

NORWEGIAN REFUGEE COUNCIL (NRC)

**COMMUNITY LAND TRUST – AN INSIGHT INTO THE
EXISTING LEGAL FRAMEWORKS AND LEGISLATIVE
REFORMS IN AFRICA, ASIA, AND AMERICA**



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1. Introduction

1.1 Overview

- (a) The Norwegian Refugee Council (“NRC”) is an independent humanitarian organisation that has been actively assisting refugees and internally displaced persons across the world since 1946. The NRC delivers high-quality aid where needs are greatest and protects people forced to flee their countries, as well as support these persons as they build a new future. They work in both new and protracted crises areas across more than 30 (thirty) countries and provide camp management, food assistance, clean water, shelter, legal aid and education. The NRC ensures the promotion and defence of the rights and dignity of displaced persons in local communities, with national governments and in the international arena.
- (b) The NRC has identified that displaced persons face particular difficulties in housing, land and property rights which are rights guaranteed under articles 13 and 21 of the Convention on the Status of Refugees 1951. It has also noted that many long-term displaced populations (including internally displaced persons - “IDPs”) face economic barriers to being able to rent land or housing at affordable prices, much less own. As a result of this, refugees and IDPs often end up in substandard housing, residing in informal settlements, and with insecure rights, which negatively affects the health, access to education and economic status of these persons.
- (c) In a bid to provide a practical solution, the NRC is proposing community land trust (CLT) model that could provide alternative and cost-effective housing opportunities for displaced communities. CLT is a model in which the ownership or long-term control of land is vested with a non-profit entity (corporation, religious, or other) that is collectively governed by members of the community who live on and use the land and its immobile assets. The goal of CLTs are to create, preserve, protect, and promote community assets for residents who are marginalized or excluded due to structural barriers. CLTs then issue long-term leases of the land to residents with existing houses (the residents own their house, but land remains with the trust), or may develop housing on the land which it then “sells” (through long term lease) to low-income homeowners, or rents to residents at prices that are insulated from market forces and prevent speculation, thereby ensuring long term affordability.
- (d) NRC now seeks to understand the existing legal frameworks for CLTs across select countries in Africa, Asia and America such as: Nigeria, Kenya, Uganda, Bangladesh, Iraq, and Colombia with a view to identifying the gaps in these legislations and developing humanitarian programmes which will introduce CLTs where practicable and ensure the protection of the housing and land rights of displaced persons.

1.2 Background

- (a) We have prepared the Report to assist NRC in comparing the CLT laws in Nigeria, Kenya, Uganda, Bangladesh, Iraq, and Colombia. The report will provide comprehensive analysis of housing, land, and property laws to identify what tools exist within existing policies and legislation to establish CLTs, and to identify if/how these instruments could be practically used to secure the housing and land rights of refugees and tenure insecure IDPs.

(b) NRC has, through Trust Law, the Thomson Reuters Foundation's global pro bono legal programme, engaged a team of law firms across the following jurisdictions, to undertake legal research on the CLT laws in these jurisdictions:

- i. the Federal Republic of Nigeria;
- ii. the Republic of Uganda;
- iii. the Republic of Kenya;
- iv. the People's Republic of Bangladesh;
- v. the Republic of Iraq; and
- vi. the Republic of Colombia.

(Collectively hereinafter referred to as the **Jurisdictions**).

1.3 Issue categorisation

Certain matters identified in the course of the research behind this Report have been categorised and laid out in a manner that clarifies the information that has been provided. It is not intended to be a guide as to which issues should be prioritised.

1.4 Contacts

Should you require any further information regarding this Report, please contact any of the key persons below:

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1.5 Law Firm Contributors

The findings in this report were provided by a team of law firms operating in the Jurisdictions. NRC acknowledges the generous contributions of these law firms:

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1.6 Disclaimer

- (a) This report and the information that it contains is provided for general informational purposes only.
- (b) It has been prepared as a work of comparative legal review only and does not represent legal advice in respect of any of the Jurisdictions. It does not purport to be complete or apply to any particular factual or legal circumstances. It does not constitute and must not be relied or acted upon as legal advice or create an attorney-client relationship with any person or entity.
- (c) Neither NRC, Trust Law, or any of the Law Firm Contributors accept responsibility for losses that may arise from reliance upon the information contained in this report or any inaccuracies therein, including changes in the law since the date of this Report. Legal advice should be obtained from legal counsel qualified in the respective Jurisdictions when dealing with specific circumstances.
- (d) The respective Law Firm Contributors do not hold themselves out as being qualified to provide legal advice in respect of any Jurisdiction as a result of their participation in or contributions to this Report. Each Law Firm Contributor is only qualified to provide advice in relation to the Jurisdiction indicated against its name in section 1.5 above.

2. Definitions

CAMA	Companies and Allied Matters Act, 2020 (as amended)
CLA	Community Land Act
CLA Regulations	Community Land Regulations 2017
CLMC	Community Land Management Committee
CLT	Community Land Trust
IDPs	Internally Displaced Persons
Kenyan Constitution	Constitution of Kenya in 2010
LUA	Land Use Act, CAP L5, Laws of the Federation of Nigeria, 2004
NGO	Non- Governmental Organisation
Nigerian Constitution	Constitution of the Federal Republic of Nigeria, CAP C23 LFN 2004 (as amended)
Kenyan National Land Policy	2009 National Land Policy
NRC	Norwegian Refugee Council
Uganda's Land Act	Land Act, Cap. 227 Laws of Uganda 2000 Edition
Uganda's Refugees Act	Refugees Act, 2006

3. Executive Summary

This Report is divided into sections by Jurisdictions. This executive summary provides a general overview of the current CLT laws in the Jurisdictions. The sections of this Report that follow this Executive Summary contain a more detailed analysis of the legal framework for CLT laws in each of the Jurisdictions.

The purpose of this Executive Summary is to highlight the legal requirements in each of the Jurisdictions which we believe should be specifically drawn to your attention:

3.1 Nigeria

Nigeria's north-eastern region has, since 2009, suffered frequent attacks by the Boko Haram armed group which has caused civil unrest in the region. This in turn has had rippling adverse effects on the quality of life of residents in this region, including leaving many displaced. According to a report by the United Nations Office for the Coordination of Humanitarian Affairs, in Nigeria, women and girls make up at least 79% of approximately 2.5 million people displaced across the country's North-East as a result of the conflict between the armed group Boko Haram and the Nigerian government.¹

Despite the appalling statistics above, there are currently no laws² that deal specifically with issues of internal displacement or the establishment of CLT in Nigeria. However, a person or a company/organisation incorporated/ registered in Nigeria may purchase land for the purpose of establishing a CLT under the LUA. The LUA is the primary legislation governing real property ownership in Nigeria. The LUA vests all titles to land comprised in the territory of each state in the federation in the governor of that state, to be held in trust and administered for the use and common benefit of all Nigerians. The LUA further vests the control and management of land in non-urban areas in the Local Government within the area of jurisdiction of which the land is situated.

Under the LUA, the governor or local governments (as applicable), may allocate land in urban or non-urban areas to individuals resident in the state and to organisations for residential, agriculture, commercial and other purposes. In view of this, corporate bodies and organisations can acquire land from the governor or local governments and hold same in trust for refugees and IDPs. By virtue of the restriction in section 1 of the LUA and the decision of the Supreme Court of Nigeria in the case of **Gerhard Huebner v Aeronautical Industrial Engineering and Project Management Company Limited [2017] 14 NWLR (Pt. 1586) 397**, foreign entities are restricted from acquiring land in Nigeria. Therefore, the acquisition of any land in Nigeria can only be done through an entity duly incorporated or registered in Nigeria.

¹ <https://reliefweb.int/report/nigeria/nigeria-must-rethink-responses-women-displaced-boko-haram#:~:text=In%20Nigeria%2C%20women%20and%20girls,Haram%20and%20the%20Nigerian%20government.>

² Although Nigeria currently has a National Policy on Internally Displaced Persons 2012 ("IDP Policy") which sets out basic rights of IDPs in order to ensure that they live humanely, the IDP Policy does not have the force of law and does not mention CLTs. IDPs are, under the IDP Policy, entitled to have the right to preservation of the property which they owned prior to being displaced and host communities are enjoined to provide basic shelter to IDPs.

3.2 Kenya

CLT is not an unfamiliar concept in Kenya, with the support of the German Cooperation Agency, a CLT was set up in the informal neighborhood of Tanzania-Bondeni in Voi city at the end of the 1990s as part of a slum upgrading and land regularization initiative (GIZ).

The implementation of this communal type of tenure was intended to provide slum inhabitants with land tenure stability and prevent land sales. This was achievable after the owners of the land consented to donate some of the squatted lands as a contribution to the effort, the community in that region was able to form a CLT. The implementation of the CLT then was difficult since Kenya's legal framework at the time did not allow for the creation of such an entity especially with the concept of land being held in trust.

Land ownership, use, and administration is a highly emotive topic in Kenya, and it was one of the driving forces behind the adoption of a new Constitution of Kenya in 2010, which was promulgated on August 27, 2010. Land and the environment are addressed in Chapter 5 of the Kenyan Constitution, which mandates that land in Kenya be held, used, and managed in an equitable, efficient, productive, and sustainable manner.

Chapter 5 of the Kenyan Constitution also lays out the precepts, which are critical for securing communal land rights. They include equitable access to land, the security of land rights, the sustainable and productive management of land resources, transparent and cost-effective land administration, the elimination of gender discrimination in law, customs, and practices, and encouraging communities to resolve land disputes through recognized local community initiatives per the Constitution. The Kenyan Constitution recognizes communal rights to land in Article 63, which distinguishes three tenure regimes: public, community, and private. Community land is vested in communities identified based on ethnicity, culture, or similar community of interest. County governments are to hold unregistered community land in trust for the communities for which it is held.

The National Land Commission Act, 2012, the Land Registration Act, 2012, and the Land Act, 2012 were enacted as a result of the Kenyan Constitution's requirement that all land laws be amended, consolidated, and rationalized within set timeframes.

The Kenyan Constitution defines community land to comprise: ***land lawfully registered in the name of group representatives under the provisions of any law; land lawfully transferred to a specific community by any process of law; any other land declared to be community land by an Act of Parliament; land that is lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; ancestral lands and lands traditionally occupied by hunter-gatherer communities; and land that is lawfully held as trust land by the county governments.*** The Kenyan Constitution also requires that any disposition or use of community land be based on legislation specifying the nature and extent of the rights of members of each community individually and collectively.

The **Kenyan National Land Policy** is especially important since it is Kenya's first single and well-defined land policy since independence. The Kenyan National Land Policy is crucial for Kenyan community land rights because it rejects Kenya's long-standing land administration aim of converting customary

land tenure into individual ownership. The Kenyan National Land Policy also conforms to the Kenyan Constitution by dividing land in Kenya into three categories: public, community, and private.

The policy defines community land as **“land lawfully held, managed and used by a specific community as shall be defined in the Land Act”**. A Community is defined as **a clearly defined group of users of land, which may, but need not be, a clan or ethnic community**. The Kenyan National Land Policy also outlines land policy principles, the majority of which are important to community land rights protection. They include equitable land access, secure land rights, land information access, and transparent and good democratic land governance.

Subsequent to the Kenyan Constitution and the Kenyan National Land Policy, the CLA came into force in 2016, marking a pivotal point in Kenya’s land reform process. It gives legal recognition to customary land rights as lawful forms of property with similar legal force and effect as rights earned and transacted under freehold and leasehold tenure, allowing for the protection of communal land rights based on customary law. As a result, it addresses the fundamental issue that has been undermining rural populations’ land rights since colonial times. This was followed shortly by the enactment of the CLA Regulations in 2017

Community land tenure rests on two pillars – **the registration of a community**, and **registration of the community land**. The act of registration confers legal personality on the community, allowing it to be registered as the landowner. Only a registered community within the meaning of Section 2 of the CLA can apply to be registered as a landowner, therefore this is a crucial first step.

The community elects a CLMC as part of the registration process, which oversees the community's registration process, including the development of its Constitution and Regulations, the registration of the land, and its management on behalf of the community after registration. The provisions of the CLA and the Land Registration Act 2012 are used to register community land. Adjudication precedes it, which comprises the registration of community land claims, the demarcation of community land, and the drawing of boundaries. A title deed in the name of the community is issued after registration in the prescribed form. Along with the CLA, there are CLA Regulations that explain the procedures for putting the Act into effect.

Without Prejudice to the foregoing, it is important to point out that, in the past some have chosen to establish trusts, associations, cooperatives, or companies under the relevant acts to handle community land issues. This was especially popular before the CLA was passed into law in 2016, the aforementioned entities were seen as more effective legal bodies capable of agitating for communal land rights. Even after the Act took effect, some communities still consider the legal institutions stated above have more effect than a land management committee.

3.3 Uganda

Ugandan law does not contain a dedicated piece of legislation that purposely provides for the formation and operation of CLTs. It does, however, contain an assemblage of different laws that can be adapted and moulded to support the formation and operation of CLTs. These different laws include those

governing the formation of companies, the incorporation of trusts, the creation of Communal Land Associations, and the registration of NGOs.

Uganda is a party to the 1951 Refugee Convention as well as the 1969 OAU Refugee Convention. It also has a Refugee Act (the "Refugee Act, 2006"), which comprehensively addresses the process of applying for refugee status and the rights and obligations of refugees in Uganda. It also has one of the best approaches to refugee management that has been found to be very progressive and favourable to the wellbeing of refugees.

The 1995 Uganda Constitution, which is the supreme law of Uganda guarantees the right of all persons to own property either individually or in association with others. This right extends not only to Ugandan citizens but refugees as well. Furthermore, Section 29 of the Refugee Act expresses the right of recognised refugees and their family members to receive at least the same treatment as that generally accorded to foreigners (i.e., persons who are not citizens of Uganda) in similar circumstances relating to movable and immovable property and other rights pertaining to property. It also recognises the right of refugees to transfer assets lawfully acquired and held in Uganda.

Importantly, both the 1995 Uganda Constitution and the Refugees Act prohibit discrimination on the basis of gender and encourage affirmative action in favour of protecting women from discriminatory practices. It is thus critical that in implementing any projects or programs, care be taken to not only prevent gender-based discrimination but to also affirmatively protect women.

Under Ugandan law, non-citizens including refugees can only own land under the leasehold tenure system and for periods not exceeding 99 (ninety- nine) years. They can also be ordinary tenants of land and housing units under short term periodic tenancies of less than 3 years or more without being considered owners of the property so occupied and without being required to register formal leases with the Government's official land registration system. They cannot, however, own land in perpetuity under other land tenure systems in Uganda including freehold or *mailo* land tenure systems.

Importantly, the above rules/restrictions also apply to artificial entities, such as companies, in which the controlling interest or power lies in the hands of non-citizens. The foregoing restrictions have to be borne in mind when structuring the intended CLTs.

Currently, Uganda's refugee law regime provides for access to property for both refugees and asylum seekers. Upon their entry into Uganda, refugees are accommodated in designated transit centres and settlement areas located on public land. These designated areas are used to accommodate both applicants for refugee status (asylum seekers) and persons that have already been granted refugee status.³ By law, a refugee wishing to reside in an area other than a designated transit centre or Government designated settlement area is required to apply to the Commissioner for Refugees for permission. However, Section 30 of the Refugees Act 2006 also recognises the right of refugees to free movement in Uganda subject to reasonable restrictions specified in Ugandan law and which generally apply to foreigners in the same circumstances. Refugees are not confined to living in Refugee settlements and can in fact reside elsewhere within Uganda as many of them already do, particularly in urban centres.

Within the settlement areas, refugees are entitled to free access to and use of land for purposes of cultivation or pasturing. However, they cannot sell, lease or otherwise alienate the land that has been allocated to them for their own use or their families' utilisation within these settlements, which are

³ Uganda has over 14 refugee settlements, including Adjumani, Bidibidi, Imvepi, Kiryandongo, Kyaka II, Kyangwali, Lobule, Nakivale, Oruchinga, Palabek, Palorinya, Rhino Camp and Rwamwanaja. These areas have been specifically designated by the Government of Uganda for refugee settlement and host a number of refugees from different nationalities including Rwandans, Burundians, Congolese, Ethiopians, Eritreans, Somalis and South Sudanese citizens among others.

located on public land. The CLTs therefore cannot be formed within the refugee settlements as this amounts to public land. In some refugee settlements especially those in Northern Uganda, where communities have allowed the Government to use the land as refugee settlements, the formation of CLTs would also be unlikely as this land is already gazetted by the Government for refugee settlement.

Outside of these settlements, however, refugees are free to own and transfer land under the leasehold tenure system for periods not exceeding 99 (ninety-nine) years and any CLTs set up would therefore be established in communities outside of the refugee settlements.

The CLT can be structured by setting up any of the entities below:

Firstly, the governing non-profit entity, because of its nature as a charitable organisation, can be registered as a NGO under Ugandan law and obtain an NGO permit. Its initial creation under Ugandan law can take one of two forms – either a Company limited by guarantee or as an Incorporated Trust. The non-profit would be operated according to its Constitution which would take the form of a Memorandum and Articles of Association in the case of a Company, and a Trust Deed in the case of an Incorporated Trust. These Constitutions can be designed to contain several checks and balances on the manner in which the non-profit shall be run, as well as different roles to be played by the refugees who are the beneficiaries of the CLT themselves. The Constitution will provide the objectives of the CLT as well as the governance structure of the CLT.

Once the governing non-profit is lawfully set up and operating in Uganda with an NGO Permit (“Permit”), it can proceed to acquire land for the purpose of establishing the CLT. Once the CLT has been set up, it can only acquire leasehold property for periods not exceeding 99 (ninety-nine) years if the ownership of the CLT is in the names of Refugees.

The CLT can then proceed to develop the land through construction of large – scale housing units for the benefit of the refugee community which can be sub-leased to refugees and their families at affordable prices and certificates of title for the sub-leases can be issued to the refugees. Depending on the regulations governing the CLTs, the refugees may be permitted to transfer them subject to a few restrictions such as the consent of the lessor (i.e., the governing non-profit). Alternatively, the individual units can instead be let out to refugee families at a low cost and for short tenancy periods that are less than 3 years and which are renewable upon expiry.

The CLTs can create condominium units and sub-lease them to refugee families. Those families would, as owners of a condominium unit, participate in the management of the property through the condominium corporation. The CLT can also proceed to issue short term tenancies at affordable prices to refugees and their families.

Alternatively, the land may also simply be partitioned, and the individual parcels subleased to refugee families at a low cost. If the individual parcels are already pre-developed with houses on them, then the sub-leases would be sub-leases of both the land and the houses on it. In the alternative, the parcels could be let out to the refugee families for short tenancy periods not exceeding 3 years and at a low cost.

Where formal sub-leases are issued, the sub-lessee refugee families can form a Communal Land Association for the purpose of communal ownership and management of the land as a whole and subject to a Constitution of the Association, which Constitution can be made to accord with the objectives and vision of the governing non-profit.

It must be pointed out that although Ugandan law does permit for the aforementioned courses of action, this is no guarantee that the Government will be accommodative of the project to form and operate CLTs. While refugees are allowed to own property either individually or in association with others in accordance with the Ugandan law, the Office of the Prime Minister and the Government as a whole may be reluctant to embrace such a project due to their interest in preserving their right to house refugees and their control over refugee settlements. It should also be noted that the Government is moving to more closely regulate and monitor all forms of development assistance and similar foreign aid. Any projects including those that would include setting up CLTs will therefore have to meet the Government's prior approval.

Lastly, children born to refugees are, under Uganda law, ineligible for citizenship by registration but are eligible to apply for citizenship by naturalisation if they meet the conditions provided for under the law. Although Uganda law implicitly allows for refugees to apply for citizenship by naturalisation, applications of this nature rarely succeed and are subject to a drawn-out procedure involving numerous administrative approvals/recommendations among other stringent requirements.

3.4 Bangladesh

The concept of CLTs is very foreign to Bangladesh. Any trust law, that includes a beneficiary and a trustee, needs to be regulated in order to ensure that the objective of the trusts is fulfilled. Since the creation of the refugee camps in Bangladesh made for the Biharis during the Liberation war of 1971, Activists in Bangladesh have expected that this would birth the implementation of CLTs. However, the people living in these camps had no rights until 2003, where, in the case of **Md. Abid Khan and Others vs. Government of Bangladesh and Others, 55 DLR (2003) 318**, 10 petitioners born in these camps were given the legal right to vote. Later in 2008, the Supreme Court of Bangladesh in **Md. Sadaqat Khan (Fakku) vs. Chief Election Commissioner, Bangladesh Election Commission, 60 Dlr (Ad) (2008) 407**, gave those living in these camps the right to Passports, National IDs and the right to vote from Bangladesh, thereby making them citizens of Bangladesh. Despite this, they still have no right to land, and they are not established as landowners of the communities they reside in. Similarly, slum owners face similar difficulties, and these warrants the development of such land trusts.

However, there being no legal requirements for CLT, it is still a difficult foundation to establish, and various activists are attempting to do so. The introduction of CLTs could give these people the fundamental rights that Constitution of Bangladesh promises to them and create land rights for all.

The concept of CLTs is very foreign to Bangladesh. Any trust law, that includes a beneficiary and a trustee, needs to be regulated in order to ensure that the objective of the trusts is fulfilled. Since the creation of the refugee camps in Bangladesh made for the Biharis during the Liberation war of 1971, Activists in Bangladesh have expected that this would birth the implementation of CLTs.

Although CLTs are not provided for under Bangladesh law, it is possible for similar arrangements to be organised under a Non-Government Organisation (NGO) which must be formed and registered with the Non-Government Organisation Affairs Bureau ("NGOAB"). For the formation of a NGO, it must apply to the NGOAB for authorization in the specified manner along with the requisite documents. The extensive list of documents needed to form an international NGO in Bangladesh would start with the FD-1 Form as prescribed by NGOAB, certificate of incorporation in the country of origin, the objectives of the NGO, activities report, plan of operation, the decision of the committee to open office in Bangladesh, the letter of appointment of the country representatives, the copy of treasury challan provided in support of depositing US \$9,000 plus 15% VAT, the deed of agreement with the landlord, the list of foreign executive committee and finally an intent letter. All documents must be attested by the respective Bangladesh Embassy. Subsequently, the NGOAB, subject to document verification, grants an authorization to operate at its discretion.

3.5 Iraq

Non-Iraqis (for our purposes Refugees) cannot own real estate unlike IDPs because the Revolutionary Council Decision No. (23) of 1994 forbids the implementation of laws and decisions that permit a non-Iraqi citizen to own real-estate. However, based on Article (154) of the Iraqi Real-estate Registration Law No. 43 of 1971, other rights in rem are not limited to Iraqi citizenship. We note that intervention of the Iraqi Council of Ministers to amend or clarify the Revolutionary Council's decision regarding Refugees is necessary because the decision imposes strict penalties on public officials for non-compliance which effectively makes registration of any Rights in Rem in favor of Refugees extremely difficult in practice. In addition to the practices explained above, a recent Supreme Court decision confirmed the above practice and even disregarded an exception allowing Palestinians to own real-estate. Registrable rights in rem generally offer long-term security of tenure because they are not limited by the temporal limitation of other types of rights that can be obtained over real estate via contracts. Options other than full title available to Refugees include: A- The right to benefit of property owned by others, Right of Habitation; and B- the right to have a long term lease that is registrable as an in-rem surface right to construct a building or other installations, on the land of another person pursuant to an agreement with the owner, Surface Right. However, under Iraqi legislation these rights in rem are not regulated within the scope of a Land Trust community but instead are rights in rem owned by individuals.

The conflict has affected millions of children, leaving an entire generation suffering from trauma and struggling to survive in extremely difficult conditions. Approximately half of all people displaced inside Iraq are children. They have been forced to grow up in exile, often separated from their families, and have been particularly vulnerable to violence, forced early marriage, recruitment into armed groups, exploitation and psychological distress. As of November 2018, an estimated 2.1 million children were at serious risk of not being able to access essential services due to lack of civil documentation and nearly 2.6 million were not attending school.

Waqf is a Right in Rem based on Article (68) of the Iraqi Civil Code No. 40 of 1951 that offers a community residential solution. Moreover, it is fundamentally based on charitable moral values, therefore, it is plausible for Iraqi authorities to allow registration of a Waqf for residential purposes for refugees. In Waqf, the Settler owns real estate and is willing to put it under Waqf for another (the "Beneficiary") to benefit from it whilst a Trustee (who must be an individual) administers the property for the benefit of the Beneficiary(s). Waqf allows a single registration for the community property, as well as, insulates the residents from having to deal with real-estate registration. In Iraq, however, the Waqf governmental department and Personal Status Court can interfere by supervising the administration of the Waqf property in a Waqf community, which would be inefficient, cause uncertainties, and produce unwanted outcomes.

Broadly speaking, there are two types of Waqfs in Iraq; Charitable Waqf, which cannot be revoked by the Settler but does not identify individual beneficiaries; and Hereditary Waqfs, which may be revoked by the Settler through an application to the court but does identify individual Beneficiaries. The lack of registration in favour of individual beneficiaries in Charitable Waqf and control of the property by the Trustee limits the beneficiaries' ability to transfer their rights and enforce them directly. Furthermore, leasing of Charitable Waqf property for more than three years requires the approval of the Waqf Department. This makes long-term residential leases difficult in the context of a Charitable Waqf.

In conclusion, a Charitable Waqf deed for residential property may be drafted to provide long-term security of tenure for Beneficiaries. However, the Trustee

must be an individual and the real estate registration must broadly define the Beneficiaries as a class. Individual residents in a Charitable Waqf residential property may find it difficult to enforce or transfer their rights because they do not hold any registration and the Waqf departments can interfere in the administration of charitable Waqf property to the detriment of the residential community. Whereas, Hereditary Waqf is more isolated from the Waqf departments and offers slightly better security of tenure because individual Beneficiaries can be registered but it is not suitable for large community properties and it has been traditionally used as an estate planning tool.

3.6 Colombia

CLTs could not operate as proposed under Colombian real estate law, since it provides that buildings and other similar improvements to a parcel always adhere to the parcel and cannot, therefore, be owned separately from it – a principle the Colombia’s Civil Code calls *acesión*. Under this principle, title over such constructions cannot be legally split from title to the land. This means that either a person or trust holds all the land and constructions used to provide housing for IDPs, or the IDPs would themselves do so without the trust’s intervention.

On the other hand, Colombian law affords IDPs and foreigners the same legal capacity as citizens to enter into contracts or purchase land. There are no restrictions on the ability of foreigners or foreign companies to purchase land, other than foreigners not being able to purchase lands in the country’s borders if said lands were at some point public-domain vacant lands (*baldíos*). However, ID documentation – incorporation certificates, passports, or citizenship cards, as applicable – would have to be submitted to execute the real estate conveyance documents and proceed with its registration in the local real estate registry.

With that in mind, a non-profit could be incorporated to hold the land indefinitely and grant tenancy to the IDPs through either lease agreements or free bailments (*comodatos*). The tenancy interest granted under such agreements is freely transferable, yet that transferability can be limited by agreement if needed. Also, criteria and selection procedures for granting such tenancy or admission into the non-profit government bodies could be set forth in the non-profit’s incorporation and/or policy documents.

3.7 Objective of this Report

The objective of this report is to provide a comprehensive analysis of housing, land, and property laws which in order to identify what tools exist within existing policies and legislation to establish CLTs, and to determine if/how these instruments could be practically used to secure the housing and land rights of refugees. The report will also assist in identifying the weaknesses in legislation and best practices which can provide humanitarian and development actors with the tools to conduct informed and targeted advocacy and to develop programming interventions to provide refugees and IDPs with long-term security of tenure.

4. Jurisdiction Research

This section sets out our research as well as any other issue identified during our legal review that we consider to be relevant in the context of this Report.

4.1 Nigeria

Legal Framework for CLT in Nigeria	
Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>1. Do your country's legal frameworks governing housing, land, or property allow for the establishment of CLTs and/or waqf?</p> <p>The LUA is the primary legislation for real property in Nigeria. The LUA vests all titles to land comprised in the territory of each state in the federation in the governor of that state, to be held in trust and administered for the use and common benefit of all Nigerians. The LUA further provides that the control and management of land in urban areas shall be under the control and management of the Governor, while all other land shall be under the control and management of the Local Government within the area where the land is situated. Under the LUA, the governor or local governments (as applicable), may allocate land in urban or rural areas to individuals resident in the state and to organisations for residential, agriculture, commercial and other purposes.</p> <p>The LUA however does not contemplate CLTs or make any provisions regarding their operation.</p>	<p>Land Use Act: https://lawsofnigeria.placng.org/view2.php?sn=228</p>
<p>2. If so, what are the key legislation and any associated regulations?</p> <p>There are no specific provisions under Nigerian law that recognize or establish to CLT within Nigeria's legal framework. It is possible, however, for a non-profit organization like NRC to acquire land and hold it in trust for refugees and IDP. We should mention that the NRC cannot, as a foreign entity, legally purchase land in Nigeria in its name by virtue of the restriction in section 1 of the LUA, the decision of the Supreme Court of Nigeria in the case of Gerhard Huebner v Aeronautical Industrial Engineering and Project Management Company Limited [2017] 14 NWLR (Pt. 1586) 397, and section 43 of the Nigerian Constitution, which only guarantees the right of property ownership by</p>	<p>Land Use Act: https://lawsofnigeria.placng.org/view2.php?sn=228 Constitution of the Federal Republic of Nigeria, 1999: https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Nigeria_Constitution_1999_en.pdf</p>

Legal Framework for CLT in Nigeria

Nigerian citizens. Therefore, the acquisition of any land in Nigeria can only be done through an entity duly incorporated or registered in Nigeria.

3. **What kind of legal entity is allowed to establish a CLT and how are these created?**

As we mentioned in our response in (1) above, there are no statutory provisions which deal specifically with the establishment of CLT in Nigeria. Generally, a company/organisation established in Nigeria should, in or view, be able to purchase land for the purpose of establishing a CLT. Given that NRC is a not-for-profit organisation, it may choose to register a not-for-profit entity in Nigeria for this purpose. Under the CAMA (the principal legislation that regulates corporate entities registered in Nigeria), the available structures for incorporating not-for-profit organisations are incorporated trustees and company limited by guarantee. These not-for-profit organisations may acquire land and use such land to establish a CLT.

Companies and Allied Matters Act, 2020:

<https://www.cac.gov.ng/wp-content/uploads/2020/12/CAMA-NOTE-BOOK-FULL-VERSION.pdf>

4. **How are these created? What is the make-up of their membership and governing entities?**

The available structures for incorporating not-for-profit organisations are incorporated trustees and company limited by guarantee.

With respect to incorporated trustees, the CAMA provides that where two or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality, or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, they may, if so authorised by the community, body or association, apply to the Corporate Affairs Commission (“CAC” – the Nigerian companies’ registry) for registration as a corporate body.

Regarding a company limited by guarantee, the CAMA provides that where a company is to be formed for promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar objects and the income and property are to be applied solely towards the promotion of its objects and no portion thereof is to be paid or transferred directly or indirectly to the members of the company except as permitted by the CAMA, the company may be registered as a company limited by guarantee.

Companies and Allied Matters Act, 2020:

<https://www.cac.gov.ng/wp-content/uploads/2020/12/CAMA-NOTE-BOOK-FULL-VERSION.pdf>

Legal Framework for CLT in Nigeria

NRC could utilise either of these structures to establish a CLT in Nigeria.

On the balance, we believe that, due to the ease of administration, the company limited by guarantee will be the more appropriate structure for the organisation if you eventually wish to set up an entity in Nigeria for the CLT. Although the process of registering the company might not be completed as quickly as would be the case for incorporated trustees, once this initial hurdle is crossed, the resulting organisation is one that is easier to manage; the process for appointing new directors, convening meetings, and making returns to the CAC is more straightforward than is the case with respect to incorporated trustees. Upon the registration or incorporation of any of these entities in Nigeria by an international NGO, the NGO must register with the National Planning Commission.

We have set out in **Appendix A**, the procedure for registering these entities as well as the various post- incorporation approvals they require to operate in Nigeria.

5. **Are there provisions to ensure the representation of women in these governance committees?**

No, there are no such provisions. However, the constitutional documents of the organisation can specify that the organisation’s board must have a specified minimum representation of women.

6. **Are refugees or IDPs legally allowed to be members of these governance entities/be members of the trust? Explain why.**

A company limited by guarantee has two governance bodies, which are the members in general meeting and the board of directors. We confirm that any person can be a member of company limited by guarantee provided that they are not disqualified under the provisions of the CAMA. Disqualified persons are: (i) minors i.e., persons that are less than 18 (eighteen) years of age; (ii) a person of unsound mind having been so found by a court; (iii) an undischarged bankrupt or (iv) a person disqualified under sections 281 and 283 of the CAMA from being a director.

In relation to the membership of the board of directors, the CAMA provides that a person less than 18 (eighteen) years of age, a person of unsound mind, an insolvent person, a fraudulent person as provided in section 280 of the CAMA, a person suspended or removed under section 288 of the CAMA, a person who has vacated the office of director as provided in section 284 of the CAMA and a corporation other than its representative appointed to the board for a given term; shall be

Companies and Allied Matters Act, 2020:

<https://www.cac.gov.ng/wp-content/uploads/2020/12/CAMA-NOTE-BOOK-FULL-VERSION.pdf>

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disqualified from being a director.

Furthermore, every person can act as a trustee for an incorporated trustee provided that they are not disqualified under section 826 of the CAMA. A person shall be disqualified from acting as a trustee if he: (i) is an infant; (ii) a person of unsound mind having been so found by a court; (iii) an undischarged bankrupt; or (iv) a person that has been convicted of an offence involving fraud or dishonesty within 5 years of his proposed appointment.

Based on the foregoing, refugees and IDPs may be members, directors or trustees of the aforementioned not-for-profit corporate structures provided that they are not disqualified under the provisions of the CAMA.

7. **Would the lack of possession of legal identity documents prevent refugees, IDPs, or other undocumented communities from being members of the trust?**

Yes, the lack of possession of identification documents by refugees, IDPs or other undocumented communities may prevent them from becoming members, directors or trustees of these CLT structured as either a company limited by guarantee or incorporated trustees. This is because, under Nigerian law, identification documents of proposed members, directors and trustees of an organisation are required for the registration of the relevant organisations with the CAC.

Commonly used and acceptable identification documents in Nigeria are:

- (i) International Passport: an application for an international passport can be made to the Nigerian Immigration Service.⁴ Documents required for the application process are available on the Nigerian Immigration Service [website](#). Only Nigerian citizens can apply for an international passport. Therefore, a non- Nigerian IDP can only apply for and obtain an international passport if he/she becomes a Nigerian citizen. Details on how a person may become a citizen can be found [here](#).
- (ii) Drivers' Licence: an application for a drivers' licence can be made to the Federal Road Safety Corps [here](#). A non-Nigerian can obtain a drivers' licence in Nigeria.

Nigerian Immigration Service (application guidelines):

<https://portal.immigration.gov.ng/?p=passportguidelines>

Nigerian Immigration Service (Passport application):

<https://portal.immigration.gov.ng/passport/epassport>

Federal Road Safety Corps:

<https://www.nigeriadriverslicence.org/>

National Identification Management Commission:

<https://nimc.gov.ng/preenrolment-online/#::~:~:text=To%20download%20your%20enrolment%20form,enrolment%20form%20at%20NIMC'S%20ERC>.

⁴ <https://portal.immigration.gov.ng/passport/epassport>

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(iii) National Identification Number (NIN): an application for an NIN can be made to the National Identity Management Commission following the steps set out [here](#). A non- Nigerian can obtain an NIN.

The applicants are required to present themselves – for photographing and collection of biometrics – as part of the application process. An NGO might be able to engage the authorities to fast track the processing of these applications if an appeal is made on a compassionate basis in view of the plight of the applicants.

Ministry of Interior:

<https://ecitbiz.interior.gov.ng/citizenship/requirements>

8. **What are the processes and procedures to establish CLTs, including any permits and fees?**

Please see our response in question 1 above. We have however set out in **Appendix A** to this memorandum, the procedure, timing and costs for incorporating a company limited by guarantee, and an incorporated trustee with the CAC.

9. **What are the rights and responsibilities of CLTs, including taxes, obligations and fiduciary responsibilities?**

Since the concept of CLT is not expressly provided for under Nigerian law, there are no stated rights, responsibilities, tax obligations and fiduciary responsibilities of these organisations. However, under Nigerian law, companies limited by guarantee and incorporated trustees have general compliance obligations as required under the CAMA and the relevant tax laws.

These compliance obligations are set out below:

- a. **Filing of annual returns:** the CAMA requires all companies to hold an annual general meeting (“AGM”) of their shareholders in each year, the first of which is required to be held within 18 (eighteen) months of their incorporation and subsequent AGMs, within a period of no longer than 15 (fifteen) months of each preceding AGM. Companies are also required to file their annual returns with the CAC within 42 (forty- two) days after the AGM for the year. Under section 425, the failure to file annual returns is an offence and if continuing, the company and every director or officer of the defaulting company may be liable to a fine of ₦10,000.00 (ten thousand Naira) (USD24.04).

Companies Income Tax Act, CAP C23 Laws of the Federation of Nigeria, 2004 (as amended):
<http://lawsofnigeria.placng.org/laws/C21.pdf>

Value Added Tax Act, CAP V1, Laws of the Federation of Nigeria, 2004 (as amended):
<https://www.firs.gov.ng/wp-content/uploads/2021/01/VAT.pdf>

Finance Act 2019:
<https://pwc-nigeria.typepad.com/files/finance-act-2019-official-gazette.pdf>

Finance Act 2020: https://www.firs.gov.ng/wp-content/uploads/2021/01/finance-act-2020_signed.pdf

Capital Gains Tax Act, CAP C1, Laws of the Federation of Nigeria, 2004 (as amended):
<http://lawsofnigeria.placng.org/view2.php?sn=57>

In respect of incorporated trustees, section 848 of the CAMA requires the trustees of an association to file returns showing the name of the association, the names, addresses and occupations of the trustees, and members of the council or governing body, particulars of any land held by the corporate body during the year, and of any change which has taken place in the constitution of the association during the preceding year along with its audited statement of accounts, not earlier than 30th June or later than 31st December each year (other than the year in which it is incorporated). Where an association registered as an incorporated trustee fails to comply with this obligation, such association is liable to a fine of ₦10,000.00 (ten thousand Naira) (USD24.04).

b. Tax compliance obligations:

i. Companies' income tax:

The Companies Income Tax Act, Chapter C21, Laws of the Federation of Nigeria, 2004 (as amended) ("CITA") requires that companies should register with the Federal Inland Revenue Service ("FIRS") and pay income tax at the rate of 20% or 30% depending on their turnover, with the lowest being 0% for small companies.

Section 23 of the CITA however exempts from CIT, the profits of any company engaged in ecclesiastical or charitable activities of a public character in so far as such profits are not derived from a trade or business carried on by such company. Section 105 of CITA defines "public character" with respect to any organisation or institution to mean an organisation or institution:

- that is registered in accordance with the relevant law in Nigeria; and
- that does not distribute or share its profit in any manner to its members or promoters.

The above exemption therefore applies to organisations that are structured as companies limited by guarantee and incorporated trustees, which are by their nature entities of a "public character".

Notwithstanding that these organisations are exempt from paying income tax (unless where applicable) in each year of assessment, where NRC sets up either of these structures in Nigeria, they would still required to file returns on a self-assessment basis

Personal Income Tax Act 2011:

<https://www.firs.gov.ng/wp-content/uploads/2021/07/Personal-Income-Tax-Act.pdf>

with the FIRS not later than 6 (six) months after the end of their accounting year. Failure to file tax returns attracts a penalty of ₦25,000 (twenty- five thousand Naira) for the first month in which the failure occurs and ₦5,000 (five thousand Naira) for each subsequent month in which the failure continues. If convicted, the responsible officer of the company/ association may be liable to a fine of ₦100,000 (one hundred thousand Naira) or 2 years imprisonment or both. In addition, the CITA provides a penalty of 10% of the amount of tax payable and interest at the bank lending rate against an entity, for late payment or non-payment of tax.

ii. Personal Income Tax – Pay As You Earn

The Personal Income Tax Act (as amended) (“PITA”) imposes an obligation on employers to deduct Pay As You Earn (“PAYE”) from the salaries, entitlements and other emoluments of their employees and remit same to the relevant tax authority of the state where the employee is resident within 10 days from the end of each month. An employer is also required to file a return with the relevant tax authority of all emoluments paid to its employees not later than 31st January of every year in respect of all the employees in its employment in the preceding year.

The PITA provides that where an employer fails to deduct tax from the emoluments paid to an employee and fails to account, or deducts but fails to account, to the relevant tax authority, such employer shall be liable to pay the tax due together with a penalty of 10% per annum of the amount plus interest at the prevailing commercial rate. In addition, any corporate employer that fails to deduct tax and to file returns in respect of its employees shall be liable on conviction to a penalty of ₦500,000 (five hundred thousand Naira).

Where NRC incorporates either a company limited by guarantee or an incorporated trustee in Nigeria, such entity would be required to make these deductions and filings on behalf of its employees.

iii. Withholding Tax

Nigerian corporate entities are required to deduct tax (i.e., Withholding Tax (“WHT”)) from certain payments it makes, such as payments for consultancy, professional and technical services, at the rate of 5% or 10% depending on the nature and the beneficiary of such

payment. The tax withheld must be remitted to the relevant tax authority within 30 (thirty) days of such deduction.

Any association set up by NRC in Nigeria would be required to comply with this obligation, and failure to deduct and remit WHT as at when due attracts a penalty of 10% and interest per annum (at the prevailing commercial rate) on the tax not withheld or withheld but not remitted, as the case may be under PITA where the relevant payment is made to an individual. Where the relevant payment is made to a company, non-compliance would make NRC guilty of an offence and liable to a penalty of 100% per annum of the tax not withheld or withheld but not remitted, as the case may be.

iv. Value Added Tax

Corporate entities in Nigeria are required to charge value added tax (“VAT”) where they make any taxable supplies of goods and services. The Value Added Tax Act (as amended) (“VAT Act”) charges VAT on the supply of all goods and services (except those expressly exempted by the VAT Act) at a rate of 7.5%.

The VAT Act requires every business engaged in the supply of goods and services to register with the FIRS and to render VAT returns to the FIRS on or before the 21st day of the month following that in which the purchase or supply was made. Such returns are made in respect of all taxable goods and services purchased or supplied by a person during the preceding month.

Where a company limited by guarantee or incorporated trustee set up by NRC makes a supply any taxable goods and services as part of its operations, it would be required to file VAT returns and make the necessary remittances.

v. Capital Gains Tax

Corporate entities in Nigeria are required under section 2 of the Capital Gains Tax Act (“CGTA”), to compute and remit to the FIRS, capital gains earned from the disposal of any capital assets in Nigeria at the rate of 10%. Furthermore, where a corporate entity disposes of any chargeable asset, in addition to computing and remitting the tax to the

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FIRS, such company is required to file a self- assessment return not later than 30th June and 31st December in each year where the disposal of the capital asset was made.

All forms of property (except those expressly exempted) are regarded as chargeable assets for the purposes of the CGTA, whether situated in Nigeria or not, including-

- options, debts and incorporeal property generally;
- any currency other than Nigerian currency; and
- any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired.

10. **For what purposes/uses are CLTs permitted? Housing (ownership vs rental, both short and long terms), commercial, agricultural or any other purpose?**

Please see our response in question 1 above. Where a company limited by guarantee or an incorporated trustee acquires land on behalf of refugees and IDPs, then it may freely put such land to use, including commercial, agricultural or residential use, provided the use of the land complies with the existing land and property laws of the particular state.

After the organisation has been incorporated in Nigeria, it gains the freedom to identify and purchase/lease any suitable site for its objectives. The purchase/lease of such land in Nigeria remains subject to compliance with relevant laws regarding the perfection of title to the land (in the case of an assignment/ long leases as would be discussed in question 15 below); and building permits to be obtained from the Ministry of Physical Planning and Urban Development which are required for erecting buildings or the use of property for specific purposes. The building permits and regulations governing its issue are usually outlined in physical planning regulations applicable in various states in Nigeria, e.g., in Lagos, the relevant regulation is the Lagos State Physical Planning Permit Regulations, 2019.

The right to ownership of land once acquired is not absolute. This is because the LUA vests all titles to land comprised in the territory of each state in the federation in the governor of that state, to be held in trust and administered for the use and common benefit of all Nigerians. Therefore, the ultimate ownership of all land is vested in the government. Although the rights to use the land are granted to individuals by virtue of rights of occupancy (usually for a period of 99 years), the government reserves the right to revoke a right of occupancy in accordance with section 28 of the

Lagos State Physical Planning Permit Regulations, 2019:

https://epp.lagosstate.gov.ng/regulations/REVISED_LASPPPA_REGULATION_2019_1.pdf

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LUA on the grounds: i) of overriding public interest; ii) that the land is required by the government for some government or public purpose; iii) of a breach of any of the provisions which a certificate of occupancy is deemed by section 10 of the LUA to contain; iv) of a breach of any term contained in the certificate of occupancy or in any special contract made under section 8 of the LUA; v) a refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the governor under subsection (3) of section 9 of the LUA.

Overriding public interest in the case of a statutory right of occupancy granted by a state government is defined to mean-

- (a) the alienation by the occupier by assignment, mortgage, transfer of possession, sub-lease, or otherwise of any right of occupancy or part thereof contrary to the provisions of the LUA or of any regulations made thereunder;
- (b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;
- (c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.

In relation to a customary right of occupancy granted by local governments, overriding public interest is defined to mean-

- (a) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;
- (b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;
- (c) the requirement of the land for the extraction of building materials;
- (d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sub-lease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

11. **Would refugees, IDPs, or host communities be legally allowed to own, lease or rent housing or commercial spaces contained within CLTs?**

Under Nigerian laws, only Nigerians and entities registered in Nigeria are permitted to own land in Nigeria. Therefore, only refugees/IDPs that are Nigerians are legally permitted to own the lands

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contained within the CLT. However, foreign refugees/IDPs may acquire short term interests in land in the form of leases of a term not more than 3 years or yearly tenancies. These short-term leases and tenancies would not require any form of government approval for validity.

In relation to the question of naturalisation of children born by refugees in Nigeria, section 27(2) of the Nigerian Constitution provides that in order to qualify for citizenship by naturalisation, the President must be satisfied that the applicant:

- (a) is a person of full age and capacity;
- (b) is a person of good character;
- (c) has shown a clear intention of his desire to be domiciled in Nigeria;
- (d) is, in the opinion of the Governor of the State where he is or he proposes to be resident, acceptable to the local community in which he is to live permanently, and has been assimilated into the way of life of Nigerians in that part of the Federation;
- (e) is a person who has made or is capable of making contribution to the advancement, progress and well-being of Nigeria;
- (f) has taken the Oath of Allegiance prescribed in Seventh Schedule to the Nigerian Constitution; and
- (g) has immediately preceding the date of his application, either:
 - (i) resided in Nigeria continuously for a period of 15 years, or
 - (ii) resided in Nigeria for a continuous period of 12 months, and during the period of 20 years immediately preceding that period of 12 months has resided in Nigeria for periods amounting in the aggregate to not less than 15 years.

12. **Would the lack of legal identity documents prevent individuals from entering into this type of agreements with CLTs?**

Yes, we confirm that the lack of identity documents could potentially pose a barrier to individuals who would like to enter into agreements to either own, lease or rent housing or commercial spaces in a CLT. Subject to the restriction on non-Nigerians owning land in Nigeria, where an individual intends to enter into any agreement for the lease of land or renting of commercial spaces, then such individual may be required to provide legal identity documents to the counter party as part of the KYC process.

13. **How are rights to houses or parcels of land within CLTs transferred between parties?**

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Given that CLTs are not expressly provided for under Nigerian Law, there is no exclusive process for the transfer of rights to houses or parcels of land within a CLT. Such transfer will be subject to the general rules under Nigerian law governing the transfer or disposal of property or interests in land in Nigeria. Under Nigerian law rights/interests to houses or parcels of land could be transferred between parties in the following ways:

- a. the outright transfer of an interest in land by virtue of a sale of land;
- b. the lease of land;
- c. a gift of property;
- d. probate/ letters of administration/ assent.

14. Can the rights/membership in (13) be inherited, leased, rented, or sold?

Yes, the rights to houses or parcels of land can be inherited, leased, rented or sold. Each procedure must however be in compliance with Nigerian land legislation, in order to be viewed as a valid alienation of rights in land.

15. What are the mechanisms and restrictions around the transactions in (14) and how are they monitored?

Sale of Land

As we have mention in our response to question 1 above, the LUA vests all titles to land comprised in the territory of each state in the federation in the governor of that state, to be held in trust and administered for the use and common benefit of all Nigerians. Notwithstanding this provision, interests in property- rights of occupancy- can be transferred from one person to another through a sale of such property, subject always to the overriding interest of the federal, state or local government, depending on which arm of government the property is originally vested in. Such transfer would usually be documented in a contract of / agreement for the sale of land/ deed of assignment.

The extent to which land can be “owned” in Nigeria, therefore, is restricted to the tenure of the right of occupancy held. Rights of occupancy are usually granted for a term of 99 (ninety-nine) years generally or 50 (fifty) years in the case of land for agricultural purposes, after which they may be renewed.

Land Use Act:

<https://lawsofnigeria.placng.org/view2.php?sn=228>

Beyond acquiring real property, title to the property must be “perfected”. Perfection of title refers to the additional steps required to be taken in order to ensure that title to land (and indeed any interest created in land) is effective and enforceable against third parties. The process of perfecting title to land involves three steps:

- i. **Obtaining consent of the Governor to the property acquisition** – by virtue of Section 22 of the LUA “it shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained.” Where the interest to be alienated is in respect of land to which title is held by the Federal Government of Nigeria, section 51(2) of the LUA requires the prior consent of the President or Minister designated by the President to exercise the powers of the Governor which, in this case, relates to the power to consent to the alienation of legal interest. In practice, a transaction will not be rendered invalid for lack of Governor’s consent, but title will not vest in a purchaser unless and until Governor’s consent is obtained;
- ii. **Stamping the instrument of title** - Section 22(4) of the Stamp Duties Act, requires stamp duty to be paid, at the rates specified in the Stamp Duties Act, on instruments executed in Nigeria “or relating, wheresoever executed, to any property situate or to any matter or thing done or to be done in Nigeria”, failing which payment such instruments shall not be admissible in evidence in any civil proceedings in Nigeria; and
- iii. **Registration of the instrument of title at the relevant land registry** – the various State laws, which deal with the registration of title and/or interests over land and real property, usually contain provisions that deal with the requirement to register any document or instrument conveying title over property to any person at the relevant land’s registry. Any document that evidences the alienation of any interest in land that is owned by the Federal Government or any of its agencies are required to be registered at the Federal Lands Registry, after consent of the relevant Minister has been obtained to the alienation.

Non-perfection will make the instrument of title:

- void for purposes of conveying title to land;
- inadmissible in any civil proceedings as proof of title; and

- lose priority to a subsequent purchaser for value without notice of an existing interest who registers his title first – the subsequent purchaser shall, in such circumstances, have priority over the existing interest which was not registered.

Perfection of title costs in respect of the registration of leases, mortgages and purchase agreements/assignments vary from state to state in Nigeria and the exact amounts payable for perfecting title may only be ascertained when the process of perfection is about to be commenced.

Lease of Land

Interest in land may also be transferred through a lease/ tenancy agreement. The interest transferred here is merely a possessory interest as the owner of the property would still be entitled to the ownership rights in his property. In Nigeria, leases may be created orally and need not be in writing. However, by virtue of the Statutes of Frauds 1677 and the Property and Conveyancing Law 1959, leases of properties that have a duration of more than 3 years must be in writing. The transfer of interest in property under a long lease (i.e., a lease of more than 3 years (in Lagos, it is 5 years)) is subject to the restrictions which apply to the term of land ownership as well as the requirement for perfection stated above.

Gift of Property

Interest in a property may also be transferred by a deed of gift. The transfer of interest in property granted as a gift is subject to the restrictions which apply to the term of land ownership as well as the requirement for perfection stated above.

Probate/ letters of administration/ Assent

When a person dies with a valid will, the executors listed in the will may seek to prove it and obtain probate at a high court in the state where the deceased is resident, which grants all assets of the deceased to them. They become legal owners of the assets.

Additionally, when an individual dies intestate, then the property of the deceased will be distributed according to the provisions of the Administration of Estate Law applicable in the relevant state. The

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personal representatives of the dead will have the ability to apply as administrators and obtain a letter of administration in respect to the estate, which makes them legal owners.

The Executors or the Administrators of the estate can transfer ownership in the estate to any third party via an Assent.

4.2 Kenya

Legal Framework for CLT in Kenya	
Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>1. Do your country's legal frameworks governing housing, land, or property allow for the establishment of CLTs and/or waqf?</p> <p>There is no legal provision that provides for the registration of a CLT in Kenya but as alluded to in the summary earlier, the CLA and CLA Regulations provide for the establishment of a CLMC that is elected to manage the communal rights by a registered community.</p> <p>Hence, for all intents of this section, we shall refer to the CLMC in the same capacity as a CLT. However, we believe, despite the absence of specific legal provisions on a CLT, the CLMC and the community it represents have a trustee relationship.</p>	
<p>2. If so, what is the key legislation and any associated regulations?</p> <p>As supreme law, the origins of the CLA lie in the Kenyan Constitution specifically Article 63. The Constitution mandated that a legislation be enacted to give effect to the Constitution's provisions on community land.</p> <p>The Community Land Act and the Community Land Regulations are concerned with bringing community lands under official Community Title and governing them by communities. Hence, this will be the primary legislation in respect to Community Land in Kenya.</p> <p>The Land Registration Act, 2012 is another by product of the Constitution which was enacted to reform, consolidate, and rationalize land title registration, to give respect to the principles and objectives of devolved government in land registration, and for related purposes. This act primarily applies to the registration and recording of community interests in land as well as in private and public land.</p>	<ul style="list-style-type: none"> • The Constitution of Kenya - http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Constitution_of_Kenya_2010.pdf • Land Registration Act, 2012 - http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Land_Registration_Act__No_3_of_2012_.pdf • Community Land Act No. 27 of 2016 - http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CommunityLandAct_27of2016.pdf • Community Land Regulations, 2017 - http://kenyalaw.org:8181/exist/kenyalex/sublegview.xql?subleg=No.%2027%20of%202016#KE/LEG/EN/AR/C/NO.%2027

3. **What kind of legal entity is allowed to establish a CLT and how are these created?**

Kenyan law emphasizes that only individuals with certain commonalities may be legally allowed to form a *community*. In Chapter 5 of the Kenyan Constitution, notably Article 63 (1), expressly dictates who and/or what constitutes a community for the purposes of landholding:

63. (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.

The same has been adopted by the Land Registration Act, 2012 which states:

“community” means a clearly defined group of users of land identified on the basis of ethnicity, culture or similar community of interest as provided under Article 63(1) of the Constitution, which holds a set of clearly defined rights and obligations over land and land-based resources.

In Section 2 of the CLA, the term "community" is defined as

“a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes—

- (a) common ancestry;*
- (b) similar culture or unique mode of livelihood;*
- (c) socio-economic or other similar common interest;*
- (d) geographical space;*
- (e) ecological space; or*
- (f) ethnicity.*

It is crucial to note, however, that the CLA emphasizes that a community must be made up of **citizens of Kenya**, which has effectively excluded a number of people who do not fit this description. (i.e) refugees and foreigners.

- The Constitution of Kenya - http://www.kenyalaw.org/kl/fileadmin/pdffdownloads/Constitution_of_Kenya_2010.pdf
- Land Registration Act, 2012 - http://www.kenyalaw.org/kl/fileadmin/pdffdownloads/Acts/Land_Registration_Act_No_3_of_2012_.pdf
- Community Land Act No. 27 of 2016 - http://www.kenyalaw.org/kl/fileadmin/pdffdownloads/Acts/CommunityLandAct_27of2016.pdf

Section 7 of the CLA and Part II of the CLA Regulations explain the procedure for *registering "a community claiming an interest in or right over community land."* Having agreed on the necessity to register its interest in land, as defined by the CLA will follow this procedure, which includes the following important steps:

1. The community land registrar shall by notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage, invite all members of the community with some communal interest to a public meeting for the purpose of electing the members of the CLMC.
2. The notice shall also be given to the national county administrators and county government administrators in the area where the community land is located.
3. The community land registrar may use all available means of communication including electronic media to reach the community members.
4. The community shall elect between 7 (seven) and 15 (fifteen) members from among themselves to be the members of the CLMC as provided in section 15, who shall come up with a comprehensive register of communal interest holders.
5. The CLMC shall come up with the name of the community and shall submit the name, register of members, minutes of the meeting and the rules and regulations of the committee to the community land registrar for registration.

4. **What is the make-up of their membership and governing entities?**

As alluded to above the membership of a registered community comprises an intentionally organized group of land users who are Kenyan citizens and must share one or more of either a common ancestry, similar culture or unique mode of livelihood, socio-economic or other similar common interest, geographical space, ecological space; or ethnicity.

Once a community has been recognized as a registered community by the Ministry of Lands, it will create a Community Assembly, which will elect a CLMC. Further, it is at this community assembly that a registered community will conduct meetings, pass resolutions and significant decisions about the use of their communal land, community resource management, the election of officials, and deliberate payment of any overheads.

The primary responsibility of the CLMC is to hold the community's subject land and other assets on behalf of and for the collective benefit of all community members, as well as to manage the

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community's affairs in order to achieve the greatest possible social and economic benefit for the members.

The CLMC will have a Chairman, Vice-Chairman, Treasurer, and Secretary, who will be known as the "*Executive Officers of the community land management committee*" and will be elected during a CLMC meeting held within seven days following the community assembly elections.

5. **Are there provisions to ensure the representation of women in these governance committees?**

Gender equality is defined as a right in Kenya's constitution. Article 60 of the Constitution mandates the elimination of gender discrimination in law, customs, and practices relating to land. Article 27 (8) of the Constitution requires legislation to put into effect the concept that no more than two-thirds of the members of elected or appointive bodies must be of the same gender, which has never been implemented fully.

Additionally, Section 14 (4) of the CLA mandates "*equal consideration of applications for men and women.*" Section 30 expressly proscribes discrimination and specifically on grounds of gender, youth, minorities, persons with disabilities, and marginalized groups who have the right to equal treatment in all dealings in community land. Further, women who marry into a registered community are not to be excluded as members, and their land rights are protected unless they divorce and remarry elsewhere, see CLA section 30 (5).

The above suggests there are sufficient provisions for women to appeal against injustices in land dealings by their community. Nonetheless, no provisions are made for a minimum number of women to be members of that committee, or that women ought to make up at least one-third of community members in order to achieve a quorum at member assemblies. While the law does not prohibit women from participating in this forum, it has been argued that it would also have been helpful for this to be expressly stated.

- The Constitution of Kenya - http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Constitution_of_Kenya_2010.pdf
- Community Land Act No. 27 of 2016 - http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CommunityLandAct_27of2016.pdf

6. **Are refugees or IDPs legally allowed to be members of these governance entities/be members of the trust? Explain why.**

In regard to refugees, the Refugee Act 2021, specifically in Section 3 in its entirety provides on who is

- Refugee Act, 2021 - <http://kenyalaw.org:8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts>

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classified as a refugee under Kenyan Law, the common denominator in all the subsections is that a refugee is **NOT** a Kenyan citizen.

According to the CLA, individuals must be citizens of Kenya to properly form a community. As a result, refugees are unable to legally participate as members of a community or the CLMC.

With respect to IDPs, the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012, states that *“internally displaced person” means a person or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, large scale development projects, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border*”.

As a result of the aforementioned, the Internally Displaced Persons and Affected Communities Act 2012 underlines that an IDP must not have crossed an internationally recognized boundary, therefore, making them Kenyan citizens as long as they remain within the borders. IDPs within the Kenyan borders meet the criteria of a community and are legally capable of participating in the protection of their collective land rights.

[%20and%20Regulations/R/Refugees%20Act%20-%20No.%2010%20of%202021/docs/RefugeesAct10of2021.pdf](#)

- Community Land Act No. 27 of 2016 - http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CommunityLandAct_27of2016.pdf
- Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012 - <http://kenyalaw.org:8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/P/Prevention%20Protection%20and%20Assistance%20to%20Internally%20Displaced%20Persons%20and%20Affected%20Communities%20Act/docs/PrevProtAsstolInternDisPersAffComsAct56of2012.pdf>

7. **Would the lack of possession of legal identity documents prevent refugees, IDPs, or other undocumented communities from being members of the trust?**

As previously stated, refugees are not Kenyan citizens and hence are unable to form a registered community or engage in property ownership transactions.

On the other hand, Kenyan citizens, IDPs and undocumented groups in possession of their identification documents can form a registered community and be part of a CLMC. They must, however, share a shared ancestry, similar culture or distinctive style of livelihood, socio-economic or other common interest, geographical space, ecological space, or ethnicity, as defined by the Constitution and the CLA.

8. **What are the processes and procedures to establish CLTs, including any permits and fees?**

Following the formation of a community and the election of a CLMC as described in Section 7 of the CLA, Section 8 of the CLA Regulations further breaks down the procedure as follows:

The newly elected CLMC shall apply to the Community Land Registrar (the “Registrar”) for registration of the community. A community registration application must be submitted to the registrar using **Form CLA 3** set out in the Fifth Schedule to the CLA.

The application for registration under its paragraph (1) shall be accompanied by—

- a) name of the community;
- b) register of members of the community;
- c) a certified true copy of the minutes of the meeting at which it was resolved to seek application for registration;
- d) rules and regulations of the community;
- e) description of the interest in land being claimed by the community including a sketch map.

If the Registrar is satisfied that an application for registration is valid, the Registrar may issue a certificate of registration in the name of the community in **Form CLA 4** in the Fifth Schedule, subject to such terms, limitations, or exemptions as the Registrar deems appropriate. The Registrar shall need to be satisfied that—

- a) the name proposed to be registered has not been used by any other registered community;
- b) the applicant has complied with the Act; and
- c) the rules and regulations of the community are satisfactory in substance and in form,

Once registration of the community named in the certificate of registration is completed, they shall—

- a) be a body corporate, in the name specified in the certificate, with perpetual succession and a common seal; and
- b) in its corporate name, subject to the Act and the conditions, limitations and exemptions in the certificate of registration, be capable of—

- i) suing and being sued;
 - 1. acquiring, holding, charging or disposing of movable or immovable property; and
 - 2. having and managing its own funds including borrowing and lending money; and
 - 3. doing or performing such other things or acts necessary for the proper
 - 4. performance of its functions which may lawfully be done by a body corporate.

Additionally, the members of the CLMC shall—

- a) become the officers of the community;
- b) be responsible for management of any property of the community;
- c) exercise their powers on behalf and for the collective benefit of all the members of the community; and
- d) consult the community assembly on such exercise of their powers under paragraph (c).

The CLMC shall embark on the creation of rules and regulations that will control the operations of the community assembly on behalf of the community, that shall be adopted by the community assembly. All of the subjects stated in the Second Schedule of the CLA Regulations must be covered by a community's rules and regulations, to the satisfaction of the Registrar.

It is crucial to note that if a community's application does not meet the conditions set forth in the CLA and CLA Regulations, the Registrar may refuse to register the community and state the reasons why. Nevertheless, a community that is dissatisfied with the Registrar's decision may file an appeal with the Chief Land Registrar.

9. What are the rights and responsibilities of CLTs, including taxes, obligations and fiduciary responsibilities?

In terms of taxation, there is no specific legal requirement that a registered community and a CLMC ought to pay any taxes just to be in operation. However, absent of any exemptions granted on a case-by-case basis by the Registrar, taxes will fall due in the course of normal transactions, such as annual property taxes (Land rent and rates), Stamp Duty and Capital Gains tax during land transactions and, where applicable Value Added Tax.

Section 15 (4) of the CLA enumerates the roles and requirements of a CLMC to be as follows —

- a) have responsibility over the running of the day-to-day functions of the community;

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- b) manage and administer registered community land on behalf of the respective community;
- c) coordinate the development of community land use plans in collaboration with the relevant authorities;
- d) promote the co-operation and participation among community members in dealing with matters pertaining to the respective registered community land; and
- e) prescribe rules and regulations, to be ratified by the community assembly, to govern the operations of the community.

Additionally, the Third Schedule of the CLA Regulations specifically rule number 15 and 16 provide a draft of rules and regulations titled *MODEL RULES AND REGULATIONS* which lists the duties and powers of the management committee, as well as the responsibilities of a CLMC, that need to be adopted in the rules and regulations by registered communities.

10. **For what purposes/uses are CLTs permitted? Housing (ownership vs rental, both short and long terms), Commercial, Agricultural or any other purpose?**

The CLA in Section 29 regulates the designation of various land use rights on community land as follows:

- a) farming areas;
- b) settlement areas;
- c) community conservation areas;
- d) access and rights of way;
- e) cultural and religious sites;
- f) urban development; or
- g) any other purpose as may be determined by the community, county government or national government for the promotion of public interest.

The Act expressly states that an area set aside for a specific purpose must be used only for that purpose.

The community, on the other hand, may elect to utilize the community land in any way beneficial to the community that is not provided for above, as long as the majority agrees and it is in accordance to the law. This is especially important where a community is registered in an urban setting for non-traditional communities.

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There are, for example, city slum neighbourhoods where parcels are so tiny, sometimes only a few square metres, in which a collective approach to utilization of the community land would be beneficial for regularizing insecure mass occupancy than agriculture.

It would be important to note that the clear definition and separation of purpose as stipulated in the constitution sometimes brings conflict between two or several communities and often the government and communities. In most cases the subject of this clash is usually a conflict between what a particular piece of land has been set apart for by the government and what the locals believe their ancestors or their culture stipulates.

Specifically, and in connection with climate change, the government has been trying to make sure that the forest cover is not depleted, but some communities believe that the protected lands are part of their community land and have in certain instances decided to cut down trees. Additionally, the government has been proactive in wildlife protection by implementing policies such as the National Wildlife Climate Change Adaptation Strategy by the Kenya Wildlife Services.

Kenya has taken commendable actions to combat climate change, such as the National Climate Change Action Plan 2018-2022, which is the country's second 5-year sectoral plan to direct national climate change actions, such as the reduction of greenhouse gas emissions, and builds on the success of the National Climate Change Action Plan 2013-2017. Even so, more needs to be done in creating awareness on the existential threat that climate change poses more so to the rural areas.

11. **Would refugees, IDPs, or host communities be legally allowed to own, lease or rent housing or commercial spaces contained within CLTs?**

As previously stated, refugees' legal status will prevent them from lawfully obtaining absolute land rights in Kenya. Refugees would not be able to own land absolutely, but with the passing of the Refugee Act, 2021 and specifically under Section 28 (4), a case may be made for the option of leasing and renting property.

The passage of the new law, which gives refugees the chance to be gainfully employed and take part in Kenya's economic and social development, will result in a noticeable and welcome improvement to Kenya's response to refugees by working toward a whole-of-government approach to unlocking the potential for refugees in the country to significantly boost Kenya's economy.

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In relation to the foregoing, there will be an increase in the number of refugees engaging in businesses, better housing, and commercial property options as a result of their increased earning potential.

In regard to IDPs and host communities, they are Kenyan citizens, they are legally able to obtain land rights in community land, subject to the restrictions set forth in CLA and the rules and regulations approved by the Communities. They can either be by way of lease, tenancy and/or freehold, which are all provided for under the CLA.

12. **Would the lack of legal identity documents prevent individuals from entering into this type of agreements with CLTs?**

In Kenya, legal identification paperwork is critical in all property transactions; it is one of the pillars in due diligence to ensure that the parties to the transaction are legitimate. Any land transaction will be extremely difficult, if not impossible, without these documents.

13. **How are rights to houses or parcels of land within CLTs transferred between parties?**

The CLA in Section 27 provides that, a registered community may allocate part of its registered community land to a member or a group of members of the community for exclusive use and occupation for a time determined by the registered community, upon application and with the approval of the members of the said community. Despite the aforementioned, a separate title for such a parcel of property will not be issued.

According to Section 31 of the CLA, contracts and transfers over community land shall be carried out in the same manner as transactions over private land as stipulated in the Land Act, 2012 (No. 6 of 2012) and recorded in the same manner as transactions over private land as provided in the Land Registration Act, 2012. (No. 3 of 2012). A meeting must be organized to particularly address such transactions, and approval must be granted at the community assembly.

In Section 32 of the same Act, a lease of community land must be based on an agreement between the community and the lessee, and it must be subject to any implied conditions set forth in any other written law.

14. **Can the rights/membership in (13) be inherited, leased, rented, or sold?**

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Every man or woman married to a member of the community gains automatic membership in the community, which continues until the spouses officially divorce and the woman remarries, or the woman remarries following the death of a spouse, according to Section 30 of the CLA. This means that even after a spouse's death, the estate's beneficiaries will be eligible to the community land rights privileges within the conditions therein.

As previously stated, leases, tenancies, and land dispositions must be granted by the CLMC and only after community approval at a special meeting convened for that purpose. (See Sections 27, 31 and 32 of the CLA)

Without Prejudice to the above, refugees born within the borders of Kenya are more often than not, not considered citizens despite the right to a nationality being a fundamental human right. International Human Rights Law stipulates that countries have the right to choose who their nationals are but the same is not absolute and, particularly, countries must conform to their obligations under human rights concerning the granting, denial and revocation of nationality.

Unfortunately, it is typical for children born in Kenya to share the same status as their parents if their parents are refugees. If it is established for instance that the parents are mandate refugees in Kenya, the status of the children will be the same and they will enjoy the rights applicable to mandate refugees in Kenya. This in turn makes particularly difficult for a child born within the borders of Kenya to refugee parents to be permanently assimilated by a community that is Kenyan especially in regards to land matters.

15. **What are the mechanisms and restrictions around the transactions in (14) and how are they monitored?**

First, community land must be used for the benefit of the community, in compliance with the law and the rules and regulations established by the community. However, community land may be used by the county government or the national government for the promotion of public interest, as stated in Section 29 (g) of the CLA.

Subject to the above Article 40 of the Constitution on matters of compulsory acquisition stipulates that occupants of a piece of land and registered owners are to be paid compensation when land is taken for public purposes. The Land Act and the CLA specifically in Section 6, reaffirm this commitment. Compensation will be held by the county government and released to the community as soon as the property is registered.

Second, in terms of leases Section 33 of the CLA allows a registered community, with the approval of the members of the said community, may cancel a leasehold if the lessee fails to comply with the requirements or adhere to any restrictions imposed by or under any law pertaining to the utilization of the land to which the right relates or the rules and regulations of the community.

4.3 Uganda

Legal Framework for CLT in Uganda	
Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>1. Do your country's legal frameworks governing housing, land, or property allow for the establishment of CLTs and/or waqf?</p> <p>Ugandan law does not contain a singular and dedicated piece of legislation that purposely provides for the formation and operation of CLTs. It does, however, contain an assemblage of different laws that may be adapted and moulded to support the formation and operation of CLTs. These different laws include those governing the formation of companies, the incorporation of a trusts, the creation of Communal Land Associations, and the registration of NGOs.</p> <p>Although these numerous laws can theoretically be adapted to support the formation of CLTs, the practicality and ease of doing so on a large and durable scale would be significantly limited by socio-political factors and depend largely on the perception and attitude of the Government of Uganda. The Government closely controls matters relating to refugees in Uganda through the Office of the Prime Minister. The Government has lately moved to monitor and control more closely all aspects of "Development Assistance" to Uganda including the operations of development partners, any project for the creation of CLTs in Uganda for the benefit of refugees would have to involve extensive and close collaboration with the Government.</p> <p>We proceed however to discuss ways in which Uganda's existing legal framework can be adopted to support the formation of CLTs in Uganda.</p>	
<p>2. If so, what is the key legislation and any associated regulations?</p> <p>a) <u>The 1995 Constitution of Uganda</u></p> <p>The 1995 Constitution of Uganda guarantees the right of all persons to own property either individually or in association with others. (Article 26)</p> <p>It also provides that non-citizens may acquire leases in land in accordance with laws prescribed by the Ugandan Parliament. (Article 237(2)(c)).</p>	<ol style="list-style-type: none"> 1. The Constitution of Uganda, 1995 (https://ulii.org/akn/ug/act/statute/1995/constitution/eng@2018-01-05); 2. The Land Act, Cap. 227 (https://ulii.org/akn/ug/act/1998/16/eng@2010-02-12); 3. The Registration of Titles Act, Cap. 230 (https://ulii.org/akn/ug/act/ord/1922/22/eng@2011-09-02);

Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>Importantly, Article 286 recognises the treaties and conventions that Uganda was a party to prior to its (the Constitution's) coming into force, including the 1951 Refugee Convention and the 1969 OAU Refugee Convention.</p> <p>b) <u>The Land Act, 1998Cap. 227</u></p> <p>Uganda's Land Act restricts ownership of land in Uganda by non-citizens (including refugees) to the leasehold tenure system and specifically to leases not exceeding 99 (ninety- nine) years. (See Section 40 of this Act).</p> <p>Concerning artificial entities, the Land Act also characterises all such entities where the controlling interest lies in the hands of non-citizens as non-citizen entities themselves, restricted to ownership only of land in leasehold. Where the artificial entity is a company limited by shares, its memorandum and articles of association must also restrict the transfer of shares to non-citizens or else it will be deemed a non-citizen company even though the controlling interest within it may actually lie in the hands of Ugandan citizens. (See Section 40(7)(e) of the Land Act, and the recent Uganda Court of Appeal decision in Civil Appeal No. 0018 of 2017, <i>Biyinzika Enterprises Ltd and Others vs Biyinzika Farmers Limited and Another</i>).</p> <p>Importantly, under Section 15(1) of Uganda's Land Act, any group of persons being owners of land may form a Communal Land Association ("CLA") for any purpose connected with communal ownership and management of land, whether under customary law or otherwise.</p> <p>The land owners intending to form a Communal Land Association apply to the District Registrar of Titles of the District where the land is located, to be formed into a CLA. The District Registrar of Titles then convenes a meeting of the applicants at which 3 to 9 persons are appointed as officers of the Association and tasked with coming up with a Draft Constitution of the Association. The draft Constitution of the Association, once certified by the District Registrar of Titles as being legally compliant, is then debated at a subsequent Meeting of the Members of the Association and validated for its governance by the votes of an absolute majority of all Members. Thereafter, the officers of the Association, who constitute the Association's "Managing Committee", apply to the District Registrar of Titles to be granted the status of a body corporate. Once incorporated as a body corporate, the said Managing Committee then holds the land of the Association on behalf of all the Members of the Association. Decisions concerning transactions on the land held by the Managing Committee on</p>	<ol style="list-style-type: none"> 4. The Refugee Act, 2006 (http://www.judiciary.go.ug/files/downloads/Act%20No.%2021of%202006%20Refugees%20Act2006.pdf); 5. The Companies Act, 2012 (https://ulii.org/akn/ug/act/2012/1/eng@2015-07-01); 6. The Trustees Incorporation Act, Cap. 165 (https://www.ngobureau.go.ug/sites/default/files/laws_regulations/2020/12/The%20Trustees%20Incorporation%20Act.pdf); 7. The Trustees Incorporation Rules, S.I. 165—1 (https://www.parliament.go.ug/cmisis/browser?id=61f4fe39-5f44-4c38-b670-d1489a42e43c%3B1.0); and 8. The Non-Governmental Organisations Act, 2016 (https://ulii.org/akn/ug/act/2016/5/eng@2016-03-03). 9. Condominium Property Act, 2001 (https://ulii.org/akn/ug/act/2001/4/eng@2001-02-23) 10. Uganda Court of Appeal decision in Civil Appeal No. 0018 of 2017, <i>Biyinzika Enterprises Ltd and Others vs Biyinzika Farmers Limited and Another</i>: https://ulii.org/ug/judgment/court-appeal-uganda/2021/47

Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>behalf of all Members of the Association are, importantly, only valid if made by a majority of the Members at a meeting specially convened to discuss a proposed transaction.</p> <p>The Communal Land Association model can be used by <u>land owners</u> to create a communal form of ownership and management of land, which can be adapted to mirror the tenets of a CLT, with the Managing Committee occupying the position of the non-profit trustee and the owners of the merged pieces of land being the beneficiaries of the CLA.</p> <p>c) <u>The Registration of Titles Act, 1924 Cap. 230</u></p> <p>The Registration of Titles Act governs the formal registration of land in Uganda under the freehold, <i>mailo</i>, and leasehold tenures. This formal registration is done by the Government of Uganda through its Ministry of Lands, Housing and Urban Development. Once land is formally registered, a Certificate of Title in its respect and evidencing ownership of the registered proprietor is issued.</p> <p>d) <u>The Condominium Property Act, 2001</u></p> <p>The Condominium Property Act, 2001 allows for the division of a building into multiple units (usually residential housing units) that can be each be owned separately by different individuals, leaving common ownership of shared spaces and structures. The condominium units in the building so divided can be owned under leasehold tenure. The owners of the condominium units are further required to form a corporation whose primary function is to manage the property for the collective benefit of all owners.</p> <p>e) <u>The Refugee Act, 2006</u></p> <p>Section 29 of Uganda’s Refugee Act expresses the right of recognised refugees and their family members to receive at least the same treatment as that generally accorded to foreigners (i.e. persons who are not citizens of Uganda) in similar circumstances relating to movable and immovable property and other rights pertaining to property. It also recognises their right of to transfer assets lawfully acquired and held in Uganda.</p>	

Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>This means that recognised refugees and their families are by law permitted to own land in Uganda under the leasehold tenure.</p> <p>Section 30 of the Refugee Act also recognises the right of refugees to free movement in Uganda subject to reasonable restrictions specified in Ugandan law and which generally apply to foreigners in the same circumstances. On the other hand, Section 44(2) of the same Act requires a refugee who wishes to reside in an area other than such a designated transit centre or settlement area on public land to apply to the Commissioner for Refugees for permission.</p> <p>f) <u>The Companies Act, 2012</u></p> <p>This law provides for the setting up of companies that either have the liability of their members limited by shares or by guarantee. It also allows for the incorporation of companies with unlimited liability.</p> <p>Companies Limited by Guarantee are the commonest vehicles for the incorporation of non-profits and would be ideal for use in setting up the non-profit entity that would be in charge of operating the CLTs. Under the Company Limited by Guarantee, the members of the company undertake to contribute a nominal amount each toward the assets of the Company if it is being wound up.</p> <p>A charitable organisation that is set up as a Company must also be registered as an NGO under the Non-Governmental Organisations Act, 2016.</p> <p>g) <u>The Trustees Incorporation Act, 1939 Cap. 165 and the Trustees Incorporation Rules, S.I. 165—1</u></p> <p>The Trustees Incorporation Act and Rules provide for the incorporation (as a corporate body) of a Trust established for, amongst others, a social or charitable purpose.</p> <p>Upon its registration/incorporation, the Incorporated trust must then register as an NGO under the Non-Governmental Organisations Act, 2016.</p>	

Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>h) <u>The Non-Governmental Organisations Act, 2016</u></p> <p>The Non-Governmental Organisations Act, 2016 provides for the mandatory registration of organisations (such as companies, incorporated trustees, or other associations of persons) established to provide voluntary services to the Community or any part of it for non-commercial, not-for-profit purposes.⁵</p> <p>It also provides for the registration of Community Based Organisations, which are defined as organisations operating at the Sub-County Level and below and having as their objective the promotion and advancement of the well-being of the members of the community.</p> <p>Once an NGO is successfully registered and has paid the requisite fees, it is issued with a renewable NGO Permit (“Permit”). It is unlawful for an organisation that is required to register as an NGO to operate without a valid NGO Permit issued by the NGO Bureau.</p> <p>The first step to setting up and registering a Non-Governmental Organisation is usually incorporating a Company Limited by Guarantee or creating a Trust and incorporating its trustees.</p> <p>From the above key legislation, the process of setting up a CLT in Uganda would involve the incorporation of a Company Limited by Guarantee or of Trustees (either entity being the intended non-profit entity that shall operate the CLTs), followed by the registration of the incorporated non-profit entity as an NGO.</p> <p>Upon its registration as an NGO, the incorporated non-profit entity would acquire land and proceed to develop and distribute it to the intended beneficiaries being refugees and their families.</p> <p>The distribution could take the form of formal sub-leases or semi-formal tenancies for periods not exceeding 3 years. The said sub-leases or short-term tenancies could be in respect of condominiums, or individual parcels of land. They could also be distributed at a low cost and made reasonably transferrable.</p>	
<p>3. What kind of legal entity is allowed to establish a CLT and how are these created?</p>	

⁵ Sections 29(1) and 3 of the Non-Governmental Organisations Act, 2016.

Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>By virtue of its nature as a charitable or not-for-profit entity, a CLT can only be set up has the option to be operated as a registered NGO. However, NGOs are not in themselves a form of incorporation. They are merely a status accorded to an already existing entity that has successfully registered and been recognised as an NGO. Most entities will therefore commence as Companies Limited by Guarantee or as an Incorporated Trust prior to their registering as NGOs.</p>	
<p>Once the incorporation and registration processes are complete, the creation of the CLT will be largely governed by a Trust Deed and the constitutive documents of the governing non-profit entity, such as its Memorandum and Articles of Association if it is a Company.</p>	
<p><u>Incorporation of a Company Limited by Guarantee</u></p>	
<p>The governing non-profit entity may take the form of a Company Limited by Guarantee (with or without a share capital). Companies limited by guarantee are a preferred vehicle for the structuring of non-profits and would there be suitable for the foundational structuring of the intended CLT as well.</p>	
<p>The process, procedure and fees for the incorporation of a Company Limited by Guarantee in Uganda is set out under Appendix B below.</p>	
<p><u>Incorporated Trust</u></p>	
<p>An alternative to the incorporation of a Company Limited by Guarantee is the incorporation of a Trust capable of holding property in trust for the intended beneficiaries and in accordance with a founding Trust Deed and the law generally governing trusts in Uganda. The process involved is governed by the Trustees Incorporation Act, Cap. 165 and the Trustees Incorporation Rules, S.I. 165—1 and is contained within Appendix B below.</p>	
<p>Once the trustees have been incorporated, an application must then be made to the NGO Bureau for the registration of the incorporated body of trustees as an NGO.</p>	
<p><u>Registering a Non- Governmental Organisation (NGO)</u></p>	
<p>The process of registering an NGO commences after the incorporation of a Company Limited by Guarantee or the incorporation of trustees as described above. The procedure and requirements are</p>	

Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>also set out under Appendix B below.</p> <p>Once the application is submitted with all the requisite documents attached and the organisation satisfies all the necessary requirements above, the NGO Bureau issues a certificate of registration of the NGO.</p> <p>Upon successful registration as an NGO, the Organisation must then apply to the NGO Bureau for a Permit. It is an offence to operate an NGO without a valid Permit from the NGO Bureau. Permits are issued for a maximum period of 5 years and are renewable.</p> <p>Once it is registered and granted a permit, an NGO may validly carry out its activities in Uganda, in line with the conditions stated in its permit and the governing laws.</p>	
<p>4. What is the make-up of their membership and governing entities?</p> <p>If the NGO was initially structured as a company, its governing entities will be the Board of Directors and a General Meeting of the Company’s Members.</p> <p>If the underlying structure of the NGO is an incorporation of the Trustees, the governing entity will be the Board of Trustees.</p> <p>The governing entity of the underlying structure is therefore the governing entity of the NGO itself.</p> <p>Where a group of beneficiaries holding sub-leases on condominium units form a corporation in accordance with the Condominium Property Act, 2001, the governing entity of that corporation will be the Management Board of that corporation.</p> <p>Where a group of beneficiaries holding sub-leases on parcels of land choose to form a Communal Land Association (of owners) for the purpose of creating communal ownership and management of their land collectively, the Managing Committee of that Association will be its governing entity. It will be bound by the Constitution of the Association and answerable to the members.</p>	

Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>5. Are there provisions to ensure the representation of women in these governance committees?</p> <p>At least one third of the officers of a Communal Land Association’s Managing Committee must by law be women. (Section 16(4)(b) of the Land Act, Cap. 227).</p> <p>With respect to Boards of Directors of companies (including those later registered as NGO’s) and trustees of trusts, there is no legal requirement as to gender composition. However, it is possible and advisable to create such a requirement into the Articles of Association of the Company incorporated and in the Trust Deed creating a trust.</p> <p>Uganda’s Constitution enshrines the right to gender equality, the rights of women, and provision for affirmative action in favour of marginalised groups. To that end, it is important and advisable for entities to incorporate rules that provide for the representation of women within their governing committees.</p>	
<p>6. Are refugees or IDPs legally allowed to be members of these governance entities/be members of the trust? Explain why.</p> <p>Recognised refugees, persons whose application for refugee status is pending final determination, and Internally Displaced Persons can all be members of CLT’s. If the CLT is structured as a company, they can be shareholders/members. To be a director of a company however, the appointee must be at least 18 (eighteen) years old at the time of their appointment.</p> <p>If the CLT takes the form of an Incorporated Trust, refugees or IDPs can be trustees as well as beneficiaries. If they own land under leasehold tenure (this is the only tenure system under which a non-citizen may hold land), a group of such owners may form a Communal Land Association.</p>	
<p>7. Would the lack of possession of legal identity documents prevent refugees, IDPs, or other undocumented communities from being members of the trust?</p> <p>The lack of possession of legal identity documents would make the membership for refugees difficult as a refugee card is used to prove refugee status for refugees. Undocumented refugees and other undocumented communities would be unable to be members of the trust and puts refugees at risk of their occupation being illegal and leading them to be deported.</p>	

Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>Recognised refugees are entitled to be issued with an identity card stating their refugee status. Prior to the issuance of such an identity card, a refugee is, upon being processed, issued with a temporary identifying document (an Attestation Card) which can temporarily be used in place of the Identity Card.</p> <p>The lack of a legal identity document (in this case the abovementioned identity card or a similar document issued or recognised by the Government of Uganda) would prevent refugee from becoming registered land owners in their own right since the registration process would require the submission of such an identifying document.</p>	
<p>8. What are the processes and procedures to establish CLTs, including any permits and fees? The detailed process of establishing a CLT through a Company or an incorporation of Trustees and then registering it as an NGO, including the requisite fees, is set out under Appendix B below.</p>	<ol style="list-style-type: none"> 1. The Stamp Duty Act, 2014 as amended in 2016 and 2018 (https://ulii.org/akn/ug/act/2014/13/eng@2019-07-01). 2. The Trustees Incorporation Rules, S.I. 165—1 (https://www.parliament.go.ug/cmris/browser?id=61f4fe39-5f44-4c38-b670-d1489a42e43c%3B1.0);. 3. The Uganda Registration Services Bureau website (https://ursb.go.ug/fees). 4. The Non-Governmental Organisations (Fees) Regulations, 2017 (https://www.ngobureau.go.ug/sites/default/files/laws_regulations/2021/04/NGO%20%28Fees%29%20Regulations%2C%202017.pdf). 5. The Finance Act, 2013 (http://ugandanlawyer.com/wp-content/uploads/2019/03/Finance-Act-of-2013.pdf).
<p>9. What are the rights and responsibilities of CLTs, including taxes, obligations and fiduciary responsibilities?</p> <p>Based on our response in 1 above, there is no dedicated piece of legislation that purposely governs CLTs in Uganda. The rights and responsibilities of CLTs will therefore largely depend on what the</p>	<p>See generally:</p> <ol style="list-style-type: none"> 1. Equity and Trusts in Uganda by D.J. Bakibinga (https://www.worldcat.org/title/equity-and-trusts-in-uganda/oclc/741494549);

Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>CLT's constitutive documents (such as Trust Deeds, Memorandum and Articles of Association, Constitutions of Communal Land Associations, Rules of a Corporation in respect of condominium property) provide for, and the general laws governing trusts and trustees, NGOs, refugees, and related aspects.</p> <p>Under the general law on trusts and trustees, applicable in Uganda, the rights and responsibilities of trustees (including those in the context of a CLT) include the following:</p> <ol style="list-style-type: none"> The Trustees bear the duty of collecting and reducing into their possession the trust property; The Trustees bear a duty to maintain equality between or among the beneficiaries without undue partiality; Importantly Trustees are required to keep and provide to the beneficiary's relevant accounts and information relating to the trust; While the trustee can recover their out-of-pocket expenses, they are generally not entitled to remuneration for their service; Trustees are generally estopped from themselves purchasing trust property on their own account (i.e. in their individual and non-trustee-based capacities); Trustees have a duty not to compete with the Trust; and In general, trustees have a duty to act in the best interests of the beneficiaries. <p><u>Tax obligations</u></p> <p>The main taxes charged in Uganda are income tax, Value Added Tax (VAT), Local Government Property Rates, and Stamp Duty.</p> <p>The following is a high-level summary of the main taxes that we envisage as applicable in respect of the intended CLTs:</p> <p><u>Income Tax</u></p>	<ol style="list-style-type: none"> The Trustees Act, Cap. 164 (https://ulii.org/akn/ug/act/ord/1954/3/eng@2000-12-31); Income Tax Act, Cap. 340: https://ulii.org/akn/ug/act/1997/11/eng@2000-12-31 Value Added Tax Act, Cap. 349: https://ulii.org/akn/ug/act/statute/1996/8/eng@2000-12-31 The Stamp Duty Act, 2014: https://ulii.org/akn/ug/act/2014/13/eng@2019-07-01 The Local Governments (Rating) Act, 2005 (https://www.kcca.go.ug/uploads/acts/local%20govenment%20rating%20Act%202005.pdf) The Local Governments (Rating) (Amendment) Act, 2006 (https://www.kcca.go.ug/uploads/acts/local%20govenment%20rating%20ammendment%20Act%202006.pdf); The Local Governments (Rating) Regulations, 2006 (https://www.parliament.go.ug/cmris/browser?id=3f22bd5f-1ea7-46d1-b1df-ee686c0cd570%3B1.0);

Remarks (please insert responses here)**Legal Basis (i.e., Link to legal sources)**

As a charitable institution of a public character, a CLT entity may apply to the Commissioner of the Uganda Revenue Authority for a ruling stating that it is exempted from paying income tax. It would, however, have to demonstrate that it is a charitable institution of a public character, providing a public benefit, and none of whose income or assets confer or may confer a private benefit on any person.

Where the CLT does not qualify as an exempt organisation, it will be liable to pay the following income tax:

- a) Companies and Trustees of Trusts are charged an income tax of 30% of their chargeable income less allowable deductions, in respect of every year of income. This however, does not include the rental income, which attracts its own rental tax (see below).
- b) Where the CLT derives rental income, it shall be required to pay rental tax of 30% of the chargeable rental income derived in a year of income, less allowable deductions. Rental tax is separate from the income tax imposed under Section 4 of the Income Tax Act.

Note that a year of income is typically from 1st July in one year to 30th June in the following year.

Value Added Tax (VAT)

VAT is charged on all taxable supplies made by taxable persons, in accordance with the Value Added Tax Act, Cap. 349.

In general, every person whose quarterly turnover in relation to their taxable supplies in a 3 calendar month period exceeds Ug. Shs. 37,500,000/= is required to register for and is liable to pay VAT.

The prevailing VAT rate is 18% of the taxable value of a taxable supply except for supplies that are zero-rated.

However, the supply of unimproved land and the supply (through sale, leasing or letting) of immovable property for periods exceeding 3 months and for non-commercial premises, are exempted supplies.

Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>We therefore opine that a CLT that sales or lets unimproved land and one that sales or lets or leases immovable property for residential purposes and for periods exceeding 3 months will not have to pay VAT on those supplies unless the law is amended.</p> <p><u>Local Government Property Rates</u></p> <p>Pursuant to the Local Governments (Rating) Act, 2005, Local Governments (such as Sub-Counties) are required to levy property rates on the rateable property values for property within their jurisdictions. These rateable values are equivalent to the net annual rental values of the property as valued by the Local Government. Property includes immovable property except a vacant site.</p> <p>However, “any property used <u>exclusively</u> for the purposes of any charitable or educational institution of a public character <u>supported only by endowments or voluntary contributions</u>” is exempted.</p> <p>Additionally, organisations with which the Government has a contractual obligation not to levy fees and taxes against it are also exempted.</p> <p>Since the CLTs envisioned here are likely to derive rental income from the property to be acquired and developed, they will be liable to pay the relevant Local Government Rates.</p> <p>In respect of houses in urban areas, the law also exempts from having to pay Local Government Property Rates all persons who own and also live in those houses. Residential houses in rural areas are by law exempted.</p> <p><u>Stamp Duty</u></p> <p>The CLT would also incur tax liability in the form of stamp duty on chargeable instruments such as land transfer instruments, agreements, company memoranda and articles of association, leases, and others. Most of the relevant ones have already been addressed in the preceding segments.</p> <p>It is important to note that the tax legal regime is wide. CLTs and their partnering entities will therefore have to seek further and more detailed and fact-specific tax-related advice when they are being set up and operated.</p>	
<p>10. For what purposes/uses are CLTs permitted? Housing (ownership vs rental, both short and long terms), Commercial, Agricultural or any other purpose?</p>	

Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>There is no specific law that provides for the formation of CLTs. The CLTs formed have the discretion to determine the purposes and uses of the CLTs. They can be used for housing, commercial and agricultural purposes as long as it does not breach any of Uganda’s laws such as environmental laws.</p>	
<p>11. Would refugees, IDPs, or host communities be legally allowed to own, lease or rent housing or commercial spaces contained within CLTs?</p> <p>Recognised refugees as well as members of their families, IDPs and host communities can legally own, lease or rent housing or commercial spaces contained within CLTs that have been created. However, refugees can only own land through leasehold tenure and for periods not exceeding 99 (ninety- nine) years.</p>	
<p>12. Would the lack of legal identity documents prevent individuals from entering into this type of agreements with CLTs?</p> <p>Recognised refugees are entitled to be issued with an identity card stating their refugee status. Prior to the issuance of such an identity card, a refugee is, upon being processed, issued with a temporary identifying document which can temporarily be used in place of the Identity Card. Where a refugee’s identity card is lost or destroyed, a new one may be issued to them as soon as practicable and in the case of loss, at least one month after the loss, provided that the loss or damage has been reported to a police station or an immigration office. Pending such replacement, the holder of the card is issued a temporary document notifying the loss or destruction of the card.</p> <p>The lack of a legal identity document (in this case the abovementioned identity card or a similar document issued or recognised by the Government of Uganda) would prevent a refugee from becoming a land owner in their own right since the registration process would require the submission of such an identifying document.</p> <p>The lack of a legal identity document is however not an absolute bar to the refugees’ being beneficiaries of a CLT, although it is best if all such beneficiaries have proof of being refugees (either recognised or with temporary protection) in order to avoid administrative friction with the Government.</p>	<p>The Refugees Act, 2006 https://ulii.org/akn/ug/act/2006/21/eng%402006-08-04</p>
<p>13. How are rights to houses or parcels of land within CLTs transferred between parties?</p>	<p>1. The Stamp Duty Act, 2014 as amended in 2016 and 2018</p>

Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>If the parcels are held under registered leases, the transfers are done by way of lodging for registration a transfer instrument, a form called a Consent to Transfer (on which the Chief Government Valuer endorses for stamp duty purposes his or her professional opinion as to the value of the land), together with the Certificate of Title. The transfer is subject to a Stamp Duty tax of 1.5% of the value of the land.</p> <p>Note that a lease of more than 5 years granted to a non-citizen must by law (the Land Act) be registered. Alternatively, the non-citizen may obtain a tenancy of less than 3 years that is renewable upon expiry, in keeping with the requirements of the Registration of Titles Act, Cap. 230.</p> <p>If the parcels are held under un-registered tenancies, the tenancy is transferred by extinguishment and creation of a new one in favour of the new tenant. It is possible, however, to give the current tenant a right under the tenancy agreement to assign their tenancy to another person or family. This is an unusual, but not a prohibited clause.</p>	<p>https://ulii.org/akn/ug/act/2014/13/eng@2019-07-01).</p> <p>2. The Land Act, Cap. 227 https://ulii.org/akn/ug/act/1998/16/eng@2010-02-12);</p>
<p>14. Can the rights/membership in (13) be inherited, leased, rented, or sold?</p> <p>A lease can by law be inherited. It can also sub-leased/rented unless the head lease Agreement prohibits this and can be assigned/sold - usually with the consent of the lessor.</p> <p>A tenancy can be inherited. It can be sub-let if the head agreement allows for sub-letting. It cannot on the face of it be sold and transferred, however. Housing tenancy agreements in Uganda rarely provide for assignment of the tenancy by a tenant, although adding an assignment clause to them is not prohibited.</p> <p>It is also important to note that in relation to immovable property situate in Uganda, the inheritance laws applicable to citizens of Uganda also apply to refugees and their families. The principal law of succession in Uganda is the Succession Act, Cap. 162 (recently amended). This Act applies in respect of all immovable property (land and fixed buildings) in Uganda regardless of whether it is owned by a citizen or by a refugee, and regardless as well of the domicile of the deceased owner. Succession in respect of movable property in Uganda is, however, governed by the law of the country in which the deceased was domiciled at the date of their death. Where the deceased is considered to have taken up fixed habitation in Uganda at the time of their death, Uganda law will apply to the succession of the deceased's movable property.</p>	<p>Succession Act, Cap. 162 https://ulii.org/akn/ug/act/ord/1906/1/eng%402000-12-31)</p>

Remarks (please insert responses here)**Legal Basis (i.e., Link to legal sources)****15. What are the mechanisms and restrictions around the transactions in (14) and how are they monitored?**

Leases and transfers of registered leases (as with all other major land registrations) are processed by Ministerial Zonal Offices (MZOs) under the control of the Ministry of Lands, Housing and Urban Development. MZOs process submitted paperwork and effect registrations of interests in property. They also process requested land searches, caveat lodgements, and effecting of court orders relating to property.

On the other hand, less formal tenancy and licence agreements are entered into and governed by contract law. They are also enforceable before local courts, usually by Magistrates Courts.

The transfer of a lease is effected as follows:

1. The lessor’s consent to the assignment is obtained in writing;
2. The lessee then executes a transfer instrument in favour of the person taking the assignment;
3. The property is valued by the Chief Government Valuer for the purpose of payment of Stamp Duty (1% of the value of a first time lease, and 1.5% of the value of an existing lease being transferred). This value is indicated on an “Application for Consent to Transfer” Form that is addressed to the Commissioner Land Registration.
4. Upon due payment of all requisite fees and taxes (see table below), the documents are lodged with the relevant Ministerial Zonal Office, together with the Leasehold Certificate of Title for processing and registration.
5. Once the transfer is successfully registered, the lessee retrieves the Certificate of Title, which will contain their details as the new registered proprietor.
6. The transfer process typically takes 2 (two) to 3 (three) weeks.

We set out the official fees and charges below:

No.	ITEM	OFFICIAL FEES (excluding ancillary costs)
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Remarks (please insert responses here)			Legal Basis (i.e., Link to legal sources)
1.	Registration of a transfer	Ug. Shs. 30,000/= ⁶	
2.	Registration of a Consent to Transfer (Consent by the Commissioner for Land Registration)	Ug. Shs. 20,000/=	
3.	Stamp Duty	1% of the value of the lease, for the issuance of a leasehold Certificate of Title for the first time. 1.5% of the value of the lease in the case of a transfer of an existing lease.	
4.	Stamp Duty on the Lease Agreement	Ug. Shs. 15,000/=	

⁶ Finance Act, 2013.

4.4 Bangladesh⁷

Legal Framework for CLT in Bangladesh	
Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
1. Do your country's legal frameworks governing housing, land, or property allow for the establishment of CLTs and/or waqf?	
2. If so, what is the key legislation and any associated regulations?	
3. What kind of legal entity is allowed to establish a CLT and how are these created?	
4. What is the make-up of their membership and governing entities?	
5. Are there provisions to ensure the representation of women in these governance committees?	
6. Are refugees or IDPs legally allowed to be members of these governance entities/be members of the trust? Explain why.	
7. Would the lack of possession of legal identity documents prevent refugees, IDPs, or other undocumented communities from being members of the trust?	

⁷ Counsel in Bangladesh have provided no responses here and have indicated in the Executive Summary that there are no laws governing CLTs in their jurisdiction.

Legal Framework for CLT in Bangladesh

8.	What are the processes and procedures to establish CLTs, including any permits and fees?	
9.	What are the rights and responsibilities of CLTs, including taxes, obligations and fiduciary responsibilities?	
10.	For what purposes/uses are CLTs permitted? Housing (ownership vs rental, both short and long terms), Commercial, Agricultural or any other purpose?	
11.	Would refugees, IDPs, or host communities be legally allowed to own, lease or rent housing or commercial spaces contained within CLTs?	
12.	Would the lack of legal identity documents prevent individuals from entering into this type of agreements with CLTs?	
13.	How are rights to houses or parcels of land within CLTs transferred between parties?	
14.	Can the rights/membership in (13) be inherited, leased, rented, or sold?	
15.	What are the mechanisms and restrictions around the transactions in (14) and how are they monitored?	

4.5 Iraq

Legal Framework for CLT in Iraq	
Remarks (please insert responses here)	Legal Basis (i.e., Link to legal sources)
<p>1. Do your country's legal frameworks governing housing, land, or property allow for the establishment of CLTs and/or waqf?</p> <p>Iraq's legal framework allows the establishment of Waqf. However, it does not allow the establishment of CLTs. There are alternative rights in rem that provide long-term security of tenure without the community element such as; the right to benefit of property owned by others (Right of Habitation); and the right to have a long term lease that is registrable as an in-rem surface right to construct a building or other installations, other than plantations, on the land of another person pursuant to an agreement with the owner of the land setting down the rights and obligations of the holder of the right (Surface Right).</p>	<p>Iraqi Civil Code No.40 of 1951. https://iraqld.hjc.iq/LoadLawBook.aspx?SC=120120013721926</p>

Legal Framework for CLT in Iraq

<p>2. If so, what is the key legislation and any associated regulations?</p> <p>Articles (2-10) of the Regulation of Waqf Trustees No.46 of 1970.</p> <p>Article (256) of the Iraqi Real-Estate Registration Law No. 43 of 1971.</p> <p>Articles (14) & (1) under the Permission of Waqf Liquidation's Decree No.1 of 1955.</p> <p>Article (68) of the Iraqi Civil Code No.40 of 1951.</p> <p>Law of Waqfs Administration No.64 of 1966.</p>	<p>Regulation of Waqf Trustees No.46 of 1970. https://iraqlid.hjc.iq/LoadLawBook.aspx?page=2&SC=&BookID=10209</p> <p>Iraqi Real-estate Registration Law No. 43 of 1971. https://iraqlid.hjc.iq/LoadLawBook.aspx?page=26&SC=&BookID=8808</p> <p>Permission of Waqf Liquidation's Decree No.1 of 1955. https://iraqlid.hjc.iq/LoadLawBook.aspx?SC=120120017216950</p> <p>Iraqi Civil Code No.40 of 1951. https://iraqlid.hjc.iq/LoadLawBook.aspx?SC=120120013721926</p> <p>Law of Waqfs Administration No.64 of 1966. https://iraqlid.hjc.iq/LoadLawBook.aspx?SC=031220051346004</p>
<p>3. What kind of legal entity is allowed to establish a CLT and how are these created?</p> <p>Waqf is a concept adapted by Iraqi legislators based on Islamic Sharia similar to a Deed of Trust in English Law. The Settler owns real estate and is willing to put it under Waqf for another (the Beneficiary) to benefit from it whilst a Trustee administers the property for the benefit of the Beneficiary(ies). As a real estate disposition, Waqf must be registered at the Real-estate Registration Department.</p> <p>Waqf is a Right in Rem based on article (68) of the Iraqi Civil Code No.40 of 1951 and it is fundamentally based on charitable moral values, therefore, it is plausible for Iraqi authorities to allow Refugees to be registered as beneficiaries of a Waqf housing property.</p> <p>There are two types of Waqf, Hereditary and Charitable Waqf. Based on article (1) under the Permission of Waqf Liquidation's Decree No.1 of 1955. Hereditary Waqf is established when the Beneficiary party is specifically identified and only the identified individuals can</p>	<p>Iraqi Civil Code No.40 of 1951. https://iraqlid.hjc.iq/LoadLawBook.aspx?SC=120120013721926</p> <p>Permission of Waqf Liquidation's Decree No.1 of 1955. https://iraqlid.hjc.iq/LoadLawBook.aspx?SC=120120017216950</p>

benefit from the Waqf. Charitable Waqf is when the Beneficiary party is not specifically identified, as it can be a group or a class of people. The Governmental Waqf Department has standing to file claims regarding the administration of Charitable and Hereditary Waqf which includes all types of Waqfs property. However, we note that the Waqf Department is more likely to interfere in Charitable Waqf. This poses a risk, as the community cannot regulate itself independently without governmental interference.

Hereditary Waqf allows the Settler to revoke the Waqf and retake the property through an application to the Court of First Instance, which poses a risk to long-term security of tenure based on article (14) under the Permission of Waqf Liquidation’s Decree No.1 of 1955.

We should mention that there is no published statutory procedure for forming the said Waqf’s. The procedures vary between one real estate department and another, depending on where the land is located. Visits to the relevant real estate department will be required to determine the exact procedures.

4. **What is the make-up of their membership and governing entities?**

Based on article (2) of the Regulation of Waqf Trustees No.46 of 1970, Charitable Waqf which is slightly more regulated than Hereditary Waqf in practice must be administered by an individual that is selected through nomination of the Personal Status Court and a decision from the Scientific Council which is a formation within the relevant Waqf Department. In contrast, there are no explicit regulations regarding the appointment of Trustees in Hereditary Waqf, however, we note the practice is for one of the individual Beneficiaries to be the Trustee and for the Personal Status Court to step in if there is a dispute between the Beneficiaries.

In addition to any conditions that may be set by the Settler in the Waqf Deed, based on article (3) of the Regulation of Waqf Trustees No.46 of 1970, Charitable Waqf Trustee’s must pass an examination conducted by the Scientific Council regarding Waqf management, accountability, and the rules, laws and regulations that govern it.

Regulation of Waqf Trustees No.46 of 1970.

<https://iraql.d.hjc.iq/LoadLawBook.aspx?page=2&SC=&BookID=10209>

Legal Framework for CLT in Iraq		
5.	<p>Are there provisions to ensure the representation of women in these governance committees?</p> <p>Not applicable because there are no governance entities in this regard. However, there are no prohibitions precluding women from becoming Trustees of Waqfs.</p>	N \ A
6.	<p>Are refugees or IDPs legally allowed to be members of these governance entities/be members of the trust? Explain why.</p> <p>Not applicable as there are no governance entities in this regard. However, there are no prohibitions precluding non Iraqis from becoming Trustees in Waqf.</p>	N \ A
7.	<p>Would the lack of possession of legal identity documents prevent refugees, IDPs, or other undocumented communities from being members of the trust?</p> <p>Yes, because identification is required to follow up with governmental authorities and become a Trustee. Meanwhile in case of loss or damage, they can start issuing, updating or renewing documentation which is the most significant barrier to accessing documentation.</p>	<p>The practices of real estate registration departments.</p> <p>Iraqi Real-estate Registration Law No. 43 of 1971. https://iraql.d.hjc.iq/LoadLawBook.aspx?page=26&SC=&BookID=8808</p>
8.	<p>What are the processes and procedures to establish CLTs, including any permits and fees?</p> <p>Based on Article (256) of the Iraqi Real-Estate Registration Law No. 43 of 1971, Waqf for real estate is done by the registration at the Real-estate Registration Department pursuant to a Waqf deed or a final court ruling not based on admission. The Settler loses title and the registration is held in the name of the Settler and the Beneficiary whilst identifying the following; the type of Waqf either Charitable or Hereditary Waqf; its conditions as set by the settlor on creation of the Waqf; the Trustee or the Waqf Department who is the default trustee for charitable Waqafs if no Trustee is identified.</p>	<p>Iraqi Real-estate Registration Law No. 43 of 1971. https://iraql.d.hjc.iq/LoadLawBook.aspx?page=26&SC=&BookID=8808</p>
9.	<p>What are the rights and responsibilities of CLTs, including taxes, obligations and fiduciary responsibilities?</p>	<p>Regulation of Waqf Trustees No.46 of 1970. https://iraql.d.hjc.iq/LoadLawBook.aspx?page=2&SC=&BookID=10209</p>

The relationship between the Settler, the Beneficiary, and the Trustee is regulated by the Waqf Deed and Sharia jurisprudence and rules which are uncodified in Iraq.

The obligations of a Trustee towards the relevant Waqf Department and the Personal Status Court in Charitable Waqf are regulated by articles (5-10) of the Regulation of Waqf Trustees No.46 of 1970 and can be summarized as follows;

Duties of the Trustee:

1. Monitoring and maintaining Waqf property.
2. Maintaining the Waqf, notifications, and all official documents related to the Waqf under his management.
3. Registration of Waqf, notices, deeds, title deeds, maps and other documents related to the Waqf under his management in the Waqf departments, and real estate registration departments.
4. Keeping the following records, numbered according to their sequence, and certified by the Waqf departments:
 - A. A record of the items of movable and immovable Waqf property, showing their serial numbers, locations, and door numbers, according to the title deed entries, and indicating all actions that may occur.
 - B. A record of the Waqf's income and expenses.
5. To commit to spending the income according to the Waqf conditions.
6. To adhere to the payment of the relevant salaries according to the percentages specified for the salaries of the Waqf seized. If the endowment revenues do not allow this, he must refer to the endowment departments to determine the percentage of their salaries.
7. Investing charitable and Waqfs that are in disrepair by reconstructing them from the surplus of revenues or expropriation allowances and replacing them with real estate or cash, whichever is more beneficial for the Waqf when its benefit ends completely or when its expenses exceed its revenues.
8. The Diwan Department of Waqf's and the Trustee must refer to the Shari'a Court to obtain permission to disburse the allowances for expropriation and replacement of property attached to the Waqf property on purchase of properties registered according to an annex or the creation of Waqf lands in the title deed

- departments, each according to his share of those Waqfs. It is permissible to collect allowances for Waqf properties arrested for the purpose.
9. The trustee must deposit the following amounts with the Waqf Department in order to keep it on account of the Waqf:
 - A. What he receives from the rent allowances for the coming years, provided that he recovers what is related to each year when it falls, and he may, with the approval of the Board, borrow from these amounts for necessary Waqf matters.
 - B. The surplus of annual revenues, provided that it is recovered when it is necessary to spend it on an authority required by the interest of the Waqf and with the approval of the Board, unless the authority is for the trustee under the Waqf deed.
 10. The custodian shall not rent the Waqf property for a period of more than three years except with the approval of the Board, and he shall announce the rent in one of the local newspapers, if any, otherwise by the available advertising methods, and he shall conduct a public auction after the lapse of ten days from the day following the day of publication in a place and time he specifies in the advertisement, provided that he meets the deposits Not less than 10% (ten percent) of the fee allowance (similar to market rent).
 11. The Trustee may not change the type of exploitation of Waqf property except by a decision of the Board.
 12. The trustee may borrow for the Waqf if the interest of the Waqf so requires and with the permission of the personal status court.
 13. The trustee must pay the salaries of the Waqf departments and those working in the management of the Waqf, fees, taxes and other expenses of the Waqf under its administration at their specified times. If he refuses to pay, the department must warn him to pay within ten days. If he insists for no acceptable reason, the department takes possession of the Waqf and submits his matter to the Accounting Committee for consideration.
 14. It is permissible for the Trustee to allocate a remuneration for his administration of the Waqf, and the amount of which is determined by a decision of the Supreme Council, if he does not have allocations in the Waqf, provided that it does not exceed 10% of the amount received in any case.

Legal Framework for CLT in Iraq

	<p>While we do not have capacity to provide detailed tax advice, we expect that In practice a community Waqf would be taxed as a commercial activity</p>	
10.	<p>For what purposes/uses are CLTs permitted? Housing (ownership vs rental, both short and long terms), Commercial, Agricultural or any other purpose?</p> <p>Waqf is allowed for any purpose that is not contrary to Islamic Sharia and public policy including agricultural, commercial and residential uses. Historically, practices of Waqf in Iraq have developed around use of Waqf for Charitable and estate planning purposes. While the Trustee can use the property for commercial purposes to the benefit of the Beneficiaries, it has not been traditionally used by Settlers for commercial purposes because of the potential interference of the Governmental Waqf Department and the assumption of charitable intent of the Settler.</p>	<p>Sharia jurisprudence and rules which are uncodified in Iraq</p>
11.	<p>Would refugees, IDPs, or host communities be legally allowed to own, lease or rent housing or commercial spaces contained within CLTs?</p> <p>Once a property is put under Waqf, ownership of the Waqf property is frozen in all types of Waqf, which precludes anyone from holding title or owning the property. Leasing of Charitable Waqf property for more than three years requires the approval of the Scientific Council, which makes leases unsuitable to govern the relationship between the individual residents and the Trustee.</p> <p>Beneficiaries of Hereditary Waqf acquire non-transferable rights in rem, which allows them to occupy the Waqf property.</p>	<p>Sharia jurisprudence and rules which are uncodified in Iraq.</p> <p>Regulation of Waqf Trustees No.46 of 1970. https://iraqlid.hjc.iq/LoadLawBook.aspx?page=2&SC=&BookID=10209</p>
12.	<p>Would the lack of legal identity documents prevent individuals from entering into this type of agreements with CLTs?</p> <p>The relationship between Charitable Waqf and a Waqf Trustee who has legal control over the property is regulated by the Waqf deed, which can be drafted to address lack of identification documents. However, registration of individual Beneficiaries in Hereditary Waqf at the Real estate Registration Department requires identification documents.</p>	<p>Sharia jurisprudence and rules which are uncodified in Iraq.</p> <p>The practices of real estate registration departments.</p> <p>Iraqi Real-estate Registration Law No. 43 of 1971.</p>

Legal Framework for CLT in Iraq

		https://iraqlid.hjc.iq/LoadLawBook.aspx?page=26&SC=&BookID=8808
13.	<p>How are rights to houses or parcels of land within CLTs transferred between parties?</p> <p>Charitable and Hereditary Waqf vests control of the property in the Trustee, which precludes the Beneficiaries from transferring their rights.</p>	Sharia jurisprudence and rules which are uncodified in Iraq.
14.	<p>Can the rights/membership in (13) be inherited, leased, rented, or sold?</p> <p>The rights of Beneficiaries in Hereditary Waqf automatically transfers to their heirs upon death and Hereditary Waqf can be liquidated. Furthermore, no transfer of rights is possible in a Charitable Waqf contest.</p>	
15.	<p>What are the mechanisms and restrictions around the transactions in (14) and how are they monitored?</p> <p>Not applicable.</p>	N \ A

4.6 Colombia

Legal Framework for CLT in Colombia					
Remarks (please insert responses here)			Legal Basis (i.e., Link to legal sources)		
1.	<p>Do your country’s legal frameworks governing housing, land, or property allow for the establishment of CLTs and/or waqf?</p> <p>Colombian real estate law does not allow for the establishment of CLTs or waqf, as these are common law and Islamic law institutions with no analogue in Colombia’s civil law system:</p> <p>A. While CLTs are based on separating ownership over the land (held by the trust) from a conditional ownership of the housing unit (held, in this case, by the IDP), Colombian law provides that any improvements or constructions are indivisible from the land they sit on and are, therefore, owned by whoever owns the land (a principle locally known as <i>accesión</i>). This means that title to the real estate cannot be legally split between the trust and its beneficiaries. Either the trust holds the real estate while granting tenancy to IDPs or IDPs are themselves owners of the entire real estate with the trust out the scheme.</p> <p>B. Whereas CLTs and waqfs are intended as communal forms of ownership, Colombian law only recognizes such collective titles (locally known as <i>propiedad colectiva</i>) to indigenous or Afro-American communities. IDP communities are not recognized as such for collective title purposes. Thus, title to the real estate rests with a single person (natural or legal entity).</p> <p>Nonetheless, Colombian law does provide an alternative that could partially mirror the functioning of CLTs or waqf: using a non-profit to directly hold title to the land instead of a trust, while granting tenancy to the IDPs. In particular:</p> <p>A. The non-profit could be incorporated and/or managed by the IDP community or an NGO.</p> <p>B. The real estate would be conveyed to the non-profit by a third party either as a donation or a purchase, or by the community itself.</p> <p>C. The non-profit would grant tenancy under either of the following contracts:</p>			<p>Colombian Civil Code: https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=79140</p>	
	COMPARISON	LEASE	USUFRUCT	BAILMENT	

Legal Framework for CLT in Colombia

CRITERIA	(COMODATO)		
REQUIRES DEED FILED ON PROPERTY RECORDS?	No	Yes	No
MAXIMUM TERM	Indefinite	Lifetime of the IPD	Indefinite
FREE OF CHARGE TO IDP?	No, but below market rent could be charged	Yes	Yes
INHERITABLE TENANCY?	Yes, unless agreement provides otherwise	No.	Yes, unless agreement provides otherwise
EASENESS OF NON-PROFIT REVOKING TENANCY	Low	Low	High

2. **If so, what is the key legislation and any associated regulations?**

As stated above, there is no provision in Colombian law allowing for the establishment of CLTs.

Regarding incorporation of non-profits, relevant laws provide for incorporation proceedings, tax and other obligations, and the transfer of real estate to the non-profit.

Colombian Civil Code:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=79140>

Law 222 of 1995:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=14940>

National Decree 4400 of 2004:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=15581>

Decree 1074 of 2015:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=76608>

3.

What kind of legal entity is allowed to establish a CLT and how are these created?

Any person, including foreigners, may incorporate a non-profit. Colombian law provides no special restriction or requirement on these matters. The procedure for incorporating a non-profit is as follows:

- (i) Drafting and execution of the articles of incorporation (in Colombia these are the same as the bylaws). The articles of incorporation may be executed by means of a private document, in which case the document must be notarised. In addition, if the document is notarised abroad (outside of Colombia), the notary public’s certificate or seal must be apostille. Alternatively, the founders may request a notary public to execute a public deed of incorporation. In both cases, a copy of the founders’ ID document must be attached or presented.
- (ii) The articles of incorporation must be accompanied by letters of acceptance signed by the individuals appointed as board members and legal representatives of the non-profit, and a copy of their ID documents, as well as a commercial registration form and a tax registration form, containing the organization’s basic information (address, phone number, commercial activity, etc.).
- (iii) Registration of the articles of incorporation and ancillary documents and forms with the local chamber of commerce. Registration is subject to a fee, the amount of which will vary depending on the type of non-profit and the initial capital contribution to be made by the founders or members. Please note that members of corporations (in Colombia “*corporaciones*” are not commercial companies) and associations are not required to make capital contribution for incorporation, whereas members of foundations are required to have make an initial capital contribution for incorporation; however this amount could be as low as USD 1.00.⁸
- (iv) Usually, the corresponding chamber of commerce will submit the tax registration form and other information to the national tax authority, *Dirección de Impuestos y Aduanas Nacionales* (DIAN), and the DIAN will issue a tax identification number (TIN or “NIT” for its acronym in Spanish). However, occasionally there are some communications issued between these two entities and one must request a tax ID (NIT) and register the non-profit (*registro único tributario*) directly with the DIAN.

Colombian Civil Code. Article 19:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=39535>

The Political Constitution of Colombia. Article 100:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4125>

⁸ The registration fee for corporations or associations without an initial capital contribution is approximately USD 45.00, while the registration fee for non-profits with an initial capital contribution is 0.7% of the amount of the initial capital contribution.

Legal Framework for CLT in Colombia

	<p>Conveyance of the real estate to the foundation. If done as a donation, notary and registration fees will be less than USD 250 (two hundred and fifty United States Dollars). If purchased or otherwise not done free of charge, notary and registration fees will amount to about 3.5% of the conveyance's consideration.</p>	
<p>4.</p>	<p>What is the make-up of their membership and governing entities?</p> <p><u>Membership:</u></p> <p>Any private or public entity or person can be a member of the non-profit. However, note that the non-profit could be structured to have the beneficiary IDPs (i) not be members, but rather simple beneficiaries of a property managed in their benefit by the non-profit management (a foundation), or (ii) be members of a community of beneficiaries engaged in a collective purpose – farming, forestry, etc. – and where each contributes its parcel for such main purpose with housing being a secondary one (a <i>corporación</i> or <i>asociación</i>).</p> <p><u>Governing bodies:</u></p> <p>In the case of non-profits, Colombian law does not provide for a mandatory governance structure. Therefore, the make-up of membership and governing bodies is freely determined by the rules agreed upon in the respective bylaws (which can be amended at any time by the member's assembly).</p> <p>As such, the founders or members can choose whether or not to create a board of directors and what duties and powers the board shall have (e.g. budget approval, appointment and supervision of the legal representative, etc.). In addition, the legal representation of legal entities in Colombia is held, not by the chairman of the board like in many other countries, but by the appointed legal representative. The legal representative shall have the powers and limitations set forth in the bylaws. It is very common to limit the powers of legal representatives in respect of execution of agreements; for instance, requiring the legal representative to request approval from the board of directors or member's assembly in order to execute agreements the amount of which exceeds a certain threshold.</p> <p>An additional board or assembly comprising IDP tenants could be created to allow them collective representation within the governing bodies of the non-profit.</p>	<p>Law 222 of 1995: https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=14940</p> <p>Colombian Civil Code. Article 34: https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=39535</p>
<p>5.</p>	<p>Are there provisions to ensure the representation of women in these governance committees?</p> <p>Colombian law does not require corporate, non-profit, or trust governing bodies to ensure equal representation. Although provisions ensuring diversity could be included on incorporation documents and while Colombian law recognizes freedom of association and freedom of</p>	<p>None.</p>

Legal Framework for CLT in Colombia

contract/association principles, there is no court precedent regarding the lawfulness or enforceability of such provisions.

6. **Are refugees or IDPs legally allowed to be members of these governance entities/be members of the non-profit? Explain why.**

Refugees or IDPs are legally allowed to be members and/or beneficiaries of the non-profit and participate in its governing bodies. Colombian law affords them the same legal capacity as any citizen.

Decree 2840 of 2013, article 1:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=76610>

Law 2136 of 2021, article 2:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=168067>

7. **Would the lack of possession of legal identity documents prevent refugees, IDPs, or other undocumented communities from being members/beneficiaries of the trust?**

Non-possession of ID documents would not prevent refugees or IDPs from being beneficiaries of the housing opportunities to be provided as the validity of any contract or agreement granting them such benefits would not be affected by lack of such ID documents if such documents are executed by private document instead of deed.

Conversely, non-possession of ID documents would prevent refugees or IDPs from executing any contract by deed, as Colombian law requires notaries to check ID documentation from the persons parties to the contract by deed and, if applicable, their representatives. Also, refugees or IDPs not in possession of ID documents would not be able to grant powers of attorney for a third party to execute such deeds on their behalf, as the powers of attorney must be notarized as well.

Similarly, lack of ID documents would prevent them from participating in the incorporation of the vehicle or participating in governing bodies, since Colombian law requires notary and/or registrars involved in the incorporation process to check ID documentation from those signing the incorporation instruments and being named board members or legal representatives of the entity.

Nevertheless, IDPs who have lost their ID documents can request a duplicate by either filing a request for a duplicate ID online at https://epagos.registraduria.gov.co/tramites_web/ or scheduling an appointment with a local registrar office at

Law-Decree 960 of 1970:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=149249>

Decree 2840 of 2013, article 14:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=76610>

Law 2136 of 2021, article 59:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=168067>

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<https://agenda.registraduria.gov.co/agenda/index.php>. A fee of approximately USD 15 will have to be paid before filing is completed.

Refugees, on the other hand, would have to request for new ID documents from their respective governments through their respective embassies or consulates. We highlight, however, that refugees that have been issued Colombian residency documents — *permisos especiales de permanencia* or visas, for instance — can request free duplicates at *Migración Colombia* offices.

While NGOs cannot file on their behalf, they can advise IDPs or refugees on the steps to obtain duplicate ID documents. NGOs could also coordinate with local officials to allow for faster response times on the petitions filed by IDPs or refugees.

8. **What are the processes and procedures to establish CLTs, including any permits and fees?**
See answer to question No. 3, above.

See question N° 3, above

9. **What are the rights and responsibilities of CLTs, including taxes, obligations and fiduciary responsibilities?**
In general, non-profits have the same obligations as a for-profit company:

- (i) Record all the amendments to the bylaws or appointments on the board or legal representative positions in the local chamber of commerce.
- (ii) Maintain proper books and records, including financial statements. Members will, as of right, be able to inspect them.
- (iii) Submit financial statements to the *Superintendencia de Sociedades*, the Colombian corporate regulator.
- (iv) Submit all information required by local and national authorities.
- (v) Manage the non-profit's assets consistent with the non-profit's bylaws and purpose, in a faithful, transparent, the due diligence of a good businessperson, and good faith manner.

File tax returns and pay VAT and income taxes. VAT is charged for the provision of goods and services; leases being taxed at a 19% rate. Income taxes are charged at a 20% rate if the non-profit indeed operates for charitable purposes, and at 0% if it furthermore reinvests all earnings in the charitable activity.

Law 454 of 1998, articles 4, 5, 13:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=3433>

Colombian Tax Statute (*Estatuto Tributario*):
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=6533>

National Decree 4400 of 2004:
<https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=15581>

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10.	<p>For what purposes/uses are CLTs permitted? Housing (ownership vs rental, both short and long terms), Commercial, Agricultural or any other purpose?</p> <p>The non-profit may engage in any lawful undertaking, subject to not being able to distribute earnings among its members (as a for-profit company would do). Any restrictions are imposed by its own bylaws and the zoning and land use rules governing the property.</p> <p>For instance, the non-profit could restrict its own capacity to enter into tenancy agreement to those agreements allowing only housing for IDPs, and this would be subject to the local zoning allowing for housing to be provided in the property.</p>	<p>There is no provision on Colombian statute explicitly establishing the undertakings non-profits may engage in. Our answer is based on general principles of law.</p>
11.	<p>Would refugees, IDPs, or host communities be legally allowed to own, lease or rent housing or commercial spaces contained within CLTs?</p> <p>Any person legally considered an adult (older than 18), regardless of its refugee status, would be legally allowed to lease or rent the spaces owned by the non-profit. Minors (ages 14 to 18) could also rent or lease, through their parents or legal guardians.</p> <p>On the other hand, since ownership of the real estate would be vested in the non-profit, IDPs or refugees would not be able to hold title to the buildings or houses located there.</p> <p>Please note that Colombian law considers all children born within the country's borders as Colombians, if at least one of their parents is either a Colombian citizen or a foreigner able to evidence that they reside in the country by, for instance, being employed in Colombia or maintaining their household residency (<i>hogar doméstico</i>) in Colombia, circumstances unlike those of a tourist or a mere business traveller.</p>	<p>Law 2136 of 2021, articles 3, 4: https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=168067</p> <p>The Political Constitution of Colombia. Article 13: https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4125</p>
12.	<p>Would the lack of legal identity documents prevent individuals from entering into this type of agreements with CLTs?</p> <p>Lack of legal ID documents may not prevent individuals from entering into tenancy agreements with the non-profit so long the agreement is not executed by deed, as notaries must verify ID documentation of all the deed's grantors.</p>	<p>Decree 960 of 1970, article 3: https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=149249</p> <p>Decree 2148 of 1983, article 11: https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1408127</p>

<p>13.</p>	<p>How are rights to houses or parcels of land within CLTs transferred between parties?</p> <p>Since the non-profit would only grant IDPs tenancy rights over the houses or parcels (ownership of land and houses/parcels would be always vested in the non-profit), the respective agreements could be assigned from current to new tenants by a simple assignment document. If the agreement is contained in a deed, the assignment must also be done by deed.</p> <p>Under freedom of contract principles as recognized by Colombian law and courts, language requiring prior vetting and authorization from governance bodies before such an assignment takes place could be added to the tenancy agreements, as appropriate.</p> <p>On the other hand, note that Colombian law doesn't recognize non-profits as being able to issue transferable interests to members like a stock company (<i>sociedad</i>) would do. New members may be able to join only by meeting the criteria (including the performance of any contributions) set forth in the bylaws.</p>	<p>Decree 960 of 1970, articles 12, 31, 32: https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=149249</p> <p>Colombian Civil Code, article 754: https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=39535</p>
<p>14.</p>	<p>Can the rights/membership in (13) be inherited, leased, rented, or sold?</p> <p>Under Colombian law, leases or bailments can be inherited, sublet or assigned. That is:</p> <ul style="list-style-type: none"> A. Tenants will be replaced by their heirs upon death, unless the agreement provides otherwise or the tenancy was granted as a usufruct – in which case, the law bars its inheritability. B. Tenants may sell or assign free of charge the tenancy to a third party. The agreement between the tenant and its assignee will only be enforceable against the non-profit if approved by the non-profit. The tenancy agreement can impose on tenant an assignment procedure requiring prior vetting and approval of any assignee from the non-profit. 	<p>Colombian Civil Code, article 24, 673, 1008, 1019, 1974, 2004: https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=39535</p>
<p>15.</p>	<p>What are the mechanisms and restrictions around the transactions in (14) and how are they monitored?</p> <p>Colombian law provides that:</p> <ul style="list-style-type: none"> A. Heirs will succeed tenant in his/her rights under the tenancy agreement by a probate proceeding. In such a proceeding, a court – or a notary, if all heirs agree on a distribution of the estate – will determine who will hold the tenancy rights. B. Sublease or assignment requires consent from the landlord unless the tenancy agreement provides otherwise. 	<p>Colombian Civil Code, article 24, 673, 1008, 1019, 1974, 2004: https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=39535</p>

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Ideally, the tenancy agreement the non-profit will enter into with the IDP would contain provisions regulating each scenario – for example, providing the entity with veto over each new tenant or providing that the agreement will terminate upon death of the IDP.

5. Appendices⁹

A. NIGERIA

APPENDIX A1

1. PROCEDURE AND DOCUMENTATION FOR THE INCORPORATION OF A COMPANY LIMITED BY GUARANTEE

1.1 PROCEDURE AND DOCUMENTATION

- (a) A name is chosen for the company, and an application for Registrar-General's consent to the name is submitted to the Registrar-General (“**RG**”) of the CAC (**Timeline**: 1 working day);
- (b) The RG's consent is, thereafter, obtained. If the RG consents to the name a notice of approval will be issued by the CAC, stating that the name is reserved for a period of 60days (**Timeline**:10 working days);
- (c) In the meantime, prepare the Memorandum and Articles of Association of the company. Nigerian company law requires a company limited by guarantee to have at least two members and two directors. (**Timeline**: 3-5 working days);
- (d) Members of the company are required to provide an undertaking to contribute to the assets of the company in the event of the company being wound up;
- (e) The total liability of a member to make to this contribution is required under CAMA to be not less than ₦100,000.00 (one hundred thousand Naira);
- (f) The Memorandum and Articles of Association of the Company will be submitted to the CAC together with the following documents:
 - (i) A statement of the particulars of the initial directors of the company, of which there must be at least two;
 - (ii) A notice of the situation of the registered office of the company; and
 - (iii) A declaration, sworn to by an applicant/ lawyer, confirming that all matters preliminary to the registration of the company have been complied with;

⁹ Please include an additional information which may be required for your response, e.g., lengthy procedural matters.

- (h) Form of identification for the Directors and members (if individuals) in the form of copies of data page of passports (**Timeline:**1 working day);
- (i) Filing fees and stamp duties are thereafter paid (**Timeline:**1 working day);
- (j) A copy of the Memorandum and Articles of Association of the company is submitted by the CAC to the office of the AG Fed for his review and approval. Where the approval of another government agency is also required, the Memorandum and Articles of Association of the Company will also be submitted to the relevant government agency (**Timeline:** 1 working day);
- (k) After the approval of the AGF (and any other relevant agency) has been obtained, the Memorandum and Articles of Association of the company are returned to the CAC for further action (**Timeline:** Difficult to estimate especially where queries are raised on the Memorandum and Articles of Association);
- (l) If the application is approved by the CAC, a certificate of incorporation will be issued, and the company can commence its activities (**Timeline:** 2-3 working days).

1.2 Costs

S/N	Item	Fees ¹⁰
1.	Filing fee for RG's consent	5,000.00 (approximately US\$12)
2.	Stamp Duty payable to the Federal Inland Revenue Service, on the Memorandum and Articles of Association (four copies at ₦500.00 a copy)	2,000.00 (approximately US\$5)
3.	Filing Fees at the CAC including cost of certified true copy of first incorporation documents	20,000.00 (approximately US\$49)

¹⁰ Converted to the US Dollar at the rate of N411.23 to US\$1.00.

APPENDIX A2

REGISTRATION OF INCORPORATED TRUSTEES IN NIGERIA

1. Procedure

- i) Apply for the consent of the Registrar-General and conduct a search at the CAC to ascertain the availability of the proposed name for the purpose of ensuring that the proposed name does not conflict with another organisation's name, company name, business name or trademark registered in Nigeria. Upon confirmation that the name is available, the name is reserved by the CAC for a period of 60 days.
- ii) Draft a constitution in the CAC's standard format for the organisation, which should, in addition to any other specific matters, include provisions dealing with:

- a. appointment, powers, duties, tenure of office and replacement of Trustees;
 - b. the device, use and custody of the common seal of the organisation if it chooses to have one;
 - c. the meetings of the organisation;
 - d. the number of members of the governing body, if any, the procedure for their anointment and removal, and their powers;
 - e. the classification of the organisation; and
 - f. where subscriptions and other contributions are to be collected, the procedure for the disbursement of the funds of the organisation, the keeping of accounts and the auditing of such accounts.
- iii) A public notice will be published in 2 national newspapers, one of which must be in circulation in the locality where the organisation is to be situated, inviting objections, if any, from the public to the setting up of the organisation. This, in our experience, is usually a mere formality, as objections are rare. The duration allowed for objections to be raised is usually 28 days from the date of the last publication in the newspapers.
- iv) If there are no objections, an application is prepared in the prescribed form (these are standard forms) providing the following information.
- a. the name or title of the proposed incorporated trustees;
 - b. the aims and objectives of the organisation, which must be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose and must be lawful; and
 - c. the names, address and occupations of the first trustees and the secretary of the organisation if any.
- v) The application must be submitted with the following documents;
- a. two signed copies of the constitution of the organisation;
 - b. duly signed copies of the minutes of the meeting appointing the trustees and authorising the application, showing the people present and the voting pattern at the meeting;
 - c. a copy of the minutes of a meeting where a special clause was adopted stating that “in the event of winding up of the organisation the assets and liabilities shall be transferred to an organisation having similar aims and objective as their organisation”;
 - d. the impression or drawing of the proposed common seal, if it elects to have one;

- e. the application is usually signed by the president and the secretary of the organisation;
 - f. Trustees Declaration Form deposited to by each of the Trustees;
 - g. applicants verification of statements showing that the statements made are correct;
 - h. form of identification for the Trustees, which could be copies of driver’s licence or national ID card, where they are Nigerians, or data page of international passports; and
 - i. copies of the newspaper publications.
- vi) Where any objection is raised, the CAC may consider these and require the person(s) raising the objection and the applicants to provide further information. The CAC has the discretion to uphold or reject the objection, as it considers fit, and will inform the applicants accordingly.
 - vii) Where no objection is received within the specified period, or where it is rejected, the CAC may grant the application or withhold its grant.
 - viii) Where the CAC grants the application, it will register the organisation as incorporated trustees, and issue the trustees with a certificate of registration in the prescribed form.
 - ix) The incorporated trustee is also required to register with the NPC post-incorporation.

2. Timing

In our experience, the process of registering incorporated trustees can be completed within approximately three months from the date of the submission of a completed application form accompanied by all necessary documentation to the CAC.

3. Cost of Registration

S/N	ITEM	Fees ¹¹
1.	CAC filing fee including cost of certified true copy of first registration documents.	₦35,000.00 (approximately US\$85.11)
2.	Cost of Reservation of Name	5,000.00 (approximately US\$12.16)

¹¹ Converted to the US Dollar at the rate of ₦411.23 to US\$1.00.

3.	Cost of advertisement in 2 Newspapers	150,000.00 ¹²
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APPENDIX A3

POST-INCORPORATION APPROVALS

1.1 TAX REGISTRATIONS

The company/incorporated trustee is required to be registered with the relevant tax authorities for tax purposes. The company/incorporated trustee would automatically be issued a Tax Identification Number (“**TIN**”) at incorporation. The CAC has introduced a system that integrates its operations with the operations of the Federal Inland Revenue Service (“**FIRS**”) regarding the issuance of TIN to companies. As a result, the Certificate of Incorporation would reflect the company’s TIN issued by the FIRS. The company/incorporated trustee, after incorporation, makes an application to the relevant tax office requesting a Tax Clearance Certificate (“**TCC**”). The procedures and requirements for processing these tax registrations are as provided below.

1.1.1 STEP BY STEP PROCEDURE AND DOCUMENTATION

- (a) Application is made to the Tax Controller, FIRS, together with the following documents:
 - (i) Duly completed FIRS Taxpayer Registration Input Form;
 - (ii) Duly completed application form for TCC (in triplicate);
 - (iii) Letter addressed to the FIRS providing the required responses to the FIRS standard questionnaire;
 - (iv) Copy of the Certificate of Incorporation;
 - (v) Copy of the Memorandum and Articles of Association; and
 - (vi) Copy of the Form CAC 1.1(Application for registration of company).

¹² This is an estimate and may vary depending on the newspaper.

- (b) The tax authorities would need to sight the originals of items(iv), (v) and (vi).
- (c) The FIRS recently introduced an online service for registering and obtaining a TCC. As a result, the FIRS will send an email to the registered email address of the company provided at incorporation, with login details that will enable the company to register and to request the company's electronic Tax Clearance Certificate (“**E-TCC**”).
- (d) The E-TCC is usually issued within four to six weeks from the date of application.

1.2 SPECIAL CONTROL UNIT AGAINST MONEY LAUNDERING REGISTRATION

The principal legislation that governs the Special Control Unit Against Money Laundering (“**SCUML**”) registration is the Money Laundering (Prohibition) Act 2011, Prevention of Terrorism Act (PTA) 2011 and the SCUML Regulations. Under the SCUML regulation, all designated non-financial businesses and professions such as dealers in jewelry, cars and luxury goods, precious stones and metals, real estate, estate developers, estate surveyor and valuers, estate agents, chartered accountants, audit firms, tax consultants, clearing and settlement companies, hotels, casinos, supermarkets, dealers in mechanised farming equipment and machinery, practitioners of mechanised farming, construction companies, accountants and accounting firms, consultants and consulting companies, trust & company service providers, NGOs or such other businesses as the Federal Ministry of Trade and Investment or appropriate regulatory authorities may from time to time designate, are required to obtain the SCUML certificate.

1.2.1 STEP BY STEP PROCEDURE AND DOCUMENTATION

- (a) The registration is carried out through the SCUML online registration platform.
- (b) The name of the company/enterprise/NGO, registration number, date of registration, tax identification number, the category of the non-financial business or profession, description of the business, head office address, state the business is operating from, phone number, email address and names of the directors are required fields to be completed on the online registration form on the platform.
- (c) The following documents are required to be uploaded on the platform:
 - (i) Certificate of Incorporation/Registration;
 - (ii) Memorandum and Articles of Association/ Constitution of the incorporated trustee;
 - (iii) CAC Status Report issued following the company / the incorporated trustees’ incorporation;
 - (iv) Evidence of tax registration;
 - (v) Signed copy of the Host Country Agreement (for NGOs with a foreign parent entity);

- (vi) Company bank account number;
 - (vii) Bank name; and
 - (viii) Company's Bank Verification Number (“**BVN**”) or the BVN of one of the directors of the company.
- (c) The documents would be scanned as one pdf file not exceeding 2MB or 2000KB before uploading on the portal.
- (b) Upon the successful approval of the application, the NGO will undergo a sensitisation session, and the company's original certificate of incorporation must be sighted before the collection of the SCUML certificate.

1.3 NATIONAL PLANNING COMMISSION REGISTRATION

The National Planning Commission (“**NPC**”) is the agency that has the responsibility of managing multilateral and bilateral economic co-operation, including development aid and technical assistance and as such the NPC is empowered to make policies and regulations in this regard. All NGOs and NGO-related entities who intend to operate in Nigeria are, therefore, required to be registered with the NPC. Upon registration with the NPC, the registered entity will be entitled to 3 expatriate quota positions only. The NPC will, thereafter, grant the registered entity an exemption from paying import duty on goods and equipment imported for executing its aims and objectives. The benefits of registration with the NPC, however, do not include tax exemption, as the registered entity can only obtain such exemption from the FIRS.

1.3.1 STEP BY STEP PROCEDURE AND DOCUMENTATION

- (a) The NPC registration form is completed and submitted to the NPC with the following documents:
- (i) A letter addressed to the Honorable Minister for Budget and National Planning requesting to be registered with the NPC;
 - (ii) A brief profile of company and its offshore parent company;
 - (iii) A copy of the registration certificate from the country of origin of the parent company;
 - (iv) A Power of Attorney from the parent company designating the local company as its representative in Nigeria;
 - (v) A mission order for the company to operate in Nigeria on behalf of the offshore parent company;
 - (vi) The names and addresses of the members of the NGO as reflected on its CAC documents;

- (vii) 6 hard and soft copies of the draft Host Country Agreement;
 - (viii) The Memorandum and Articles of Association of the company; and
 - (ix) A copy of the company's Certificate of Incorporation.
- (c) The application process is free and typically takes between 3-6 months to complete.

B. UGANDA

APPENDIX B1

INCORPORATING A COMPANY LIMITED BY GUARANTEE:

The requirements for the registration of a Company Limited by Guarantee are as follows:

- i. 3 alternate, preferred names of the intended Company. In the event that one name is found to be too similar to an existing name, or the Registrar of companies deems the suggested name to be undesirable, the alternative names may be considered.
- ii. Details of the main objects of the company. It is important to make it clear in the objects that the Company is intended to operate CLTs (as Trustee) and to achieve incidental objectives.
- iii. Details of the persons that are to be members in the company, i.e., their full names, addresses, dates of birth, nationality, occupation and passport size photographs. The members need not be natural persons. They may also be artificial entities such as other companies or corporate bodies that are in their governing Constitution permitted to become members in the intended Company Limited by Guarantee.
- iv. Details of the persons that are to be the directors of the company, i.e., their full names, addresses, dates of birth, nationality, occupation and passport size photographs.
- v. Details of the person who is to be the Company Secretary, i.e. their full name, postal address. In case of a Corporate Secretary, the applicants for registration are required to indicate the corporate name and registered address of the intended Corporate Secretary; and
- vi. Details of the registered office of the company, i.e., its postal and physical address (plot number, building and street name).

The above information is included in a set of company incorporation documents that are registered at the Companies Registry operated by the Uganda Registration Services Bureau, a Government Entity. These company incorporation documents include:

- i. Memorandum and Articles of Association;
These documents are the constitutional documents of a company. The Memorandum of Association contains the objectives of the company, its members, and the amounts that those members each undertake to contribute to the assets of the Company upon its being wound up. On the other hand, the Articles of Association guide the regulation of the Company's internal affairs/management. As such, they also govern the conduct of the Board of Directors, the holding of members' meetings, the powers and duties of directors, the borrowing powers of the Company, and other important details.

The objectives stated within the Memorandum of Association should clearly articulate the principal aim of the Company operating a CLT and acquiring property for the benefit of refugees and their families.

By virtue of their being filed at the Companies Registry, the Memorandum and Articles of Association are public documents.

The other company incorporation documents are:

- ii. Company Registration Form (Found under the Second Schedule to the Companies Act, 2012);
- iii. Notice of Situation of Registered Physical Office and Postal Address (Company Form 18); and
- iv. Notification of Appointment of Directors and Secretary of the Company (Company Form 20).

The timeframe for registration of the company incorporation documents detailed above is between 2 to 5 business days from the date of lodging the wet ink signed versions of the company incorporation documents with the Uganda Registration Services Bureau.

The fees payable in respect to the incorporation of the company are as follows:

NO.	ITEM	OFFICIAL FEES (excluding ancillary expenses)
1.	Name reservation ¹³	Ug. Shs. 20,000/= (approximately USD 6)
2.	Registration fees for a Company Limited by Guarantee	Ug. Shs. 80,000/= (approximately USD 23)
3.	Stamp Duty on the Articles of Association of the Company	Ug. Shs. 15,000/= (approximately USD 4)
4.	Stamp Duty on the Memorandum of Association of the Company	Ug. Shs. 15,000/= (approximately USD 4)
5.	Where the company is incorporated with a share capital, Capital Duty	0.5% of the total value of the company's nominal share capital

Once the Company has been incorporated, an application must then be made to the NGO bureau. This particular process shall be discussed after the following section on the incorporation of trustees.

¹³ Schedule 1 to the Finance Act, 2013.

APPENDIX B2

INCORPORATING A TRUST

The process involved in the incorporation of trusts in Uganda is governed by the **Trustees Incorporation Act, Cap. 165** and the **Trustees Incorporation Rules, S.I. 165—1** and is as follows:

- i. A Trust Deed is executed to create a trust and also appoint trustees, in this case for the defined purpose of operating a CLT. The trustees may also be appointed by different instruments not being the Trust Deed but deriving authority from it. Under the Trustees Incorporation Act, Cap. 165, only trusts created by bodies and associations established for a religious, educational, literary, scientific, **social, or charitable** purpose are covered and allowed to seek incorporation of their Trustees. In this case, the intended purpose can be categorised as a social and charitable one.
- ii. The settlor or creator of the Trust may be the NRC and other partners.
- iii. The appointed Trustees then apply to the Minister of Lands, Housing and Urban Development, through the Commissioner for Land Registration, for incorporation into a body corporate;
- iv. The Application follows Form 1 to the First Schedule of the Trustees Incorporation Rules, S.I. 165—1 and contains the following attachments and particulars amongst others:
 - a. The details of the appointed Trustees and information pertaining to the qualifications, tenure, mode or appointment and removal of Trustees;
 - b. Information concerning the appointing body or association of persons such as their objects, rules and regulations, and constituting documents;
 - c. The Trust Deed and Deed of Appointment of the Trustees;
 - d. Certified copies of minutes for meetings at which relevant resolutions were made;
 - e. Draft Regulations for the custody and use of the Common Seal; and
 - f. A Proposed Common Seal.
- v. If the Minister considers the incorporation of the Trustees expedient, he or she issues a Certificate of Incorporation containing such directions as he or she may deem fit in relation to the qualifications, number, tenure, mode of appointment, and removal of trustees; the custody and use of the Common Seal; and the amount of land that the Trustees may hold and the purposes for which they may hold it.
- vi. A fee of Ug. Shs. 10,000/= (Uganda Shillings Ten Thousand) is payable upon the issuance of the Certificate of Incorporation.

- vii. The Certificate of Incorporation, upon issuance, vests in the Incorporated Trustees the estate and property that they hold in trust. Consequently, the registration of the various properties under that estate is to be changed to registration of the Incorporated Trustees as the proprietor.
- viii. Within one month after the expiry of every five-year term after incorporation, or whenever required by the Minister, a return must be made to the Minister containing the names of current trustees and their residences and additions.

The fees involved are as follows:

No.	Item	Official costs (excluding ancillary expenses)
1.	Stamp Duty on Trust Deed	Ug. Shs. 15,000 (approximately USD 4)
2.	Stamp Duty on instrument of appointment of trustee(s)	Ug. Shs. 15,000 (approximately USD 4)
3.	Application for incorporation	Ug. Shs. 20,000/= (approximately USD 6)
4.	Issuance of a Certificate of Incorporation	Ug. Shs. 10,000/= (approximately USD 3)

Once the trustees have been incorporated, an application must then be made to the NGO Bureau for the registration of the incorporated body of trustees as an NGO.

APPENDIX B3

REGISTRATION OF A NON-GOVERNMENTAL ORGANISATION (NGO)

The process of registering an NGO commences after the incorporation of a Company Limited by Guarantee or the incorporation of trustees as described above.

The Application for registration as an NGO is made by filling and lodging the Application Form A under the Schedule to the Non-Governmental Organisations Regulations, 2017, and accompanying it with the following documents and information:

- i. A certified copy of a certificate of incorporation of the organisation seeking to register as an NGO;

- ii. A copy of the organisation's constitution or governing documents;
- iii. A chart showing the governance structure of the organisation;
- iv. Proof of payment of the prescribed fee;
- v. Source of funding for the activities of the organisation;
- vi. Copies of valid identification documents for at least two founder members;
- vii. Minutes and resolutions of the members authorising the organisation to register with the NGO Bureau;
- viii. Statement specifying the organisation's foreign staff requirement, requirements of Ugandan counterparts of foreign employees and indicating the period of replacement of its foreign employees with qualified Ugandans if applicable;
- ix. a recommendation from the District NGO Monitoring Committee of the District where the headquarters of the NGO will be located;
- x. a recommendation from the responsible Ministry which in this case would be the Office of the Prime Minister - Department of Refugees.

Once the application is submitted with all the requisite documents attached and the organisation satisfies all the requirements above, the NGO Bureau issues a certificate of registration of the NGO.

Upon successful registration as an NGO, the Organisation must then apply to the NGO Bureau for a Permit. It is an offence to operate an NGO without a valid Permit from the NGO Bureau.

The Application for a Permit is made by filling and submitting Form D¹⁴ to the Schedule to the Non-Governmental Organisations Regulations, 2017. The Application is required to contain the following information, amongst other details:

- a) the operations or objectives of the organisation;
- b) staffing of the organisation;
- c) geographical area of coverage of the organisation;

¹⁴ A copy of Form D is available here: <https://www.ngobureau.go.ug/~ngoburea/en/ngo-bureau-forms>

- d) location of the organisation’s headquarters;
- e) evidence of payment of the prescribed fees; and
- f) intended period of operation not exceeding 5 years.

Permits are issued for a maximum period of 5 years. An NGO that desires for its permit to be renewed upon expiry must apply for renewal within 6 months before expiry.

Once it is registered and granted a permit, an NGO may validly carry out its activities in Uganda, in line with the conditions stated in its permit and the governing laws.

The registration and permit fees involved in the Registration of an NGO are as follows:

NO.	ITEM	OFFICIAL FEES
1.	Registration fees	<p>The fees range from Ug. Shs. 100,000/= to 800,000/= depending on the nature of the organisation (i.e. whether it is indigenous, foreign, regional, continental or international).¹⁵</p> <p>(approximately USD 29 to USD 229 depending on the nature of the organisation)</p>

¹⁵ Items 1 to 5 of the Schedule to the Non-Governmental Organisations (Fees) Regulations, 2017.

2.	Annual fees for the issuance and renewal of an NGO Permit for a foreign, continental or international organisation	Ug. Shs. 400,000/= ¹⁶ (approximately USD 114)
3.	Annual fees for the issuance and renewal of an NGO Permit for indigenous and regional NGOs or Community Based Organisations	Ug. Shs. 60,000/= ¹⁷ (approximately USD 17)
4.	Application fees for setting up a Community Based Organisation	Ug. Shs. 40,000/= ¹⁸ (approximately USD 11)

¹⁶ Item 7 of the Schedule to the Non-Governmental Organisations (Fees) Regulations 2017.

¹⁷ Item 6 of the Schedule to the Non-Governmental Organisations (Fees) Regulations 2017.

¹⁸ Item 11 of the Schedule to the Non-Governmental Organisations (Fees) Regulations, 2017.

6. Materials

This section sets out a list of the materials used in the course of the research as well as the citations and links to these materials.

6.1 Nigeria

Source	Link
1. Constitution of the Federal Republic of Nigeria (1999) (as amended)	https://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Nigeria_Constitution_1999_en.pdf
2. The Land Use Act	https://lawsofnigeria.placng.org/view2.php?sn=228
3. Companies and Allied Matters Act, 2020 (as amended)	https://www.cac.gov.ng/wp-content/uploads/2020/12/CAMA-NOTE-BOOK-FULL-VERSION.pdf
4. Companies Income Tax Act, CAP C23 Laws of the Federation of Nigeria, 2004 (as amended)	http://lawsofnigeria.placng.org/laws/C21.pdf
5. Value Added Tax Act, CAP V1, Laws of the Federation of Nigeria, 2004 (as amended)	https://www.firs.gov.ng/wp-content/uploads/2021/01/VAT.pdf Finance Act 2019: https://pwc-nigeria.typepad.com/files/finance-act-2019-official-gazette.pdf Finance Act 2020: https://www.firs.gov.ng/wp-content/uploads/2021/01/finance-act-2020_signed.pdf

Source		Link
6.	Capital Gains Tax Act, CAP C1, Laws of the Federation of Nigeria, 2004 (as amended)	http://lawsofnigeria.placng.org/view2.php?sn=57
7.	Personal Income Tax Act 2011	https://www.firs.gov.ng/wp-content/uploads/2021/07/Personal-Income-Tax-Act.pdf

6.2 Kenya

Source		Link
1.	The Constitution of Kenya	http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Constitution_of_Kenya_2010.pdf
2.	Community Land Act, 2016	http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CommunityLandAct_27of2016.pdf
3.	Community Land Regulations, 2017	http://kenyalaw.org:8181/exist/kenyalex/sublegview.xql?subleg=No.%2027%20of%202016#KE/LEG/EN/AR/C/NO.%2027%20OF%202016/SUBLEG/HC_LN2792017
4.	Land Registration Act, 2012	http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Land_Registration_Act_No_3_of_2012_.pdf
5.	Refugee Act, 2006	http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/RefugeeAct_No13of2006.pdf
6.	Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012	http://kenyalaw.org:8181/exist/rest//db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/P/Prevention%20Protection%20and%20Assistance%20to%20Internally%20Displaced%20Persons%20and%20Affected%20Communities%20Act%202012

Source	Link
	20Act/docs/PrevProtAsstoInternDisPersAffComsAct56of2012.pdf

6.3 Uganda

Source	Link
1. The Constitution of Uganda, 1995	https://ulii.org/akn/ug/act/statute/1995/constitution/eng@2018-01-05
2. The Land Act, Cap. 227	https://ulii.org/akn/ug/act/1998/16/eng@2010-02-12
3. The Registration of Titles Act, Cap. 230	https://ulii.org/akn/ug/act/ord/1922/22/eng@2011-09-02
4. The Refugee Act, 2006	http://www.judiciary.go.ug/files/downloads/Act%20No.%2021of%202006%20Refugees%20Act2006.pdf
5. The Companies Act, 2012	https://ulii.org/akn/ug/act/2012/1/eng@2015-07-01
6. The Trustees Incorporation Act, Cap. 165	https://www.ngobureau.go.ug/sites/default/files/laws_regulations/2020/12/The%20Trustees%20Incorporation%20Act.pdf
7. The Trustees Incorporation Rules, S.I. 165—1	https://www.parliament.go.ug/cmisis/browser?id=61f4fe39-5f44-4c38-b670-d1489a42e43c%3B1.0
8. The Non-Governmental Organisations Act, 2016	https://ulii.org/akn/ug/act/2016/5/eng@2016-03-03
9. Condominium Property Act, 2001 ()	https://ulii.org/akn/ug/act/2001/4/eng@2001-02-23
10. Uganda Court of Appeal decision in Civil Appeal No. 0018 of 2017, <i>Biyinzika Enterprises Ltd and Others vs Biyinzika Farmers Limited and Another</i>);	https://ulii.org/ug/judgment/court-appeal-uganda/2021/47
11. The Finance Act, 2013	http://ugandanlawyer.com/wp-content/uploads/2019/03/Finance-Act-of-2013.pdf

Source	Link
12. The Stamp Duty Act, 2014 as amended in 2016 and 2018	https://ulii.org/akn/ug/act/2014/13/eng@2019-07-01
13. The Trustees Incorporation Rules, S.I. 165—1	https://www.parliament.go.ug/cmisis/browser?id=61f4fe39-5f44-4c38-b670-d1489a42e43c%3B1.0
14. The Uganda Registration Services Bureau website	https://ursb.go.ug/fees
15. The Non-Governmental Organisations (Fees) Regulations, 2017	https://www.ngobureau.go.ug/sites/default/files/1aws_regulations/2021/04/NGO%20%28Fees%29%20Regulations%2C%202017.pdf
16. Equity and Trusts in Uganda by D.J. Bakibinga	https://www.worldcat.org/title/equity-and-trusts-in-uganda/oclc/741494549
17. The Trustees Act, Cap. 164	https://ulii.org/akn/ug/act/ord/1954/3/eng@2000-12-31
18. Income Tax Act, Cap. 340	https://ulii.org/akn/ug/act/1997/11/eng@2000-12-31
19. Value Added Tax Act, Cap. 349:	https://ulii.org/akn/ug/act/statute/1996/8/eng@2000-12-31
20. The Stamp Duty Act, 2014:	https://ulii.org/akn/ug/act/2014/13/eng@2019-07-01
21. The Local Governments (Rating) Act, 2005	https://www.kcca.go.ug/uploads/acts/local%20govenment%20rating%20Act%202005.pdf
22. The Local Governments (Rating) (Amendment) Act, 2006	https://www.kcca.go.ug/uploads/acts/local%20govenment%20rating%20ammendment%20Act%202006.pdf
23. The Local Governments (Rating) Regulations, 2006	https://www.parliament.go.ug/cmisis/browser?id=3f22bd5f-1ea7-46d1-b1df-ee686c0cd570%3B1.0

6.4 Bangladesh

Source	Link
1. Constitution of Bangladesh	http://bdlaws.minlaw.gov.bd/act-367.html
2. Transfer of Property Act	http://bdlaws.minlaw.gov.bd/act-48.html

6.5 Iraq

Source	Link
1. Articles (2-10) of the Regulation of Waqf Trustees No.46 of 1970.	https://iraqld.hjc.iq/LoadLawBook.aspx?page=2&SC=&BookID=10209
2. Article (256) of the Iraqi Real-estate Registration Law No. 43 of 1971.	https://iraqld.hjc.iq/LoadLawBook.aspx?page=26&SC=&BookID=8808
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6.6 Colombia

Source	Link
1. The Political Constitution of Colombia	https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4125
2. Law 1819 of 2016	https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=79140

Source		Link
3.	Law-Decree (<i>Decreto Ley</i>) 019 of 2012	https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=45322
4.	Law-Decree 960 of 1970	https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=149249
5.	Law 603 of 2000	https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=13960
6.	Law 222 of 1995	https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=14940
7.	Law 454 of 1998	https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=3433
8.	Law 863 of 2003	
9.	Colombian Civil Code	https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=39535
10.	Colombian Tax Statute (<i>Estatuto Tributario</i>)	https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=6533
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20. Unified Opinion (<i>Concepto Unificado</i>) 481 of 2018, issued by DIAN (Colombia's Tax Agency)	https://contadorespublicossantander.com/wp-content/uploads/2018/04/Concepto_unificado_E_SAL_No_481_27042018-1.pdf
21. Circular Letter (<i>Circular Única</i>) N° 4, from the Superintendency of Industry and Commerce	https://www.sic.gov.co/sites/default/files/normatividad/072017/circular-004.pdf