



GLTN
GLOBAL LAND TOOL NETWORK

For a World in Which Everyone Enjoys Secure Land Rights

ADVANCING WOMEN'S LAND AND PROPERTY RIGHTS IN THE SOMALI REGION

UN-Habitat and Global Land Tool Network
gltn@unhabitat.org

FACILITATED BY:

UN HABITAT
FOR A BETTER URBAN FUTURE

A world map is visible in the background, rendered in a light blue and white color scheme. The map shows the continents and oceans, with a slight gradient from left to right. The top and bottom of the slide feature a blue gradient bar, and a small orange square is located in the top-left and bottom-left corners.

INTRODUCTION

TRAINING LEARNING OBJECTIVES

- Recognize the **importance** of securing women's land and property rights, **raise awareness** and push forward gendered **land reforms** in the Somali region.
- Understand existing **legal instruments** protecting women's land and property rights in the Somali region, how they relate to each other and how to work with them in the prevailing context of **legal pluralism**.
- Familiarize different **land tenure arrangements** through which women access and control land and property in the Somali region, and identify challenges and opportunities to strengthen women's land and property rights
- Increase awareness on the importance of **women's participation** in land matters and land decision-making bodies
- Understand the **challenges** that women face in accessing **land dispute-resolution** mechanism and effective ways for **improving** women's access to justice
- Understand the importance of and the process for collecting, analysing and reporting **sex-disaggregated data**

OVERVIEW OF THE TRAINING MODULES

MODULE	CONTENT	SYNOPSIS
1	Why women's land and property rights matter	This module outlines some of the most pressing reasons why it is necessary to raise awareness and advocate for women's land and property rights for the benefit of society as a whole.
2	What protects land and property rights of Somali women?	This module introduces the main international and regional frameworks, customary practices and Islamic laws that secure and regulate women's land and property rights in the Somali region.
3	How women access to land and property: mapping challenges and opportunities in the Somali region	This module outlines the main avenues through which Somali women access land and property, highlighting related challenges and opportunities.
4	Creating an enabling environment	This module outlines the main strategies to strengthen women's land and property rights in the Somali region.
5	Monitoring and measuring progress	This module highlights the importance of monitoring and measuring progress of women's land rights and provides guidance on how to collect sex-disaggregated data on the status of women's land tenure security in the Somali region.

ICE-BRAKER



- Please introduce yourself to the participants
- What are your expectations from this training?



MODULE 1
WHY WOMEN'S LAND AND PROPERTY RIGHTS MATTER



MODULE 1 - LEARNING OUTCOMES

At the end of this module participants will be able to:

- 1. Identify context-specific reasons** for putting emphasis on securing women's land and property rights
- 2. Advocate for women's land and property rights** using compelling arguments
- 3. Discuss and use gendered considerations** in relation to land and property rights

WHY WOMEN'S LAND AND PROPERTY RIGHTS MATTER

- Women's land and property rights ensure the sustainable **social and economic development** of their communities.

Securing women's land and property rights...

- ...leads to **increased agricultural productivity** and production, contributing to **food security** and to the **fight against poverty**.
- ...increases women's **independence** and bring **long-term benefits for families and communities**, particularly for the children through higher investment in **education, health and nutrition**, and by providing **old age support** for both women and men.
- ...encourages investment in **house upgrading** and increases women's access to formal credit for **business opportunities** by using the titled plot as collateral.

WHY WOMEN'S LAND AND PROPERTY RIGHTS MATTER

- Securing women's land and property rights...
 - ... contributes to the **realization the human right to security of tenure**, including **protection from forced eviction** - pivotal for the realization of the right to **adequate standard of living** and the right to **adequate housing**.
 - ... contributes to the **realization of a broader spectrum of human rights**: the right to equality, food, health, work and education.

WHY WOMEN'S LAND AND PROPERTY RIGHTS MATTER

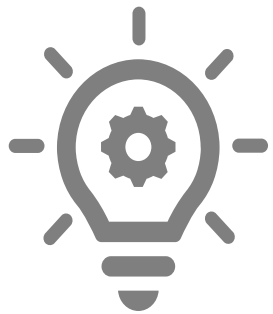
- Women's land and property rights contribute to their **leadership and participation in decision-making**

Securing women's land and property rights...

- ... strengthens women's leadership and participation in decision-making by **rebalancing roles** both within families and communities.
- ... increases their **civic engagement** and public participation.
- ... defines and enhances their **social security, status and identity**, all necessary elements to boost their participation in local decision-making processes and **political power**.

GROUP REFLECTION

“Land also has great cultural, religious and legal significance. There is a strong correlation in many societies between decision-making powers and the quantity and quality of land rights one holds. In rural areas, social inclusion or exclusion often depend solely on the individual’s landholding status. Even in urban areas, the right to participate in municipal planning, in community decisions and sometimes elections can depend on the status of an individual as a resident or home-owner.” (FIG, 2014)



WHAT’S THE CORRELATION BETWEEN LAND RIGHTS AND
DECISION-MAKING POWERS IN YOUR COMMUNITY?

[5 mins to reflect and prepare an answer]

WHY WOMEN'S LAND AND PROPERTY RIGHTS MATTER

- Women's land and property rights increase their **protection from gender-based violence and health hazards.**

Securing women's land and property rights...

- ... reduces both **physical and psychological domestic violence** as women who own land and housing are more capable of **exiting violent relationships**, make **informed decisions** over their **sexual and reproductive health and rights**.
- ... ensures they have the **financial means** to provide for themselves and for their dependents.
- ... **reduces their vulnerability to HIV**, as it prevents them from engaging in sexually risky behaviour and help them **cope with the social and economic impact** of the HIV at the household level.

WHY WOMEN'S LAND AND PROPERTY RIGHTS MATTER

The relationship between women's **land and property rights and gender-based violence** is often **complex**.



When women **claim** their land and property rights and these are **denied** to them by their male relatives, they are **more likely exposed to psychological and physical violence** - and even death in extreme cases – by the hand of their very relatives.

WHY WOMEN'S LAND AND PROPERTY RIGHTS MATTER

- Land and property rights enable women to play a bigger role in the **stabilization of societies** in crisis and conflict-affected contexts.

Securing women's land and property rights...

- ... enables women to contribute to the transition from the humanitarian phase towards **recovery and self-reliance**, alleviating the negative economic and social impact of conflict by becoming breadwinners, heads of households and caregivers to those in need.
- ... provides significant support to displaced women by guaranteeing the **economic independence** they need to cope with the lack of family support.
- ... enhances women's **participation in decision-making** and in peace processes. This leads to more sustainable **peacebuilding** efforts, to a better likelihood of peace agreements to be implemented and to longer lasting peace.
- ... contributes to the development of **socially and economically stable societies**, crucial factors for stabilizing societies and **preventing a relapse into conflict**.

GROUP REFLECTION



Provide an example from **your own experience** where you have heard or witnessed a **violation** of a woman's land and property rights.

- What was the **context**?
- Was this a gendered example of a rights violation?
- Was it ever resolved appropriately and how?

[5 mins to reflect and prepare an answer]



MODULE 2

WHAT PROTECTS LAND AND PROPERTY RIGHTS OF SOMALI WOMEN



MODULE 2 - LEARNING OUTCOMES

At the end of this module participants will be able to:

1. Identify the different **legal frameworks** that protect the land and property rights of Somali women;
2. Build strong arguments and define actions on the bases of **international human rights instruments**;
3. Identify and select the preferred **entry points and opportunities** for protecting and promoting women's access to land;
4. Provide relevant inputs to **political dialogue** at national and local level;
5. Understand and work with the **legal pluralism**.

THE EXISTING LEGAL FRAMEWORKS

- Land in the Somali region is governed and managed by a complex system of **state institutions, traditional and religious authorities, and community practices** in a **legally pluralistic system** where statutory laws, customary laws and Islamic law coexist:
- **STATUTORY LAW:** it is the codified law developed by formal state institutions, a process still under consolidation and revision also due to the recent transformation of the country into a Federal Government.
 - **CUSTOMARY LAW:** land is communally owned, it is treated as a sacred collective good and a symbol of power inherited from the ancestors. Individuals have the right to use the land and these rights can be transferred from parents to children or granted by the community elders.
 - **ISLAMIC (or SHARI'A) LAW:** it is a system of religious rules derived from the Quran and Hadith, it has a stronger power and it is more respected than the customary law although, at times, applied in an approximate way.

THE EXISTING LEGAL FRAMEWORKS

- Somalia is party to numerous **international instruments** which call upon the state to protect and promote women's land and property rights.
- **National legislation** generally protects women's access to land, although full equality between women and man's rights is not always guaranteed, especially in some areas of land-related family law.
- **Islamic land law and customary practices** offer additional viable entry points and opportunities for protecting and promoting women's land and property rights.

INTERNATIONAL LEGAL FRAMEWORKS

- At the international level, women's land and property rights are protected since the 1940s with a number of legal instruments under two streams of legislation: one protecting the **rights to adequate housing and protection from eviction**, and one recognizing the **equal rights of men and women**.
- International human rights instruments can be divided into two categories:
 - **Declarations**, adopted by international bodies such as the United Nations General Assembly and not legally binding, and
 - **Conventions**, legally binding instruments concluded under international law.
- These instruments can be used to sustain their arguments and contribute to **political dialogue** at national level where global **normative thinking** is most needed.

INTERNATIONAL LEGAL FRAMEWORKS / Declarations

- The main **international declarations** protecting women's equal rights to land and property include:
 - Universal Declaration of Human Rights (1948)
 - Declaration on the Elimination of Discrimination against Women (1967)
 - Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forest in the Context of National Food Security (2012)
 - 2030 Agenda for Sustainable Development (2015)
 - New Urban Agenda (2016)
 - Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005)

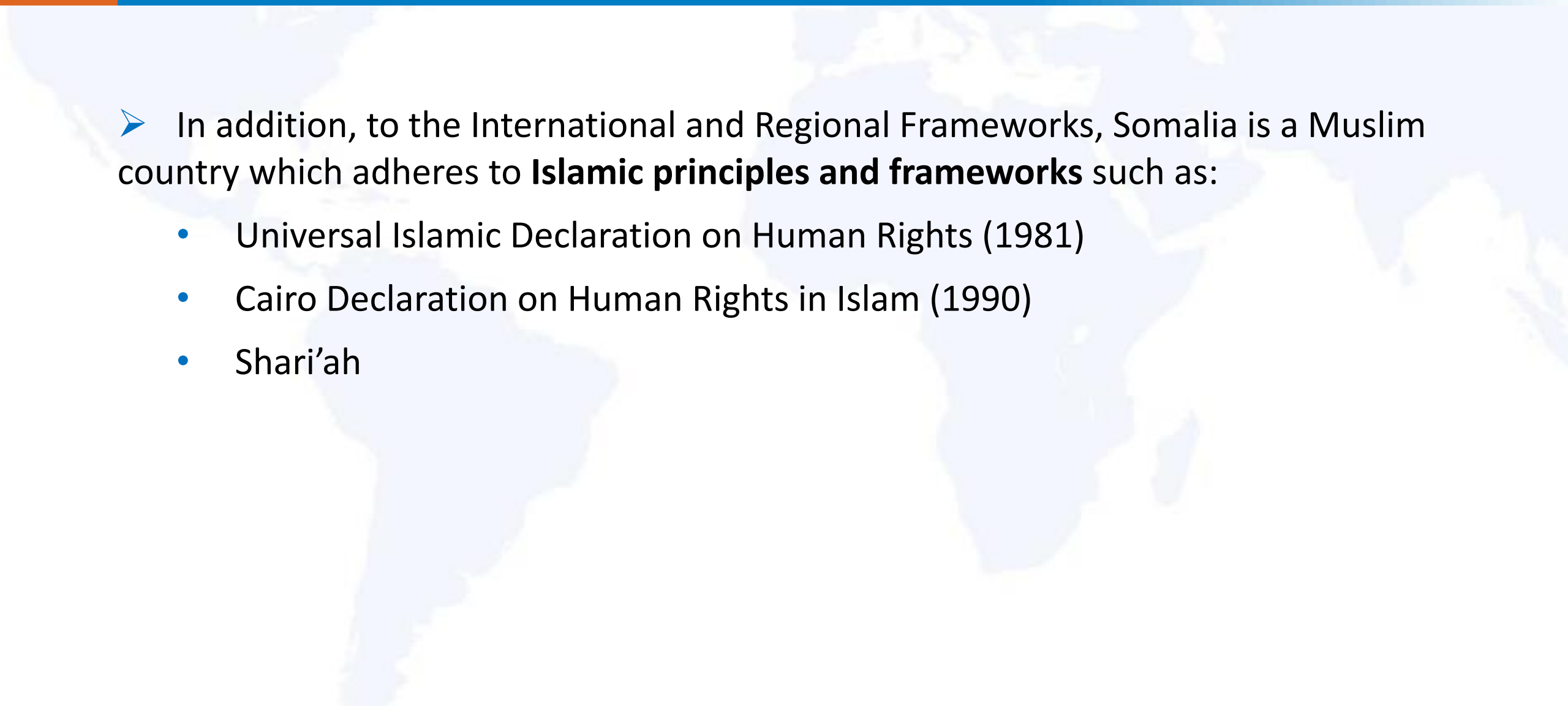
INTERNATIONAL LEGAL FRAMEWORKS / Conventions

- The main **international conventions** protecting women's equal rights to land and property include:
 - The International Covenant on Civil and Political Rights (ICCPR) – ratified by Somalia in 1990;
 - The International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified by Somalia in 1990;
 - The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) - not yet ratified by Somalia;
 - The International Convention on the Elimination of Racial Discrimination (ICERD) - ratified by Somalia in 1975.

REGIONAL LEGAL FRAMEWORKS - AFRICA

- At the regional level, women's land and property rights are protected by a number of treaties that provide a leverage point and a **bridge between national and global initiatives**. Most African countries, including Somalia, regulate women's access to land and property by adhering to international and regional conventions and protocols.
- Somalia has **assumed obligations** under different agreements such as:
 - African Charter on Human and People's Rights (1986)
 - Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa – Maputo Protocol (2003)
 - Solemn Declaration on Gender Equality in Africa (2004)
 - African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009)
 - African Union's Declaration on Land Issues and Challenges in Africa (2009)

REGIONAL LEGAL FRAMEWORKS – MUSLIM WORLD

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- In addition, to the International and Regional Frameworks, Somalia is a Muslim country which adheres to **Islamic principles and frameworks** such as:
 - Universal Islamic Declaration on Human Rights (1981)
 - Cairo Declaration on Human Rights in Islam (1990)
 - Shari'ah

FEDERAL AND STATE CONSTITUTIONS

- Somalia is a **Federal Republic** formed of five different Federal Member States: Hirshabelle State, Jubbaland, South West State, Galmudug and Puntland.
 - At the level of national laws, women's land and property rights are generally regulated by laws in the field of **personal law, marriage and divorce laws, laws on inheritance and land rights**, but it is difficult to identify a set of conditions applicable to every state of the federal republic due to their respective histories and contexts.
 - There is **no distinct law** that governs land issues in Somalia but several land laws which were inherited from the former central government are still in force. Federal land laws have not been updated since the Siad Barre regime in the 1970s which is still the only one in effect. Barre's regime enacted land legislation as part of a strategy to consolidate power: the 1975 Land Law **nationalized all land in Somalia**, requiring landowners to **register leasehold titles** within six months from enactment of the law.

FEDERAL AND STATE CONSTITUTIONS

- The **Federal Republic of Somalia Provisional Constitution** (2012) has provisions that protect, inter alia:
 - Women's rights to participation across all the three branches of government and in all national independent commissions;
 - Prohibits gender-based discrimination; and
 - Promotes equality of rights and duties before the law, regardless of sex.
- Regarding the protection of women's access to land property, the Constitution affirms that every person, **without any kind of discrimination**, has the right to **own, use, enjoy, sell and transfer property**:

“Land is Somalia’s primary resource and the basis of the people’s livelihood. Land shall be held, used and managed in an equitable, efficient, productive and sustainable manner.” [Article 43 of the Federal Republic of Somalia Provisional Constitution (2012)]

FEDERAL AND STATE CONSTITUTIONS

- **Somaliland Constitution (2001)** affirms that all citizens of Somaliland have equal rights and obligations before the law, without any kind of discrimination or precedence. Moreover, with regards to women's property rights, it states that "Women have the right to own, manage, oversee, trade in, or pass on property in accordance with the law."
- **Puntland State Constitution (2001)** states, in relation to land, housing and property rights, that "Every citizen shall have the right to have his/her own property, within the framework of the law. Any unlawful act of producing is prohibited. No personal commission or property levy may be imposed not in compliance with the law."
- The **Policy Framework on Displacement within Somalia (2014)** sets several policy actions, to be committed by the federal and state governments, to provide IDPs - including women - with tenure security, temporary and permanent title deeds or usufruct schemes, and ensure access to land without risk of eviction and other interference.

CUSTOMARY LAW - *Xeer*

- The *Xeer*, literally meaning “there is an agreement between us,” is “a complex set of norms and rules that govern inter and intra-clan relationships” passed down orally through generations.
- The *Xeer* system poses two main challenges to the equal inclusion of women in Somalia:
 1. The entire system places less emphasis on individual rights and more so on **preserving community ties** which is done primarily through the engagement of the clan system. While every Somali woman belongs to a clan, the clan system is exclusively patrilineal, **a woman adopts the clan of her father** and when she has children, they also follow the clan of their father. This may **complicate access to power** through the clan system.
 2. It is exclusively a **male dominated** arena. The system rarely has women as decision makers or part of the process in any substantial way. The **lack of representation** is incredibly limiting and contributes to the creation of further **access to justice issues**.

ISLAMIC LAW

- In the Somali region, the statutory law is based on, and **cannot contravene**, the **Shari'a**. The Federal Constitution of Somalia states that “no law can be enacted that is not compliant with the general principles and objectives of Shari'a.”
- **Land ownership** in Islam is based on **productive use of land**. The person who uses the land will have priority over another with access to a patch of land but who has failed to use it. Unworked land in principle cannot be owned.
- **Every individual**, man, and woman, Muslim and non-Muslim are entitled under the Shari'a law to the **ownership, possession, enjoyment and transfer of property**, a right which must be respected and safeguarded by his fellowmen and the state, irrespective of creed, color and race.
- Islamic law recognizes **women's rights to acquire, manage and alienate property**. However, under the Shari'a, women are accorded smaller inheritance shares: state land (*miri*) is usually inherited according to state law, in equal shares by both sons and daughters.

HOW TO WORK WITH LEGAL PLURALISM

- The expression “legal pluralism” refers to the **coexistence** in the same territory of “a range of customary, statutory, [religious] and hybrid institutions [...] and regulations with legal or practical authority over land.”
- The relationship among statutory, customary and religious laws usually depends on the level of recognition and domestication of customary and religious laws and practices in the formal legal system:
 - The Somali statutory system officially **integrates and protects the Shari’a**, subordinating the enforcement of all laws to their **compliance** with its general principles and objectives.
- **Harmonizing, reconciling and aligning** the provisions of the different legal systems, clarifying how they interact with each other is crucial to **avoid forum shopping** and jurisdictional confusion.

HOW TO WORK WITH LEGAL PLURALISM

- Understand **risks and opportunities** of engaging with the different legal systems:
 - Where institutions are **well functioning** and there is peace and security, **statutory laws** usually represent the best entry point for protecting women's land and property rights as they are often more **gender responsive**, progressive and aligned with international frameworks.
 - Where national laws and institutions are **weak**, like in the Somali region, statutory laws might not represent the most viable option.
- Assess the level and **pattern of penetration** of the different legal systems.
- Assess the **knowledge, acceptance and level of enforcement** of laws and rules to identifying which is the most viable option for successfully promoting and protecting women's land and property rights.
- Evaluate the **scale** and ambition of the intervention, the **timeframe** and the available **resources**.

HOW TO WORK WITH LEGAL PLURALISM

- Keep in consideration the nature of the **intervening organisation(s)**. For example, a local civil society organisation working in a specific rural area might be more successful in engaging with the customary land administrators than an international organisation with limited local knowledge.
- **Build longer-term** and larger-scale processes **on short-term initiatives** and humanitarian interventions. Development and humanitarian interventions - with land-related components - should be planned together.
- **Develop the capacity** of different actors on the **whole spectrum** of rules and norms characterising the Somali legal pluralism.



MODULE 3

HOW WOMEN ACCESS TO LAND AND PROPERTY: MAPPING CHALLENGES AND OPPORTUNITIES IN THE SOMALI REGION



MODULE 3 - HOW WOMEN ACCESS TO LAND AND PROPERTY

At the end of this module participants will be able to:

1. Identify and discuss advantages and disadvantages of different tenure arrangements;
2. Identify fit-for-purpose tenure arrangements for securing women's access to land and property;
3. Understand the importance of promoting inheritance and joint marital property as means to rebalance gender roles inside the household and empower women.

THE CONTINUUM OF LAND RIGHTS

- Land rights can be seen as a **continuum between informal and formal rights**.
- The continuum of land rights is an **inclusive approach** incorporating documented and undocumented tenure rights, formal and informal, for individuals and groups, including pastoralists, residents of slums and other settlements (legal or not legal).
- The continuum of land rights approach advocates for the identification and **progressive strengthening of the legitimate land tenure arrangements already existing** in a specific context as the **most effective, scalable and time efficient** way to improve access to land for all. The most appropriate form of land rights' recognition depends on:
 - the context;
 - what best suits the social, cultural and economic needs of local communities;
 - what are the existing capacities;
 - the requirements of the land administration authorities.

LAND TENURE OPTIONS - OWNERSHIP

- Ownership is the most commonly understood avenue to access land, and it is generally the most secure and preferred type of tenure to which women can aspire.
- Significant variations exist in the region on how ownership can be achieved depending on the local contexts (e.g. urban/rural settings; strong/weak presence of government institutions; etc.).
- The most common ways through which Somali women access ownership are:
 - purchase,
 - gifts,
 - dower (*mahr*), and
 - joint and group ownership.
- Nevertheless, if a woman owns a parcel of land or a house it does not necessarily mean that she has control over the way such property is used and administered nor how the income generated from such land is used and managed.

LAND TENURE OPTIONS - OWNERSHIP

- **Purchase** – It is rare that women purchase land or housing. Reasons can vary and overlap, in most cases it is due to lower levels of education, often resulting in unemployment or underemployment, insufficient financial resources, and limited access to credit and microfinance.
- **Gifts (*hiba*)** – When a woman receive land as a gift, land can be either under her full ownership or restricted to use or enjoyment of property or usufruct, she can be the sole beneficiary or one of the beneficiaries. The promotion of the Islamic land law provision of “gifts” is encouraged by the Global Land Tool Network’s partners as a viable option to increase the ownership of housing, land and property by women in Muslim-majority countries.

LAND TENURE OPTIONS - OWNERSHIP

- **Dower (*mahr*)** - In Muslim marriages, the dower (*mahr*) is a payment that a groom has to pay to the bride at the time of marriage. It may consist of land, use rights, cattle or crops, cash or jewellery. *Mahr* is the wife's entitlement and for the wife's use only. She can dispose of it as she wishes as she is not expected to offer it to the family, however it is a widespread practice.
- **Joint and group ownership** – Women are entitled to own land in joint ownership or even group ownership, through different arrangements:
 - Joint marital property is the property acquired by a couple during the time of their marriage, and it has the greatest potential to increase women's land and property rights in the short term and in many contexts.
 - The registration of land and/or housing in the names of multiple family member, such as brothers and sisters, can be an avenue to address and counterbalance women's lesser share of inheritance.

LAND TENURE OPTIONS – RIGH OF USE

- **Tenancy and lease agreements** - Tenancy and lease agreements are a widely spread type of tenure and proved to be a viable option in also contexts of displacement or migration. The tenure security provided by tenancy and lease agreements is greater where there is strong rule of law and access to functioning justice mechanisms. One of the main challenges posed by the use of tenancy and lease agreements is the lack of personal identity documents. The (re)issuing of legal civil documentation should be supported, especially in context of displacement, to increase and formalise the use of tenancy and lease agreements.
- **Endowment (*waqf*)** - Endowment (*waqf*) is a legal mechanism through which an owner permanently wave his or her land, housing or property, including its usufruct or income, in favour of a beneficiary for specific charitable purposes (e.g. education, provision of shelter or income for people in need or vulnerable groups, including women, etc.).

INCREASING WOMEN'S ACCESS TO LAND THROUGH ISLAMIC LAND LAW

- Religion is a significant part of life and identity for most Somalis, any conversation regarding women's empowerment, and protection of women's land and property rights should be framed and advocated through the Islamic framework.
- The main challenges arising from advancing land and property rights of Somali women includes:
 - Women's lesser inheritance rights, or even renunciation
 - Misinterpretation of Islamic law provisions.

INCREASING WOMEN'S ACCESS TO LAND THROUGH ISLAMIC LAND LAW

- The first challenge can be addressed by combating renunciation practices and by counterbalancing women's lesser inheritance shares through other avenues – provided in Islamic law - such as the use of wills, *mahr*, *awaqaf*, gifts, maintenance, etc.
- Significant efforts are needed to address the second challenge and ensure that the correct interpretation of Islamic land principles is applied to women's land rights. This includes:
 - Raising awareness on Islamic law provisions that protect women's land and property rights, targeting all stakeholders involved in the process, including women and their families;
 - Advancing the capacity of religious leaders and other key actors in enforcing non-discriminatory practices.

THE ROLE OF MARRIAGE IN REDEFINING LAND RIGHTS

- At the time of marriage, women's land and property rights are **redefined**. Through marriage, spouses typically acquire rights over each other's housing, land and properties. The type and duration of the rights acquired depends on the **local laws and practices**.
- **Joint marital property** is the property acquired by the couple during the marriage, including land and housing, that belongs to both groom and bride. It's based on the assumption that even if one of the contributed to a greater amount of financial assets, such **assets are equally valued and shared**.
 - Under the joint property regimes, property acquired or owned during a marriage **belongs equally or substantially to both spouses**: in case of divorce, "community property" is equally shared between the parties, while an "equitable distribution" call for an evaluation of each party's contributions before entitlements are made.

THE ROLE OF MARRIAGE IN REDEFINING LAND RIGHTS

- **The marital contract** is an opportunity for enhancing women's equality and advancing women's housing, land and property rights, through the addition of **specific clauses** or even **separate agreements**. The use of written marital contracts, and the inclusion of provisions on the couples' preferred **property regime**, should always to be encouraged.
 - Women can rarely to take advantage of the opportunities offered by the marital contract as they are usually **not aware** of their rights and of the property regime options offered through such contract and religious registrars often fail to fulfil their obligation of informing the parties.
 - It is therefore urgent to **develop the capacity of religious registrars** and other key actors involved in the process of contracting marriage and **raise the awareness of women and men** to transform the marital contract in a tool to access and secure women's land and property rights.

MINIMIZING THE RENUNCIATION TO INHERITANCE

- The renunciation of a share by a beneficiary is not contemplated in Islamic inheritance law, but it is a widespread practice. Women give up their inheritance right for a variety of reasons:
 - For fear of family boycott and to preserve the relationships with family members;
 - Due to lack of awareness of their inheritance rights and of the laws and procedures related to inheritance partition;
 - In exchange for cash or other properties;
 - Due to lack of financial resources, and other means, for claiming their rights in a court;
 - To avoid social criticism and avoid putting their husband in a “bad light”; and
 - To keep the family’s property intact.

MINIMIZING THE RENUNCIATION TO INHERITANCE

- Some approaches which proved to be successful in minimizing the renunciation of inheritance rights by women include:
 - Raising awareness among all stakeholders, including women and their families, on the existing statutory and religious inheritance laws;
 - Developing the knowledge and capacity of judiciary, customary and religious leaders involved in decision-making processes regarding inheritance;
 - Providing information, practical support and financial and legal aid to women claiming their inheritance rights;
 - Regulating inheritance renunciation practices by clearly establishing requirements, timelines and procedures;
 - Promoting communication and information campaigns aiming at changing the negative attitude of the society towards women claiming their inheritance rights;
 - Implementing initiatives designed to enhance women's empowerment and access to education and employment opportunities.

GROUP REFLECTION



- What are the variety of ways women's access to land rights is challenged in Somalia? Socially/culturally, politically and economically?
- What are some potential solutions to remove these barriers?

[15 mins to reflect and prepare an answer]



MODULE 4
Creating an enabling environment



MODULE 4 - CREATING AN ENABLING ENVIRONMENT

At the end of this module participants will be able to:

1. Understand the benefit of including women's in decision-making structures, especially the ones related to land governance and administration;
2. Draft effective strategies to increase women's participation in land matters;
3. Identify the most suitable tools to enhance women's land and property rights;
4. Evaluate the gender-responsiveness of existing land laws according to gender-sensitive principles.
5. Understand the challenges that women face in accessing land dispute-resolution mechanism.
6. Compare the legitimacy of different dispute-resolution mechanisms;
7. Identify effective ways for improving women's access to justice.

EDUCATION AND AWARENESS RAISING

- Raise awareness among women and men on the **importance of advancing and protecting women's land and property rights** at the national and regional level, and among family and community members, and key land actors;
- Raise awareness on **international frameworks** protecting women's housing, land and property rights;
- Raise awareness among decision makers on the **economic and social values of women's work**, this will assist them in understanding the benefits they, and their families, will enjoy by guaranteeing women's equal access to and control over land.
- Raise women's awareness and understanding of housing, land and property rights, so that they are better able to **claim** them and **engage in land and HLP-related processes**.

INCREASING WOMEN'S PARTICIPATION INTO DECISION-MAKING

- Promote, strengthen and **develop the capacities of women** and women's associations to **participate in land-related processes** (e.g. management of land and land-related resources, land dispute resolution, land policy reform processes, etc.).
- Support women's **employment in land administration** and in the different aspects of land management.
- Ensure women's **participation in peace negotiations**, land conflicts resolution mechanisms, and land-related commissions to make sure **women's grievances and needs** are addressed during the negotiations.
- Collect and analyse **sex-disaggregated data on land administration** processes, land use patterns, issues faced by women in accessing land and other land-related dynamics **to guide reforms** and decision making.

SUPPORTING WOMEN'S ORGANISATIONS

- Women's organizations are key for:
 - Women's **empowerment and participation** in decision-making processes;
 - Providing safe environment for women to **talk, organize, strategize, build self-confidence, and seek the support** of other women sharing similar experiences and concerns.
 - **Advocating for gender equality** within customary systems and mobilising women to advocate for change at all levels.
 - In conflict-affected contexts and during reconstruction, women's organisations are necessary to ensure that **women's housing, land and property rights are firmly placed in the political agenda**, codified by the legislation and later translated into ground realities.

SUPPORTING WOMEN'S ORGANISATIONS

- Provide **practical support** and **develop the capacity** of existing women's groups and organizations to deal with land-related issues. This include:
 - Providing **skills training**;
 - Promoting **partnership** with outside networks, including **collaboration with the international community**;
 - Encouraging **men to undertake more household responsibilities** in order to leave women the opportunity to participate in organisations.

PROMOTING LEGAL AND ADMINISTRATIVE REFORMS

- A **gender-sensitive legislation** is crucial to guaranteeing women's rights to land:
 - **Gender-discriminatory laws and practices should be reviewed** to explicitly recognise and protect women's land and property rights.
 - National constitutions, policies and laws should be developed and reformed, and they should be accompanied by **accessible and gender-sensitive enforcement mechanisms**. Gender-sensitive land tools can provide practical support to such implementation.
 - New laws protecting women's land and property should be introduced incrementally through the **continuum of land rights framework**.
 - **Practical and logistical barriers** limiting or keeping women from accessing land administration services (e.g. cost, need of travel, office hours, lengthy bureaucracy, etc.) should be **removed**;
 - The **capacity of people in decision making roles** (e.g. judges, community leaders, etc.) should be developed.

INCREASING WOMEN'S ACCESS TO JUSTICE AND LAND-DISPUTE MECHANISMS

- Justice mechanisms, both formal and informal, need to be oriented towards and **held accountable** for the protection of women's housing, land and property.
- A **plurality of dispute-resolution mechanisms** can be identified under the statutory, customary and religious systems. The Somali pluralistic legal system can pose challenges but also great opportunities for enhancing women's access to land-dispute mechanisms, benefitting from **hybrid systems** that allow for a combined approach:
 - Where state and judicial institutions are weak, costly, lengthy, and hindered by corruption, Shari'a courts and customary dispute resolution mechanisms seem to better respond to the needs of women in the short-medium term providing more accessible, quick, and affordable avenues.
- Formal, religious and customary dispute resolution mechanisms need to be **harmonized and aligned**. A hierarchy among them need to be established and so the way they interface with each other to **avoid forum shopping**.

INCREASING WOMEN'S ACCESS TO JUSTICE AND LAND-DISPUTE MECHANISMS

- A comprehensive range of interventions are needed to support women's access to formal and informal courts, these include:
 - Provision of **accessible and affordable legal aid**, legal information and counselling, legal assistance, **representation and mediation**.
 - **Removal of practical barriers** that keep women from pursuing independent legal justice and representation in courts, like the need to travel long distance.
 - Improve **accessibility to legal information** by simplifying, popularizing, and translating documents to local languages;
 - Take into consideration the need for women of having access to **non-confrontational** land dispute resolution mechanisms that do not jeopardize their family relationships.
 - Increasing the **representation of women in courts**. This would make more women feel comfortable in interacting with formal justice institutions.

INCREASING WOMEN'S ACCESS TO JUSTICE AND LAND-DISPUTE MECHANISMS

The legitimacy of the mechanisms changes in accordance with the context, and each system present its own potentialities and disadvantages:

- **Formal courts** apply civil rules in the procedures, which generally should protect the land rights of women and of other vulnerable groups, however, in practice, these protections are largely **ineffective** for many reasons:
 - Often judges and lawyers **lack training on human rights** and gender issues;
 - Courts are **expensive and located only in the major cities**.
 - Most Somalis – especially women - are **not familiar with state justice laws** and procedures.
- **Land Dispute Tribunals (LDTs)** are administrative tribunals with **quasi-judicial powers**. The LDTs have jurisdiction over urban land only and adjudicate on matters of ownership and are intended to function as a **hybrid system** that harmonizes **formal and customary legal procedures** to provide an accessible, trusted, and rights respecting dispute resolution forum.

INCREASING WOMEN'S ACCESS TO JUSTICE AND LAND-DISPUTE MECHANISMS

- ***Xeer* and Sharia systems** are by far the most **used and trusted** form of justice in Somalia, especially in rural areas where the capacity of state institutions is limited. Shari'a courts and *Xeer* use different approaches to land dispute resolution:
 - the first one uses **arbitration or adjudication**;
 - second one utilizes alternative dispute resolution mechanisms such as **negotiation, mediation, and arbitration**.
- *Xeer* system is closely interconnected with the **clan system**. Traditional judges have knowledge of Shari'a and customary law but **have no formal judicial training**.
- The service is **free** and the average time taken to investigate a case, conduct a hearing and issue a judgement was reportedly just **7 days**.
- There are however limitations to this system. The clan composition of the court lends an inherent **bias** in cases where an **unrepresented or minority clan** member is in dispute. In the *Xeer* system **women cannot assist and nor play a role** as parties, witnesses and actors.

INCREASING WOMEN'S ACCESS TO JUSTICE AND LAND-DISPUTE MECHANISMS

- **Shari'a courts** use the **Islamic law** to solve disputes and are generally perceived as **less corrupt and less clan biased** than the alternatives of *Xeer*.
- Most women either prefer traditional justice mechanism to avert confrontation to family and customary norms, or prefer Islamic Law ruling as opposed to the *Xeer* when it comes to individual and domestic conflicts.
- In Shari'a courts, the hearings are conducted similarly to those in the *Xeer* system, but the ruling are rooted in Islamic doctrine and jurisprudence – albeit with some flexibility for local customs and a **high degree of judicial interpretation**.
- **Misinterpretation of Shari'a law** can lead to women being viewed as the “possession” of their husbands or fathers which may limit their ability to access justice through the Shari'a system.

INCREASING WOMEN'S ACCESS TO JUSTICE AND LAND-DISPUTE MECHANISMS

- **Al-Shabaab courts** have assumed authority in providing justice in land conflicts, particularly in the Juba Valley in southern Somalia.
- Al-Shabaab have set up **mobile courts** that have a reputation to adjudicate disputes **fairly and efficiently**.
- Petitioners can file a case for **free** and receive a **decision on the same day** as the trial; a decision with independent enforcement power.
- Al-Shabaab rulings are **easily enforced** as people are afraid to be killed or arrested by the group.
- However, it is important to note the disparity of justice experienced by people living in Al-Shabaab controlled areas: Al-Shabaab courts provide fair and less corrupt service to those from the outside, while **those living in its territories are subject to extortion and corruption**.

INCREASING WOMEN'S ACCESS TO JUSTICE AND LAND-DISPUTE MECHANISMS

- Customary and religious dispute-resolution mechanisms are perceived as more **“family-friendly”** and better suited to meet women's will to protect their relationship with the family:
 - **Avoiding confrontation** with family members is fundamental for all **women's wellbeing and safety**, and especially for displaced women, whose family represent their main safety net.
- Women's attempts to defend their housing, land and property rights in courts often result in being **abandoned by their families**, as it's perceived as a shameful behaviour, and can lead to **physical and psychological violence**, even death in extreme cases:
- A combination of measures to **mitigate these threats** should be put in place to support women on different levels: physical, psychological, social and economic.



MODULE 5
Monitoring and measuring progress



MODULE 5 – MONITORING AND MEASURING PROGRESS

At the end of this module participants will be able to:

1. Understand the importance of collecting, analysing and reporting sex-disaggregated data as an evidence-base for monitoring the status of women's land tenure security and promoting their land rights;
2. Understand the process of survey design to facilitate data collection on the status of women's land rights;
3. Have an in-depth understanding of the SDG indicators on land tenure security that can be leveraged in monitoring women's land rights in the Somali region;
4. Identify and mitigate/overcome the main challenges that may be encountered in the data collection process.

WHY IT IS IMPORTANT TO COLLECT DATA ON WOMEN'S TENURE SECURITY

- Collection and analysis of **sex-disaggregated data**...
 - ... provide an evidence-base that **informs effective advocacy strategies and raises awareness**, at the local, national, regional, and global levels on the status of women's land tenure security.
 - ... inform decisions on **where to direct interventions, resources and services**, sharpening both the targeting of actions and the monitoring of outcomes.
 - ... guide the **formulation and implementation of gender-responsive land policies and reform**.
 - ... **ensure tracking accountability** of those responsible to advance gender equality in land and property rights.

MONITORING WOMEN'S LAND RIGHTS IN THE SDGs FRAMEWORK

- **Data collection and monitoring** initiatives by design face **limitations** in the bid to produce reliable, **quality and timely sex-disaggregated data on the real status** of women's land rights - and related challenges and opportunities
- National surveys, for instance, often interview only the (male) head of the household and leaving out women and any form of tenure which is not formally registered.

MONITORING WOMEN'S LAND RIGHTS IN THE SDGs FRAMEWORK

- The **Sustainable Development Goals** (SDGs), outlined in the 2030 Agenda for Sustainable Development (2015) are a set of 17 interlinked global goals – with respective indicators and targets - designed to be a "blueprint to achieve a better and more sustainable future for all". The SDGs acknowledge the importance of monitoring women's land rights to contribute, among others, to:
 - Poverty reduction (SDG1),
 - Gender equality (SDG5), and
 - Make cities inclusive and resilient (SDG11).
- The **SDG indicators** provide an opportunity for collecting **sex-disaggregated data** needed for promoting women's land rights including their participation in decision making on land reforms at the local and national level.

MONITORING WOMEN'S LAND RIGHTS IN THE SDGs FRAMEWORK

- **SDG Indicator 1.4.2. can be used to measure the status of women's (and men's) tenure rights.** It targets all adults - regardless their sex, ethnicity, employment status, place of residence, wealth, etc. - and all types of land, in both rural and urban contexts.
- **SDG Indicator 5.a.1 can be used to measure the gender disparities in tenure rights over agricultural land.** This is particularly relevant due to the crucial role of women in increasing food security of their households and communities, and the nexus between food security and stabilization of societies in crisis and conflict
- **SDG Indicator 5.a.2 focuses on the legal aspects of land tenure and can be used to examines the extent to which a Somalia has undertaken actual adoption of legal reforms that ensure women's rights to land.** The analysis of legal frameworks and the sex-disaggregated data collected through Indicator 5.a.2 is critical in identifying the causes of gender disparities with regard to access to and control over land and enable policymakers to design and implement gender-responsive land policy reforms.

MONITORING WOMEN'S LAND RIGHTS IN THE SDGs FRAMEWORK

- **SDG Indicator 11.1.1** can be used to measure “the proportion of urban population living in slums, informal settlements or inadequate housing.” A slum household is defined as a group of individuals living under the same roof lacking one or more of the following conditions:
- Lack of access to improved water source;
 - Lack of access to improved sanitation facilities;
 - Lack of sufficient living area;
 - Lack of housing durability and;
 - Lack of **security of tenure**.

DESIGNING AND IMPLEMENTING A STRATEGY FOR MONITORING WOMEN'S LAND RIGHTS

- Collection of data can be operationalized in two ways:
 - **Incorporating of questions** in an existing multi-topic household survey.
 - Implementing a **stand-alone survey** to collect women's land rights data.
- Prior to undertaking fieldwork operations, the data collection process is preceded by:
 - planning,
 - survey design, and
 - implementation of data collection.
- The planning step must involve **key stakeholders** working on the promotion of women's land rights.
- Enumerators needs to be **trained** with relevant technical knowledge.
- A **pilot testing** (at least 20 households) should precede the implementation of the actual final survey to check the validity, reliability and comprehension of question.

DATA COLLECTION AND APPROACH

- The precision and **reliability of estimates** is highly dependent on **who and what** is to be included in the sampling frame. A central element is to ensure that:
 - The **representation of the entire population** is covered at the time of sampling, including marginalized and vulnerable groups (who);
 - **All relevant tenure types and types of land use** are included in the sample (who).
- Concerning the selection of respondents, **two approaches** are advised:
- The first (preferred) approach is based on the interviewing of **all adult household members** (all women and all men age 18 years and over)/ selecting a random sample of adults within the household . This ensures that the information will be **self-reported** rather than reported by proxy.
- The second approach consists in interviewing only **one person in the sampled household**, while the information for the other household members will be reported by the proxy respondent. In this case, it is recommended to select one person at **random** from all adult household members.

DATA COLLECTION AND APPROACH

Elements of data collection:

1. Training enumerators
2. Survey testing and testing of data process
3. Data collection

TRAINING ENUMERATORS

- To ensure high quality data is collected, enumerators should be **fully informed** of the objective, concepts and content, structure of the data collection instruments and or technological applications to be used.
- **Targeted trainings** need to be organized to supervisors, field enumerators (data collectors) and data clerks is critical to ensure quality control in the generation, coding and feeding of the data in the system before analysis.

SURVEY TESTING AND TESTING OF DATA PROCESS

- Once the training is completed, the field supervisors and enumerators must do a **field test of the data collection** instruments (e.g. questionnaires, surveying applications and systems) as well as the entire data collection process on a small sample in order to check the validity and reliability of the data generated and the correctness of questions asked and different survey stages.
- It is important that the **testing of the pilot survey** is not limited to data collection tools, i.e. testing of the questionnaire, but it also extends to the **testing of the full survey operations** that are implemented to determine whether problems exist and need to be addressed prior to putting the final actual survey in the field.

DATA COLLECTION

- Before data collection is commissioned the following items are considered:
 - Survey team is **well trained** on the survey content;
 - There is clear **agreement on the timeframe** for completing the survey;
 - **Roles and responsibilities** among team members are well defined;
 - **Permission** from the local authorities (e.g., the village chiefs) has been obtained. Purpose and outcome of the enumeration is explained to the local community.
 - A list of **replacement households** is selected to avoid potential delays;
 - Enumerators are fully aware and are informed on the **gender dynamics and sensitivities** including power relations among men and women; how to conduct themselves while in the field. This might include the need to request interview with women separately from men to avoid situations where women will fear reprisals from their husbands or relatives for having been interviewed where social and cultural norms prescribe male dominance.

INDIVIDUAL REFLECTION



LIST:

1. One key thing learnt during this learning event;
2. Two or three actions that you will do in the next one year, building on what you have learnt during this learning event.



THANK YOU!

Name/s facilitator/s
Organization, Country
E-mail facilitator/s

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