of forced eviction.

The study findings thus indicate a new type of human rights violation concerning eviction, namely gender-based eviction of women from their land and homes by family members, due to customary practices. This type of violation of rights to land and homes, experienced specifically by women, warrants a specific type of response from the state as the duty bearer, namely to carry out its responsibility to protect the rights of women from a third party, namely their natal and marital family members.

The family members themselves, who infringe the rights of women to land and homes, also bear a duty to those whose rights have been violated, to undertake some form of redress. The current study, while exploratory and limited to a purposive sample in one country, Kenya, suggests future direction for investigation of whether the findings might be replicated in other places. Types of impact, on wealth, wellbeing and habitat, might be compared as different or similar in other places.

The study also raises questions about responses to such findings in terms of approach to judicial and customary law solutions. The current legal and policy situation in Kenya with respect to this type of gender discrimination also needs comparison with other countries, especially those in sub-Saharan Africa, which may have similar or different legal and policy frameworks. Likewise, the possible remedies may vary with different legal and policy frameworks.

It is recommended that there be a wide-ranging set of follow-ups, as follows:

Conceptually, HIC-HLRN should take the lead on defining the type of eviction in terms of human rights violation, duty bearers and their obligations.

Consultations on the concept and approach to addressing it should be led globally and regionally in Africa by HIC-HLRN and its partner organizations, together with the development of global, regional and national strategies to address this type of eviction, given legal and policy frameworks which may be more or less amenable to addressing it.

Dissemination of the concept and approaches to addressing it within a human rights framework should be led by HIC-HLRN and its partners, using media, networks and campaigns, either globally, regionally or nationally, adapted to various contexts.

Partnerships on strategies to address forced evictions of women from their land and homes should be forged at all levels by HIC-HLRN. Globally, partnership on this type of eviction can be developed with UN and other international organizations. For example, UNHCHR, UN-Habitat through its Global Land Tools Network (GLTN) and other specialized agencies need to investigate and follow up programmatically.

Regionally in Africa, HIC-HLRN partners could address this type of forced eviction through the Women Land and Homes project implementation campaigns. Other related projects should incorporate this type of approach to women's deprivation of land and homes through an enhanced understanding of this type of forced eviction. Clarity is needed on distinguishing gender-based eviction by family members from evictions of communities where women are also affected.

Partnership with Konrad Adenauer Stiftung (KAS) program on the Rule of Law in Africa could be developed to further enhance conceptual approaches and legal and alternative justice remedies adapted to different African countries.

Regarding **Kenya**, partnership with the Judiciary Training Institute (JTI) on implementing the Alternative Justice System Policy 2020 is recommended. For this, development of multi-media messaging, outreach programs and training courses for various target groups in different parts of the country are suggested.

Women's agency at community level should be recognized, and the recommendations of the women in this survey could be a starting point for bringing their voices to other forums in a campaign on redressing harmful customary practices affecting women's rights to land and homes.

Cover art: Photo shot by Theopi Skarlatos from the video report: "[Kenya widows fight sexual 'cleansing' practice](#)," *BBC News* (6 December 2017).