

LOCAL CAPACITIES FOR PEACE



Addressing Land-based Conflicts in Somaliland and Afghanistan

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This report is published by the Academy for Peace and Development, Hargeisa/Somaliland, in partnership with the Institute for Development and Peace (INEF), University Duisburg-Essen, Germany. For further information on the Land Conflicts Project, please visit: <http://www.apd-somaliland.org/projects.htm#land>

APD and INEF thank Interpeace for the practical support provided to the realization of this project. The project was funded by the German Federal Foreign Office and the Institute for Foreign Cultural Relations (see back cover).

Front Cover: The Land Based Conflict Team during a Focus Group Discussion.

Back Cover: Heated Discussion on Land Conflicts.

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Glossary

Somali	English
Berked	Pool or water catchment
Biyo-xidhasho	Purchase-contract of water for dry season consumption
Gacan	Feeding channel
Gacan-muddaro	Transgressor feeding channel
Dhaan	Water fetching
Kal	Livestock watering interval
Tuulo	Rural village
Xeer	Agreement, Informal Contract
Xeerbeegti	Customary law expertise

Abbreviations

APD	Academy for Peace and Development
FAO	Food and Agricultural Organisation
FGD	Focus Group Discussion
PAR	Participatory Action Research
PV	Participatory Video
SSI	Semi-Structured Interview
TLO	Tribal Liaison Office
UNHCR	United Nations High Commissioner for Refugees

Executive Summary

The following study is the result of the project entitled “*Local Capacities for Peace in Afghanistan and Somaliland: Empowering Local Peace Research NGOs to Enhance Conflict Resolution Practices*”. Funded by the German Federal Foreign Office and the Institute for Foreign Cultural Relations, the project was implemented by the Institute for Development and Peace at the University of Duisburg-Essen, the Academy for Peace and Development in Hargeisa, Somaliland and the Tribal Liaison Office in Kabul, Afghanistan.

It was the aim of the project to conduct case studies on certain land conflicts in order to generate reliable knowledge on the main causes, the conflict cycle and possible mechanisms of civil conflict resolution. Some remarkable results could be generated during the 9-month project. In both Somaliland and Afghanistan land conflicts exist and are fuelled by a

multitude of factors and drivers. Besides purely economical reasons, land conflicts are usually accompanied or aggravated by political conflicts and general socio-economic development. This in turn leads to the conclusion that is more difficult than originally assumed to deal with land conflicts.

Second, in both countries the formal system of conflict resolution (formal law and the courts) is not the first choice of conflicting parties. Taking some differences into account, both formal systems are perceived to be inefficient, biased and corrupt. This in turn leads to a mixed approach to conflict resolution. Usually, a mixture of conflict resolution mechanisms is used: traditional and religious courts / committees play central roles in the resolution of conflicts. The wider implications of these developments are difficult to determine, how this will influence further state-building processes is unclear.

Third, land conflicts in the rural and the urban areas differ markedly from one another. In the urban context, different factors are important; while land conflicts in the rural context are often a matter of survival, urban land conflicts are regularly about financial profit. This in turn makes the recommendation of a single system of conflict management difficult, if not impossible.

Fourth, women are seriously disadvantaged when it comes to the management, allocation and ownership of land. These disadvantages are manifest in formal and informal processes and regulations. Thus, it has become obvious that there is still structural discrimination against women in both societies. This in turn leads to the fact that land conflicts are an important obstacle for further peaceful development.

Fifth, the project could show that traditional mechanisms are useful for an ad-hoc solution of land conflicts. There are however difficulties with this system; the most important problems are that women and youth are usually not involved and that the resolution does not produce long-term solutions and thus does not produce reliable legal certainty.

1. Introduction

In collaboration with the Institute for Development and Peace (INEF) at the University of Duisburg-Essen, the Academy for Peace and Development (APD) in Hargeisa, Somaliland, and the Tribal Liaison Office (TLO) in Kabul, Afghanistan, conducted a 9-month project on land-based conflicts. The project was funded by the Institute for Foreign Cultural Relations (ifa), whose generous support is thankfully acknowledged. The idea of the project was to **strengthen the capacity of local NGOs** during an applied research project on land-based conflicts in Somaliland and Afghanistan.

As in 2007, the team in Somaliland consisted again of Mohamed Abdi Omer (Team Leader), Nassir Osman and Safia Tani (Trainees), supported by international consultants hired through INEF. Based on the experiences, findings and contacts from the forerunner project, the team extended the approach of the project considerably. Besides research on land conflicts in rural contexts, urban land conflicts became a central focus of the research. A gender perspective was included in the activities and Participatory Video (PV) was used as an innovative tool.

In Afghanistan, a new team consisting of Dr. Saeed Iftekhar Sadaat (Team Leader) and Naeem Jan (Trainee) was hired and two case studies were conducted in the Southeast provinces of Afghanistan.

This report summarizes the **consolidated research findings** and combines them with the **notes and papers** which have been produced throughout the project. In 2008, methods and methodology were an important aspect of the project; the most central results are dealt with in part 2. Part 3 and 4 deal with the issue of land conflicts in Somaliland. Part 3 is based on the case study on Nasiye village, a rural context in Somaliland. Part 4 is based on a Working Note on Urban Land Conflicts, an issue that is highly political and highly difficult to research. Part 5 will deal with land conflicts in Afghanistan, summarizing the central results of the case studies. Some tentative conclusions in part 6 will close the report.¹

¹ This report is a synthesis of the various notes, concepts and reports which have been produced during the course of the project. Thus, explicit reference is only made sporadically; further references can be found at the end of the document.

a. Basic Facts about Land Conflicts and their Influence on Development

Land conflicts have considerable impact on the overall development of both Somaliland and Afghanistan. Because this impact is mostly negative, the project set out to explore the issue of land conflicts in greater depth. Impacts can appear on many different levels, in greater detail, land conflicts influence the following developments:

- **Economy:** Depending on the type of land conflict, the economy is influenced differently. In general however, the impact is negative. This is due to the fact that contested territories can often not be used or that the production from these territories is severely limited. Besides this, keeping up different cases is expensive; irrespective of which judicial system is in place.
- **Social:** Land-based conflicts can contribute to the worsening of the relationship between different groups within society. First, asymmetries with regard to power and / or economic aspects can destabilize long-term relations between groups. Second, the gender aspect has to be seen in this context. Besides their formal misrepresentation, women often play important roles here.
- **Politics:** Land conflicts are a pressing matter for many government officials and underline the need to reform land tenure policies. On the other hand these conflicts demonstrate the weakness of the system of the state with regard to implementation. Land conflicts can also hinder development if certain projects cannot be implemented due to a lack of security or stable situations.

This first cursory glance already demonstrates that land conflicts are an enormously important issue for the development of both Afghanistan and Somaliland. Thus, the project set out to research these conflicts in greater depth through an applied research project.

b. Basic Assumptions of the Project

The basic assumption of the project was the strengthening of the capacity of two NGOs. This was to be achieved through the organisation and implementation of various trainings and inputs plus support with regard to organizational capacity. The project teams were responsible for the implementation of the project, the field research, the data gathering and analysis as well as for the writing of the respective reports.

Thus, the teams could strengthen their newly acquired capacities during an applied research project on a pressing problem of current development. Through the organization of various

dialogue events, public discussions and film screenings, the research findings were then to be fed back to the respective communities; through a representative working group, government agencies and representatives of other NGOs were kept informed about the project. This group did also provide the team with information on various aspects of land conflicts, thereby creating an atmosphere of dialogue and cooperation.

c. Results from 2007 and refined approach of 2008

As mentioned above, a forerunner project had taken place in 2007. Some remarkable results could be produced during the project in 2007, for example:

- In Somaliland, enclosures have become a big problem for the nomads. If the grazing grounds are restricted, their livestock do not find enough food and / or water. In 2007 however, it was found out that the simple removal of enclosures does not automatically lead to an improved situation. On the contrary, some tensions even increased, after the removal of enclosures.
- Land conflicts are a complex social issue, resulting from a combination of different developments at once. Among these are new modes of production (multiplication of water sources, changing movement patterns); environmental problems and sedentarization as well as the heritage of war, meaning an influx of refugees. Whereas it is difficult to attribute relative or absolute weight to each of these factors, they have to be considered when land conflicts are to be analysed successfully.
- In Afghanistan, traditional mechanisms of conflict resolution are on the rise again. Mainly due to the weakness of the Afghan state, traditional methods of conflict mediation and conflict resolution are used instead of the formal system of law.
- With regard to the support of civil conflict resolution it was found out that both countries will not improve if a short-term approach is employed. In both countries a long-term approach is necessary; the main driving forces behind land conflicts have to be understood before useful interventions can be implemented.

In 2008, the project followed a rather refined approach. The most important innovations were:

- A new focus on **urban land conflicts**. Both countries experience a rapid urbanization process, leading to new social cleavages in the rapidly expanding cities. Thus, new conflicts arise not over land for the grazing of camels, but over access to piped water and access to good roads.
- A new focus on **gender aspects**. Both Somaliland and Afghanistan are relatively conservative societies with regard to the empowerment of women. Thus, the role of women was to be researched during the project, in Somaliland a female researcher was a member of the team.
- With regard to methods, **Participatory Video** was employed for the first time. This is an innovative tool to empower local communities and to disseminate research findings through films. PV is used in conflict-affected communities, giving the local population the possibility to voice their concerns, to re-enact conflicts and to re-enact civil conflict resolution. Thus, PV represents the possibility of screening *best practices* in remote areas, reaching the illiterate population as well.

2. Methodological Aspects

a. Basic Approach

In 2008, methods and methodology were an important part of the project. Besides the refinement of existing approaches (Participatory Action Research, Focus Group Discussions), new approaches were taken up (Participatory Video). During the course of the project, two notes on methodological aspects were produced. This chapter is a product of these notes: Part a mentions the basic approach to the project, meaning a mixture of different tools. Yet the common denominator of these tools is that they are all following the basic logic of qualitative research. The subsequent chapters then deal with one of the employed tools respectively, section b covers Participatory Video, section c will deal with Focus Group Discussions. Section d will highlight a few issues related to Participatory Mapping while section e is a discussion of the problems and opportunities of research in the urban context. In section f,

gender aspects of research and research ethics will be discussed; section g will then focus on the criteria for the case study, which will be the subject of part 3 of this report.

b. Participatory Video

In the context of the land-based conflict project, **Participatory Video** meant that a “real” conflict and its resolution, which took place sometimes in the past within a local community, was video recorded. Thereby the “original actors” were playing the same roles they had occupied in the “original” event. This includes the conflicting parties as well as members of the mediation committee. Added with other shots of interviews with officials and locals conducted during the research process, the PV story and scenes form part of a **documentary film** on Land-based conflicts in Somaliland. On rural **film shows**, parts of this documentary were later shown to the local communities that had produced the film. It is especially at this local level where the video can outreach to the many illiterate people in Somaliland society. The full documentary was presented to policy makers and NGO officials on a public dialogue forum on Land-based Conflicts.

Table: Objectives of the use of video techniques in the Land-based Conflict Project

1. To combine research and action in a highly efficient way
2. To encourage community participation in the project and research process
3. To document local realities and grasp people’s perspectives on land problems and conflict resolution mechanisms
4. To empower communities to present their views on land related problems and issues to a wider public
5. To instigate local dialogue, intercommunity communication and policy discussion in government and NGO circles

The film produced by the Land-based Conflict Project team, the AVU and the respective local communities shows local communities conducting traditional methods of conflict management to solve conflicts related to land. The PV activity was integrated in the research process in Nasiye village in Burco district, Tog-dheer region, and in Magaalo-xayd village in Gabiley District, Maroodi-jeex/ Hargeisa Region. Cooperation between the AVU and the Land-based Conflict project went very well. While the research team, which had previously

done some research in the respective village, oversaw the content, the AVU was concerned with technical and dramaturgical aspects regarding the video production. Research activities, such as interviews, Focus Group Discussions (FGD) and Mapping Activities, were filmed and directly integrated into the video.

In the film, prevalent conflict issues in the respective communities are identified and basic information about living conditions is provided. The conflicts presented in the film were both “real” conflicts that had been solved at some time in the past. The actors involved in the film, the conflicting parties and the members of the mediation committee, played the same roles they had occupied in the original event.

Altogether, two films were prepared. The film in Nasiye village is about how the mediation committee of the community solved a conflict between two individuals over the passage of *Gacans* (water canals) into their respective *Berkad* (water tank). In Magaalo-xayd, the video presents a conflict over the extension of farmland between two individuals, which was again solved by a committee of elders using traditional modes of conflict resolution.

Challenges, Problems and Obstacles

Although the implementation of the PV activity was generally very successful, the team faced some minor problems.

First of all, due to the **sensitivity of land related issues** in the Somaliland context, people were sometimes phobic and suspicious about the video recording. The owner of one site, where the video was to be shot, initially refused to let the team enter his land, as he thought that the video material could be used as evidences against him.

Second, the **short time frame** of the PV implementation constrained the work of the team. As a result, the AVU had to hurry-up and shots had to be taken quickly. But nevertheless, due to the professional work and the experience of the AVU, the quality of the film was guaranteed.

Third, it sometimes proved to be difficult to conduct the video in the original conflict site, since the **territory was sometimes very inaccessible** for the AVU unit with their video equipment. As a result, in some cases alternative sites were chosen.

Fourth, due to rural destitution prevalent in Somaliland, the actors demanded small incentives for participating in the PV activity. The team could therefore not avoid the **payment of small incentives** in order to produce the film. However, since local actors were very cooperative,

played their parts very well and spent much time on the video production, the payment of small incentives is somehow justified.

Advantages and Opportunities

The advantages and opportunities of PV clearly outweigh its problems and obstacles.

First, the participating actors were not very enthusiastic about telling their story. They sought to act as in the original event, **bringing in their emotions and feelings**. The PV therefore achieved one of its main goals: to capture the local community's version of the story and let them present their own perspective related to land conflicts.

Second, after some problems in the beginning of each session, **people easily understood the story board of the PV** and its intention, as it sought to capture their narrative, views and perspectives. They were therefore able to contribute to the development and the arrangement of dramaturgical film aspects, based on their knowledge of the original conflict.

Third, local actors proved to be very flexible to **adapt to the elaborated video production** techniques and accepted the professional requirements of the AVU, what sometimes meant that scenes had to be repeated several times. Actors always remained controlled and patient.

Fourth, PV was a unique opportunity to partially overcome the gap between researchers and local communities, since both cooperated in a common project, namely the production of a film. This is a very important point, since PV can therefore be seen as an important **trust building measure** when doing research.

To sum up, the Participatory Video Production was thus a successful cooperation between the AVU, the Land-based Conflict team and the local communities.

Community Comments on the Rural Film Show

The film shows in the villages were highly appreciated. People recommended that PV is an effective tool for the contribution of the community to the development of Somaliland, since it conveys their ideas and exchange their experience with other communities and politicians in Hargeisa. They recommended continuing such activities because it will be a record for future use. Some opinions about the film are presented below:

“It was a landmark occasion for the village; for many it the first time to watch a film”, Osman Shireh, an old man in Nasiye village.

“Viewing members of the community acting in a film that presents their own story and takes place in their own setting has a special value to the village dwellers and the community around it”, A clan elder from Magalo Xayd, Gebiley District.

“It characterized the community’s capacity to resolve internal problems through customary resolution process”, Jama Hersi, a member of Nasiye village committee.

“The film screening implies that the community is engaging with NGOs and development partners and that others will be aware of their existence”, Me’ad Habane, a local chief in Magalo Hayd.

“It reflects the community’s capacity to resolve its conflicts”, Muse Haddi, a member from Magalo Hayd mediation committee.

“It puts the image of our community beyond our environment”, Shukri Mumin, a young girl in Magalo Xayd.

“I think anyone who watches the film will see the significance of the customary resolution process”, Deria Elmi, a shopkeeper in Nasiye village.

“It features the magnitude of land related conflicts in our environment”, a local farmer in Magalo Hayd.

c. Focus Group Discussions

In general, the Somali part of the Land-based Conflict team had positive experiences with the FGD manuals as provided in the 2007 project. Nevertheless, the team stressed some points that are of importance for a successful FGD:

- The flow of the discussion often differed considerably from the structure as prepared beforehand. Therefore, the team put much emphasis on the fact that the researchers need to have a clear list of issues they want to have discussed in order to guide the discussion flexibly.
- Additionally, as a result of the sensitivity of land-related issues in Somaliland, the team highlighted the need to build-up trust with local communities. This should be done by cooperating with various stakeholders of the research region (state

officials, NGO representatives, communities and elders) and explaining them thoroughly the aim of the project, especially at the beginning of a research activity.

Problems

Only in one point did the manuals differ considerably from the reality in the field. All together, the **FGDs tended to be “group interviews”**, as very little discussion took place among participants. It needs to be mentioned, however, that the value of the information received was generally very high. The fact that discussions, as envisioned by the team, did not take place can be explained partially by the fact that most people in Somaliland are not used to this kind of participatory research and it's informal character. The fact that the research team recorded every single answers contributed to a formal atmosphere as perceived by the groups. Another reason for the limited scale of dialogue lies in the Somali attitude towards expertise and authority. Very often, people directed the questions to a single expert among themselves who was seen to be very experienced on the issue and therefore enjoyed the privilege to give answer. His authority on this particular issue was not questioned.

Lessons Learned - Solutions for 2008:

In order to instigate more dialogue during FGDs, the team will seek to implement the following measures:

- To ask “provocative” questions at some points of the discussion. Thereby, it aims at getting strong reactions by participants
- To pose questions more directly to certain individuals to get a broader participation.
- To create a more informal atmosphere by not recording too openly and seeking to stay in the background.

d. Participatory Mapping

Problems in 2007

- Participants did not know what the research team was expecting them to draw in the map. As a result, the research team had to interfere very often in the drawing process to provide necessary explanation.
- Only having a white sheet of paper, participants had problems to draw features with regard to appropriate distances and locations.
- As the communities used different structures for their maps (in 2007 five maps were produced in different villages), the research team had problems to put the five maps together and create an all inclusive map of the district.

Lessons Learned - Solutions for 2008:

- Integrate mapping activity in a Focus Group Discussion (FGD): To avoid confusion among participants, the team decided to integrate the mapping activity into a FGD. Thereby, the group will first of all engage in a discussion on the issues of interest for the researchers. Having a better understanding of what the researchers want to know, it will be easier for them to draw the map.
- Provide a clear structure for the map: In order to avoid confusion among participants and to get comparable maps from the different mapping activities, the team will provide a clearer structure for the map, including some locations, roads and distances

e. Research in the Urban Context: Problems and Opportunities

Generally speaking, issues related to **urban land conflicts are very sensitive** in the Somaliland context. Driven by money from the Diaspora, an increasingly ambitious state and the Somali business community, land has become a major economic resource in Somaliland

and accordingly involves a lot of financial and political resources. For key actors, that means that land transactions do not only bear great economic opportunities, but also risks, in case that land is lost. Because of these reasons, research on urban land conflicts proved to be particularly difficult.

First of all, due to the fact that very often politically and economically influential big players are involved in urban land issues, informants are often **reluctant or unable to talk freely**, as they fear repressions. In this **atmosphere of suspicion**, information provided was often superficial and lacked concreteness. Trust-building measures are probably the only option to counter this problem. This includes long-term engagement with individuals and the sensitive handling of information obtained.

Second, some key persons from both, the group of state officials and real-estate brokers often **avoided interviews**, since they did not trust the research team, are themselves deeply involved in land issues and problems and/or lack motivation and interest to support research in this field. It sometimes took considerable time and energy to arrange meetings, while some key actors refused to give an interview at all. Nevertheless, research on urban land conflicts is generally appreciated by the Somaliland public (see next section on “Opportunities”).

Third, **officials in the administration are sometimes corrupt** and not completely trustworthy. In some cases they are deeply involved in the real-estate market and cause land conflicts due to multiple allocation of ownership titles to different individuals. Consequently, information provided by these actors had to be cross-checked intensively.

Fourth, due to the sensitivity of land-based conflicts, the research team needs to take care that it does not get involved too much in the issue to avoid **upsetting influential big-players**. The prevention of risks for the research team and the Academy for Peace and Development is of prime priority.

Opportunities

Despite the problems mentioned above, research on urban land disputes offers some great opportunities. First of all, urban land disputes are gaining importance, as it affects around one third of the Somaliland population that currently live in towns and cities. In the future, cities will become even more the centre of Somaliland society, since urbanization increases by 5-

8% every year². This reveals the need for studying and **understanding social and economical dynamics in the urban context**, of which land conflicts are surely a part of. Thereby, research on urban land conflicts not only targets an eminent problem affecting the wider public, but also provides some insights into different aspects of general Somaliland town life, such as conflict management and the role of state-, traditional- and religious authorities in the wider society.

Second, **land conflicts in the Somaliland urban context are a so far understudied issue**, despite the magnitude of the problem. Disputes over town property are a major source of conflict in Somaliland since the civil war. More research is therefore needed to support the mitigation of these conflicts and contribute to a better management of land in urban settings. Also in Mogadishu and other cities in southern Somalia conflicts related to urban land are named as a major obstacle for peace and reconciliation³. Research on urban conflicts in Somaliland could therefore indirectly offer some new perspectives on the ongoing conflict in the south. Against this background, it becomes obvious that further research on urban land conflicts is required urgently.

Third, there exists **high awareness about the seriousness of land disputes** in Somaliland's towns and cities within the society, as land issues are broadly identified as a big problem and a major source of conflict. The public therefore generally appreciates research in this field. Since every individual has experienced land disputes related to town property, the team was able to gather a lot of valuable information, although some key-actors were sometimes reluctant to talk (see previous section on "Problems, Risks and Obstacles"). Because of the support of the Somaliland public, the team is eager to continue research on urban land conflict in the next year.

Fourth, the project has shown that land plays an important role in many conflicts which appear to be centred on other issues. These land conflicts however have difficult and interacting root causes. By analysing some of these conflicts in greater depth, the project could at least hint at potential possibilities for improved conflict resolution.

f. Cross-Cutting Issues: Gender and Research Ethics

² See World Bank/UNDP Watching Brief 2002, UNICEF: Consolidated Donor Report January – December 2002

³ See: Waal, Alex de 2007: Class and Conflict in Stateless Somalia. <http://hornofafrica.ssrc.org/dewaal/> accessed: 18/12/2008

In 2008, the project did have an explicit gender aspect. While Somali society is officially dominated by men, women play an important role in all aspects of life.⁴ It was the aim of the project to

- uncover some of the roles women play with regard to land conflicts, to
- shed light on the gendered impact of land conflicts and to
- look at the gender relations mediating land conflicts.

Beforehand however, various problems with regard to the collection of information had to be solved.

Research by and through women

Generally speaking, women are very reluctant if they are interviewed by one or more men. Usually, they retreat within the group and let the discussion become dominated by men. This behaviour can only be countered to some extent, for example through

- The inclusion of at least **one female member on the research team**. This can create trust between the researchers and the female interviewees, leading to more inclusive results of the research and dialogue processes.
- Another possibility is the adaptation of the research activities to the special needs of women. The team has for example developed **specific questionnaires** while interviewing women, thereby reflecting the necessary changes with regard to the “normal” questionnaires.

Example: Interview Guideline for women.

For FGD for women

1: How do women influence the decision-making process (generally?)

Directly (public)? Indirectly (family)?

2: Do women meet to discuss clan affairs, especially concerning land management and conflict management?

⁴ At least for the election period from 2005 onwards, the Somaliland parliament (upper house) boasted 2 two female MPs.

- 3: Does the opinion of women matter in land management and conflict management affairs?
- 4: Does the opinion of women matter in land – management and conflict management affairs?
- 5: How can women influence clan affairs, especially concerning land management and conflict management?
- 6: What is actual role of women in conflicts and mediation process?
- 7: How can they contribute to peace?
- 8: Do you think that it would be for the benefit of people if the position of women in society could be enhanced?
- 9: are women in a better position to avoid conflict?
- 10: How could the role of women in land and conflict management be improved?

In general, women react well if they are interviewed separately and their opinions are thought of as being important. Usually, they value their inclusion in the research process.

Research Ethics

Often, researchers find themselves in a dilemma: The researcher needs as much information from the interviewee as possible, but the personal integrity of the interviewee has to be preserved.⁵ Thus, some ethical regulations become necessary. In more regulated countries, **institutional review boards** review any research involving interviewing people on their personal situation, thoughts, and opinions. First, the interview study must cause no harm to the subjects and if such a risk exists, researchers must provide follow-up for any incidents. Originally coined in another context, the phrase **do no harm** can also be used in the context of qualitative research. In particular, the researcher has to respect the integrity of the interview partner. If he does not want to participate in the study or is uncomfortable with the situation, the researcher should not force him to do anything. Confidentiality for the interviewee should be a matter of course.

⁵ This section is based on a discussion of qualitative research issues written by Marleen Renders, University of Gent, for the project at hand. The documentation is available separately.

Researchers must be aware of the potential impact of their research on the communities they are working with. Research should not harm the people studied. This seems obvious but research precedents show how this is not so obvious. There are examples from medical research, but also, it should not be forgotten that qualitative social research has much of its origins in ethnography as it existed as a colonial enterprise. Ethnography is about **studying the Other** – in colonial times this kind of knowledge also had to contribute to strategies to **control the other**. No Somali who is not familiar with the work of I.M. Lewis’ “A pastoral democracy”. Researchers should be aware that the results of their work can be used in ways they do not wish, or did not anticipate.

The question of the direct or indirect influence on the communities or interview partners is especially relevant if interviewees refer to criminal or illegal activities, such as corruption, illegal land grabbing or the forging of documents. If these results are published, all three groups might be in potential danger

- The researcher because he published the incriminating report or paper.
- The interviewee because he was talking about someone else’s criminal / illegal activity
- And the person the interviewee accused of illegal activities might also suffer direct or indirect repercussions due to the publishing of the accusations.

The dangers have already been recognized, leading the project to the use of **Participatory Action Research** (PAR). PAR is an extended version of “ordinary” qualitative research; people that are studied should be actively engaged in the research process. PAR tries to make research relevant for the stakeholders involved in the research process. Ideally it facilitates co-learning and capacity building throughout the research process leading to ownership of the research process by local stakeholders. Recommendations that derive from such research are meant to make a difference locally and lead to an improvement of people’s lives. PAR however is also to a large part dependent on the person and personality of the researcher and the techniques of information gathering.

g. Case Study Selection Criteria

Number

To decide about the number of case studies, the team had to choose between two possible options: They could either conduct two or three short case studies, or focus on only one extended case study. The positive and negative consequences of these two options were

obvious: while more case studies allow for a broader understanding of land-based conflicts on a national level, it quite limits the understanding of single conflict issues and phenomena. To concentrate on only one case study, on the other hand, generates deep knowledge on single conflict issues but largely ignores the national scale of the problem. The team found a solution for this dilemma by combining the film production with the field research. They decided to do only one extended case study, but to conduct the PV activity in two or three regions of Somaliland in order to cover the national level.

Type and Setting

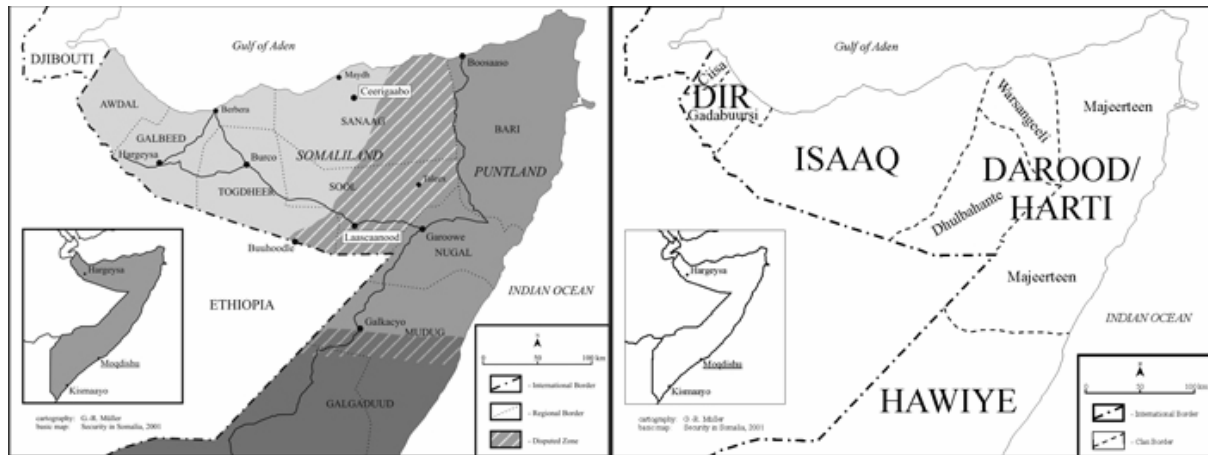
In 2007, the land-based conflict team differentiated between three different types of case studies (“issue” [e.g. enclosure], “district” or “conflict”) conducted in a specific setting (agricultural, pastoral or agro-pastoral). In the previous project, the team had successfully conducted a “district case study” in an agro-pastoral setting focusing on the issue of enclosures. Accordingly, for 2008 the focus of the field research was on conflicts again. Additionally, it was decided to go to pastoral areas, which make up the backbone of Somaliland’s economy. Altogether, the team aimed at getting more detailed information on conflict dynamics and conflict resolution practices related to pastoralism.

Location

Originally, Sanaaq was intended to become the site of research: Offering some characteristics that makes it particularly interesting for research and dialogue activities, Sanaag region in the far east of Somaliland was chosen as a location for the field research. Land-based conflicts, mainly over access to grazing land and water, are a recurrent problem in the region. As the area is inhabited by four different clans, belonging to the Isaaq (Habar Jelo and Habar Yonis) and the Harti communities (Dulbahante and Warsengeli), both associated with different political competitors (Somaliland and Puntland), disputes over natural resources easily escalate into clan warfare. Many of these conflicts originated in colonial and pre-colonial times, and were later played-off by the ruling elite in order to “divide and rule” the country. During the civil war, clans associated with the former regime were displaced and had to seek refuge in their own clan strongholds, while clans supporting the rebels occupied vacated territories. Although many local and regional conferences took place between 1992 and 1993 to reconcile the disputing clans, a number of conflicts remain unresolved. Fuelled

by the border dispute between Somaliland and Puntland, traditional elders have difficulties to maintain the power-balance between the different clans and to prevent conflicts over land from turning violent.

In fact, the site of the research had to be changed to Nasiye Village, close to Burao. This was due to an increasingly tense security situation between Somaliland and Puntland.



Political and genealogical divisions in northern Somalia; © M.V. Höhne.

Source: <http://hornofafrica.ssrc.org/Hoehne/index.html>, last access 4.2.2009

The regions of Sool and Sanaag have frequently been the subject of clashes between

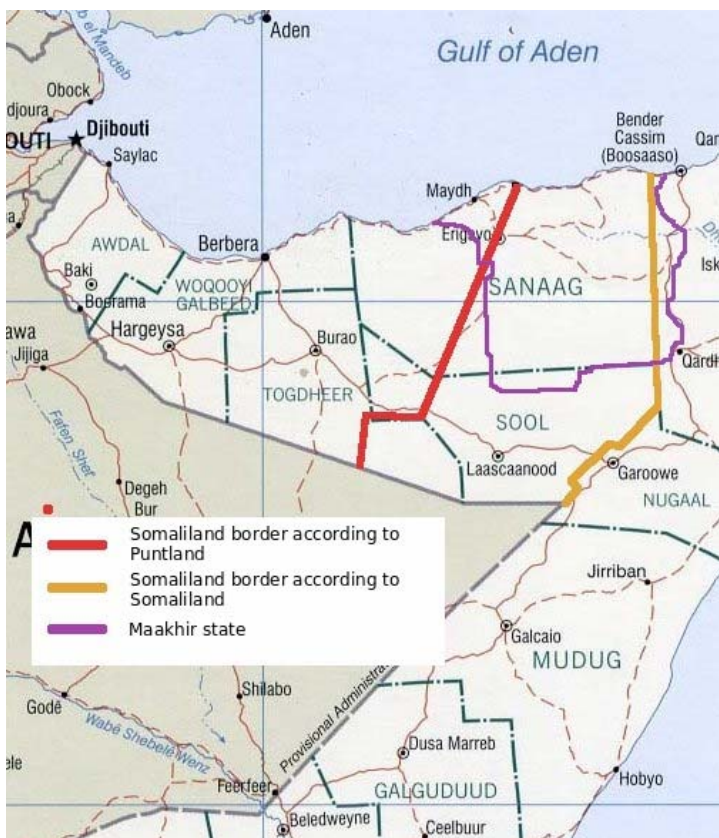


Abbildung 1: Source: Wikimedia Commons

Somaliland and Puntland, owing to the different allegiances of the population in the region. The following map shows the different delineations according to the different participants to the conflict. These tensions developed into more aggressive rhetoric during 2008, which led the management of APD to the decision that the research would have to be carried out in another region. This was based on two reasons: First, the research could be interpreted as an attempt to

redraw clan boundaries. Second, peace is usually built around clan consensus; however, almost no conflict over land has been resolved permanently so far in Sanaag. It was thus finally agreed on to conduct the research in Nasiye village in Toghdeer Region.

3. Case Study: Land Conflicts in Nasiye Village

a. Objectives of Field Research and Case Study

In cooperation with the Working Group (comprising state and NGO representatives), the following objectives for the case study were defined:

1. Illustrate the insights and issues of the research
2. Highlight the strengths and weaknesses of land conflict mediation mechanisms
3. Generate supportive evidence of the origins of conflicts and its solutions for the recommendations and dialogue
4. Document local reality and dynamics of conflict
5. Provide basis for local dialogue intervention
6. Deepen understanding of the core problem

It was further agreed to concentrate on one particular area to understand the problem of land-based conflicts in a specific local context, taking into account the importance of specific local factors as regard to conflicts over land. Accordingly, based on the field research objectives, the Land-based Conflict team developed certain selection criteria for a possible Case Study site. Nasiye-Rural Village seemed to be appropriate as a case study site as it fulfilled all of these criteria:

1. Presence of certain conflict issue: Conflict over land use and water resources
2. the area is within the sphere of the government authority.
3. Existence of traditional land use mechanisms: Community-based conflict resolution.
4. Type of conflict in the case study: A pastoral case study; Conflicts over land use and access to water resources
5. Accessibility: Vicinity of Burao town, easy accessible
6. Opportunities for dialogue intervention: Potential opportunities for dialogue on the problem of land use and access to water resources

The objectives of the case study thus were:

1. To capture local dynamics of land-based conflicts

2. To deepen understanding of the core problem and to capture a representative picture of how land-based conflicts are characterised in pastoral communities
3. To understand the roles of formal and informal institutions in the prevailing conflict management framework in the community-based structure
4. To identify the main actors in the management of land-based conflicts in a pastoral setting
5. To understand what water resources constitute in the basic livelihood of the communities
6. To make recommendations for land use conflict management

b. Methodology

Focus Group Discussions

During the case study at Nasiye village, Burco district three Focus Group Discussions were conducted, organizing the community to participate and interchange their experience and tell more about the root causes of land based conflicts in their area. FGD was useful because of the participatory approach of the research and the ensuing inclusion of the community.

- August 16, 2008: Focus Group Discussion with women, UNITA umbrella.
- August 18, 2008: Focus Group Discussion with elders and mediation committee of Nasiye village.
- October 19, 2008: Focus Group Discussion with Nasiye community on a possible solution to address land based conflicts

Focus Group Discussions were a crucial part of the participatory approach of the land based conflict research because assembling people with different experience and different ideas about the issue is important for an inclusive process. During the FGDs, the team asked the participants open questions which in turn were reflected during the meeting of the working group and also during the research study.

Semi-Structured Interviews (SSI)

Semi-structured interviews (SSI) were conducted during the case study with some state officials like the governor of Burco, the mayor of Burco, the district police commissioner, and the district court judge at Burco city. The aim of using this tool was to figure out more information about the issue.

- August 14, 2008: Interview with Regional Police Commissioner.
- August 16, 2008: Interview with the governor of Burco.
- August 17, 2008: Interview with the Mayor of Burco and district court Judge

Participatory Mapping (PM)

On 18th August and 20th October 2008, a participatory mapping tool was undertaken with the supervision of the research team. Considering the priority of participatory approaches, a group representing Nasiye village community mapped the surrounding area of the village, locations and density of berkedes in the area, conflict areas, the different gacans from which the conflicts arise and also the most problematic Gacan, the Gacan-mudaro, in the area.

- August 18, 2008: Participatory mapping on the locations of conflicting gacans.
- October 20, 2008: Mapping of Gacan-Mudaro.

Participatory Video (PV)

On 20 to 21 August 2008, a participatory video (PV) tool was also undertaken at Nasiye village. The aim of the PV was to document in a visual way how the community reacts to land conflicts and how they are solved by traditional mechanisms. PV tool is a dynamic process of community-led learning, sharing and exchange of experience. This tool was a participatory approach that the community could use to show their problems and also share their experience with others.

Observations and Informal conversations

During the field research the team continuously noted informal observations like mood, atmosphere, setting etc. This technique was crucial to gather more information on land

conflicts and especially the perception of the community. The tool was also instrumental in bringing the team closer to the community as it has the potential to encourage the community to talk and share frankly with the project team.

c. Socioeconomic Background

The Togdheer region falls in the semi-arid environment of central Somaliland; the geographical landscape varies from mountain ridges in the North to flat plateau in the South. The region borders on the North with Sahel Region, on the West with the Hargeisa Region, on the East with Sool Region and the Fifth Region of Ethiopia on the South. Originally, Togdheer Region was one of the largest regions in the Eight-region post-independent Somalia, but then the last Somalia's Government has carved out two regions (Sanaag and Sool) from Togdheer Region, the recent nomination of two new regions (Buhodle and Odweine) further shrinks the size of Togdheer region.

The population of the region is mainly constituted by four clans: the population of the region is predominantly Isaq Habaryounis in the west, Habarjeclo in the East, Issa Musa are in the North and a mix of Habaryounis in South of Burao, an Arab sub clan are a minority in the region, whereas the Dhulbahante of Darod are present in the Deep South of the region, the Gabooya minority groups do not have their clan constituencies but intermingle with the other clans.

In the demographic structure, Habarjeclo and Habaryounis populations spread from the vicinity of Burao and extend across the Ethiopian border. Dhulbahante are to be found in Buhodle district and across the Ethiopian border. Issa Musa pastoralists are in constant drift from their traditional homeland in the North southwards to the Hawd plateau.

The fact that these pastoral communities move freely across the Ethiopian border demonstrates that they are ambivalent about their national identity; in most cases they feel allegiance with the authorities on the Somali side rather than with Ethiopian authorities.

Two major clans (Habarjeclo and the Habaryounis) dominate the political scenery of the region. Dhulbahante are not represented in the region's power structure, because their territory is not under actual control of the Somaliland government, but it is under dispute with the Puntland authorities who also claim the area on clan-basis. Issa Musa are proportionately represented in the region's administrative apparatus and are more linked to the Sahel region.

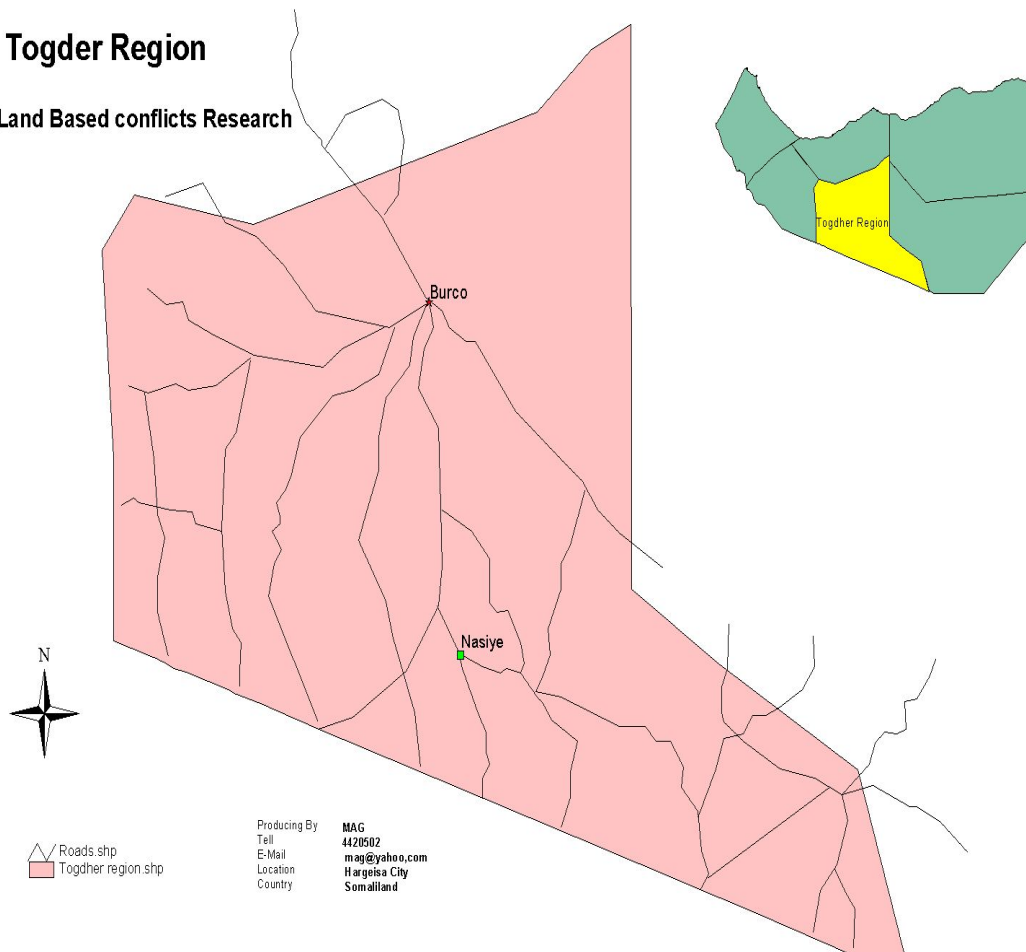
Pastoralism is the backbone of the region's economy, the living conditions are defined by the access to natural resources. The largest livestock trade market in Somaliland is situated in Burao, it is a large wholesale commodity market hub for numerous rural villages within and across the border of Somaliland. The main currency in circulation is the old Somali shilling, which manifests that this region is the nucleus in the trade between Somaliland and Somalia. It is said that Burao is a nexus between Berbera Seaport, Eastern Regions of Somaliland and fifth Region of Ethiopia. Besides livestock and food commodity trade other sources of livelihood include remittances from Diaspora community, retail of jaad and petty local trade.

In the region, rains are erratic in availability and duration. The conflict layout of the region is thus bound to the geographical structure of the area; conflicts over enclosures are common in the East and West of the region. In the South grassy lowland areas which justifies for enclosing land is hardly available and so enclosures are not common in the area. Because of the harsh dry environment and the lack of exploitation of the underground water resources, water resources are scarce and widely scattered in the Southern Hawd plateau. Due to that effect, water resources are the main source for conflict in the area. Also, over exploitation of land use increases insecurity about grazing resources; as a result of that, clan claims over specific grazing areas are gaining momentum.

During the existence of former central government, conflicts were sanctioned by the community elders no to evolve into violent stage, but for ultimate resolution they were revered to the government authorities. In the absence of strong government authorities, pastoral communities have integrated land-based conflicts into their own existing conflict management mechanisms. The involvement of community elders in land-based conflict management does not exclude occasional conflict, but it provides the context and motivation to avoid escalation and to handle conflicts peacefully.

Togdher Region

Land Based conflicts Research



Nasiye Rural Village

Nasiye is a rural village in the Burao District on the edge of small plain that falls about 88 km to the South of Burao town. From Burao to Nasiye you will pass through Suryo , Isku-dhoon, Bali-hiile, Labi-guun, Sanyare , Bilcil weyso, Waraabeye (see the map). The name of the village- **Nasiye** has its historical background, before it grew into a village, it was a big shady tree on a camel caravan route from the hinterland to the seaport of Berbera; the traders of these caravans used it as a resting place under this tree. The village was permanently established in 1948. It first began with a catchment (berked) co-owned by two brothers in-law of different clans one belonging to Issa Musa and one belonging to Habarjeclo. Unlike the berked-based settlements in the Hawd plateau, in which dwellers consist of one or two clans, Nasiye falls on the border of three different clans and the dwellers consist of these three clans.

Even though the village is peculiar of the peaceful co-existence of the dwelling communities during the high points of the inter-clan conflict in the 90s, **the division of the village settlement is obvious**. The Habaryounis and Issa Musa together are on the western side, which is adjacent to their main territory, while Habarjeclo are on the East of the village. In the clan composition of the village, Habarjeclo is slightly more than the two other clans combined and so holds the headman ship of the village. There is a village committee representing the different clan communities, they usually conflicts are sanctioned before they break into violence.

The village population is dependent on the seasonal rainwater in the months of April to June (GU' Season) and September to November (Deyr Season). The pattern of rainy seasons is however changing from time to time. There are about 200 berkeds around, although 80 of them are dysfunctional due to cracks in interior walls or their channels are too dented to draw water into the berkeds. About 80 families dwell in the village in the rainy season, the number of dwellers could be as low as 20 when the rain misses the area. But when the area receives the seasonal rain and water catchments are filled large pastoral communities settle on wide circumference of the village and converge on to it for water resources in the dry season.

Nasiye Village is located amid pastoral communities, who wander a wide area for open grazing area. Even though livestock-based livelihoods have constituted much of the pastoral communities' food consumption, the **frequent droughts and environmental degradation** have caused the livestock-based livelihoods to dwindle drastically. The ban on livestock export has negative impact on the pastoral economy, but they still depend on the sale of livestock to supplement the maintenance of their livelihood needs.

Enclosures are uncommon in the area and the mobility of the pastoral communities is not hindered. The infrastructure of the village is hardly developed; there are no tarmac roads and no electricity in Nasiye village. Only two classes are offering primary education in this village. Health services are basic, no hospital is available and there is only one mosque. VHF Radio is the means of communication to other areas. There are no NGOs actively working in the area, and there is no sense of community-based development initiatives noticeable in the area.

d. Conflict Issues

General Overview

In Africa, land and water resources quality are key factors for sustainable development. The degradation of the quality of these resources leads to scarcities and conflicts, which together threaten the sustainability of rural livelihoods. (M. Taeb, T. Matsumoto).

As the population increases, there is a corresponding increase in the amount and intensity in exploitation, leading to modification and frequent degradation of the environment. The constant population drift from the North to the South in search of pasture resources in Togdheer region results in an **unplanned proliferation of water points**, which are supposed to secure water points in the arid hinterland of Togdheer in a contested way.

The land and water scarcity problems that trigger conflicts are not as important to the pastoral communities in the wet season, due to the fact that swamps and ponds meet their need for human consumption and the grazing pastures have regenerated. As the dry season approaches, the marginality of the grazing lands to provide adequate grazing resources is a situation which forces the pastoral societies to look for other grazing areas and water sources.

The nature of conflicts can vary from ownership disputes between and among the berked owners to those triggered by time bound scarcities of access to and competition over sheer resources. The higher levels of conflict occurrence in the dry season indicate that livestock production activities face an increased shortage of land and water in addition to the already sparse resources. The scarcity of land and water resources threatens human security, which lead to conflicts everywhere in the world. The United Nations Development Program (UNDP), in its human development report (1994) defined human security as: “*safety from such chronic threats as hunger, diseases and repressions, protection from sudden and hurtful disruptions in the patterns of daily life*”. Increasing variability of the seasonal rainfalls and the erosion of the traditional land use norms undermine productivity of rural people and threaten pastoral livelihoods, which leads to resource-related conflicts.

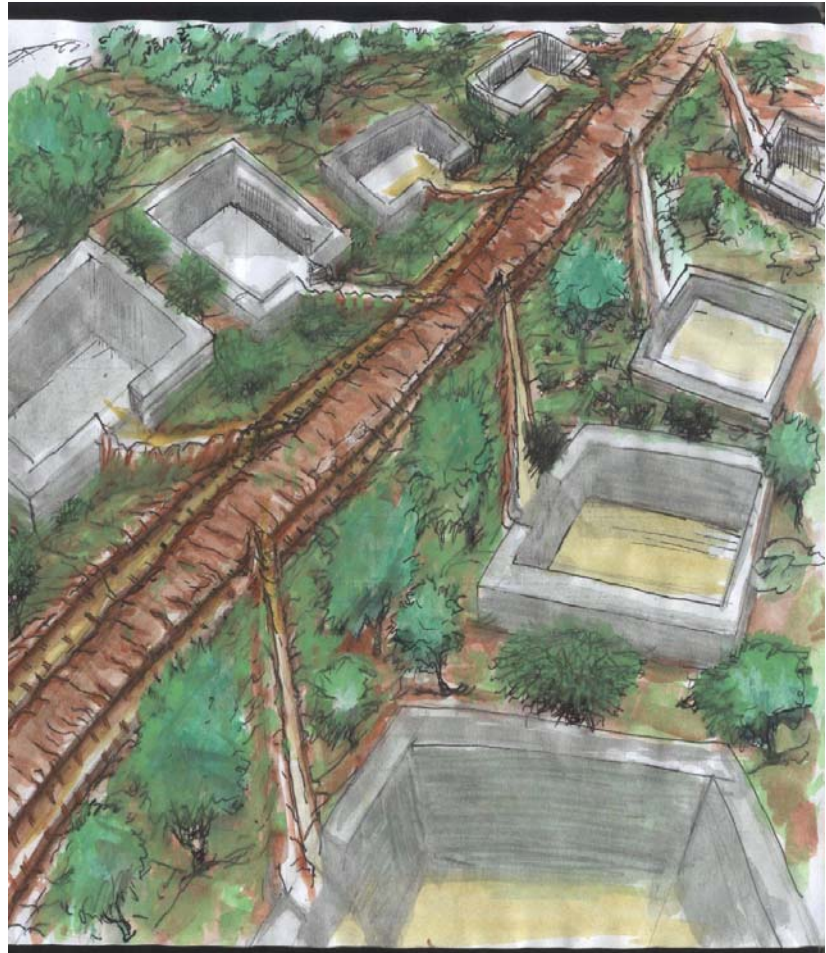
Even though the Nasiye community does not experience many land-based conflicts in comparison to other settings, a village mediation committee assumes the responsibility of managing conflicts at its early stage under the Xeer System. They usually convene under the shade of tree. In order to ensure the smooth implementation of the resolution agreements, the conflicting parties have to bring their closest kinsmen to the venue. If the magnitude of the case in conflict is beyond the capacity of the village committee, it is referred to the government authorities in Burao.

Xeer: Xeer is the name of an informal contract in Somali society. These agreements, which are usually made between different families and / or lineages, often define the size of compensation payments in the case of crimes between these groups. These rules are usually considered as binding, as long as they are not renegotiated.

e. Root Causes of Conflict

Conflicts over feeding channels

The berkedes have channels that feed runoff rainwater into the berkedes. The location of the channel defines the value of the berked. In typical setting, channels are linked to the main road, they do not cut across the road but only linked to one lane that is adjacent to the road and its linkage should not contravene access of others to the road stream.



Access to the runoff water following the road stream depends on the berked's position along the slope. The berked that is high on the slope is to be filled first before the water passes to one that is low on the slope.

From the perspective of rural Somalis, ownership of a berked also legitimizes exclusive claim for the inter-channel area and the area around the channel. Traditional practice is that channels are linked to the road stream at the nearest point. The fact that there is no clear mechanism for demarcating land between neighbouring berkedes contributes to many disputes over the size of land that belongs to each of the neighbouring berked owners.

The water that follows in the channels deepens the bed of the channel, afterwards the channel becomes so sunken and losses differential ground level so that water can no longer drain through it. Berked owners who face such a situation try to dig new channels without the consent of their neighbours; **this activity can potentially trigger conflict.**

Ga'an Mud-daro (transgressor channel)

The geophysical structure of the landscape of Nasiye area is a gentle slope from North to South, the rainwater runoff follows on that slope, the sandy road that links Burao with the outlying villages goes through Nasiye village, and the runoff water follows into that road. The road turns into small stream. The berkedes have feeding channels that feed runoff water into the berkedes, the location of the channel defines the value of the berked. In a typical setting, the berkedes that are adjacent to the main road have their channels linked to the main road at the nearest point and do not cut across both lanes of the road.

The berked that is high on the slope is to be filled first before the water passes to one that is low on the slope. The traditional practice is that feeding channels are linked to the road stream at the closest point. But as it happens, some ill-tended individual may have his berked in a manner not adjacent to the main road but lying behind another berked. Thus, they dig another feeding channel from an improper point, crossing the road in both lanes. This is known locally as “**Gacan Muddaro**”. The motive of those who make this kind of channel is twofold: on the one hand it is to maximize claims over land around his berked, on the other hand the transgressor channel is meant to access water running through the road stream at higher point before it passes to the downstream berkedes, this activity infuriates the berked owners that the transgressor channel passes over.



Conflict over seasonal water-contracts

In an arid environment, one has to secure an estimated quantity of water for human and livestock consumption before the inception of the dry season. If the rain misses your area, one alternative of passing through the forthcoming dry season is to be a guest of a relative (either marital or kinship); a different alternative is to purchase in advance an

estimated quantity of water consumption in the forthcoming dry season in a local contract known as “Xidhasho”.

Receiving rain in the wet season proves the security for water resources for berked owners in the dry seasons. If one has his berked filled by the rain, one has to budget the water resources at his disposal **and rural communities are not good at estimation.** Besides the owner’s estimated own consumption, the use of the harvested water may include the following: allocating a quantity of water for some guest relatives, who may not have berked of their own or who might have missed out rain in their area; in addition to that, the owner might specify a quantity of water for sale either in a retail fashion or in a wholesale contract for future water consumption.

Unlike the other commodities that are traded within rural communities, buying water in advance entails upfront cash payment. The fact that the berked owners do not know the exact volume of water in their catchments, they use up the water in the berked before they fulfil their contractual obligations, then conflict erupts out of this situation.

Conflict over Construction of a new Berked

As the population increases, there is a corresponding increase in the amount and intensity in exploitation, leading to modification and frequently degradation of the environment. (FAO, 1998)

The introduction of new water sources in arid environments has proven to have negative effects on the distribution of grazing resources, often leading to overgrazing around water points. The customary grazing pattern is disturbed and conflict is likely to erupt between those pulled by the use of water resources and the traditional inhabitants of the area.

Further inland is the Hawd topographical zone which extends along the border between Somaliland and Ethiopia. Most of the country's pure pastoralists depend on this area for its rich supply of high quality grazing and browsing. However, following the proliferation of berkads and ballis, which have made access to water during all of the seasons, permanent settlement has sharply increased. (Vetaid, land use policy).

The lack of central control on the formation of berked-based settlements has opened competition over digging new berkedes to justify clan claims over grazing area. The construction of these water catchments is the common prelude among the pastoral communities to claim the land around the new camp as exclusive clan territory. The construction of berkedes in certain areas legitimizes the clan or sub-clan claims over the grazing territory around the new rural village. These exclusive claims over Common Pool Resources by one agent imply that less is available for others; hence creating competition; hence resulting in conflict. These claims have the potential to disturb the communal ownership of the natural capital (the grazing resources).

The other users feel excluded from the natural resources, for which they have every right. The sedentarization also increases the marginalization of the grazing resources in the hinterland areas, which in turn increases the insecurity of the sources of the livelihood of the pastoral communities.

f. Methods of Conflict Mediation

Nasiye suffers from a number of problems that can only be dealt with indirectly or not at all, for example climate change, environmental degradation, increasing prices in food commodities. The population of Nasiye depends on the income they can raise from the sale of their livestock in the market.

In comparison, Nasiye does not suffer too many conflicts over land. If conflicts arise however, they can usually be solved by the elders of the respective clans. Few cases were brought to the attention of the institutions of the state, most conflicts could be solved through the mediation of a committee, also within the xeer-system.

The Resolution Process

When two clans dispute, and casualties have occurred, the disputants are sworn not to do more than has already happened. Elders are selected as a committee for mediation, usually coming from both parties to the conflict, trying to convince the conflict parties not to let the conflict escalate. In the event that casualties occur, to prevent the occurrence of any more casualties, the mediation process begins to settle the casualties and then proceed to the root of the conflict. The mediation committee with the collaboration of the elders of both sides of the disputants intervenes in the issue to resolve. The first step of the resolution process is to analyse the issue of the conflict- that is to know the root cause and the nature of the conflict.

Once in the process, whether the nature of conflict is financial, material or livestock the disputants are obliged to turn in the contested things to the mediation committee. If the conflict did arise over a grazing area that has been exclusively claimed by an individual or a group of people; the issue is analysed and investigated in terms of its advantages and disadvantages to the community, to the area and to the livestock. If the action is contrary to the common benefit of the communities that it has no advantage to these beneficiaries the claimant of the area is told that the action is not acceptable in accordance with the common use of the community and their well-being, and for that sake the claim should be discarded. Then the issue is solved in that way.

Even though the process excludes women from active participation, it includes the closest kinsmen of the disputants in order to safeguard the smooth implementation of the resolution agreements. To keep the fairness and justice of the resolution the disputants are sworn to the adherence of the resolution agreements.

Finally, when the resolution is reached, it is documented and kept in safe place. This is useful, for using as reference to any party who violates the points of the agreement, as well as for applying of similar issues.

g. Gender Perspectives

The role of women in Somaliland society has been on the increase, with an active and positive impact on the overall community development. Women's increased economic participation and their enviable position as bread winner in their families is evidence of that changing role. But still cultural and religious misperceptions undermine women's political participation despite their enhanced role that qualifies them to take part in the decision-making process in every aspect of national interest.

The nature of Somaliland politics is clan-based. The biases that arise from cultural attitudes and clan practices work against the participation of women in political and public life. Male clan members are unwilling to be represented by a woman because the clan loyalty of women is said to be unreliable. The Somali saying **Dumar qabiilna maaha** which implies that women do not belong to any clan as their loyalty is torn between their father's clan and their husband's clan.

In the rural areas, women were vital in all household work, including making all items of which the Somali traditional house and utensils were made. They were also responsible for generating family incomes from the animal products and other materials woven out of the abundant and rich vegetation at the time, moreover, rearing animals especially sheep and goats were exclusively their inherent responsibility.

When it comes to decision-making, at the family level, women had an unenviable role in the family affairs. Even, when it comes to decisions at community level, where women had traditionally no direct say at the community before, which was exclusively for men, their invisible voice and messages were echoed through their spouses, in this respect, the honours and **merits of the ideas delivered at the meetings were attributed to men**. But their background and sources, in most cases, were from women according to the public perceptions at large.

Women always take part in land related conflict through inheritances because man doesn't allow women to have some amount of land that man has already. In the customary Law framework, women are excluded from conflict management; even female witness is worth half of the male. **In the rural areas, the gender gap is wide**, women are obsessed with household chores and there is no indication that they will be organized to combine their efforts in the near future.

In Nasiye as in other rural communities, most of the assets (the berkeds) belong to the head of the family (the man). If the man dies, the oldest son assumes the responsibility of claiming the

asset. If all the children are female, an uncle may come up to safeguard the property (interview with Nasiye Village committee)

h. Comparative Issues

Conflicts over land **do not only arise over water resources**, there are other cases during dry seasons. These are mainly over grazing resources. Such conflicts arise in times of pastoral movements in hot dry seasons like winter time or ‘the Jilaal’. The conflicts based on such issues, initiate in wet seasons of the Gu’ and Dayr time. During these periods, people who have more rain in that period always enclose a vast piece of land for pasture, to be used as resource for the livelihood of his/her livestock as well as income-generating source. In this time, these pastoralists always do not give any hospitality to other pastoralists who travel from a long distance in the search of pasture and water for their lives and livestock. They always ask for a substitute for the resources they will use or they will give to them.

Case A:

In a dry season time, very hard drought happened in many areas in the Togdheer region, a pastoralist who lives in these areas suffered to lose many of his livestock. During this time, a pastoral man has moved his livestock and family in search of better livelihood to another area, near Aroori Plateau, which has better grazing and water resources. However, these belonged to private individuals who intended to trade them and use them only for their own livestock. The migrated pastoral man was asked to pay two of his camels in order to get water and pasture for the rest of his livestock and family as well. Since the man had no clan affiliate in the area, he paid two camels for survival. However, after it reached in the time of rainy season, the pastoral man moved back to his area. After two years time, the same drought happened in the areas where better grazing areas could be found beforehand. The man who asked a substitute of two camels for grazing, has moved to the areas of the man from whom he took the camels. As he arrived, the man, likewise asked him to pay two camels otherwise no hospitality will be given to

him. The man has refused to pay, because his clan is present in that area. This brought the escalation of conflict and dispute over the grazing and water resources.

As such cases happen; it abolishes the hospitality giving and sharing mechanisms of common pool resources in the hard dry seasons among pastoral society. As well, this creates the degradation of environment because of the greater pressure that is set on the environment in search of survival for better livelihood. For instance, when the pastoral loses his livestock during a drought, he starts to generate income for better livelihood by cutting trees and burning them, as well, to enclose huge areas of common grazing areas to trade the pasture locally and externally to the neighbouring regions and countries.

This also encourages the habit of land grabbing by individuals for private use and the competition over the scarce resources. In addition, movement patterns of pastoral society are also decreasing and groups and/or individuals start to be permanent in our area and make illegal farms for the use of pasture of his livestock, crop farms for the livelihood of his family and also dug Berkads for water reservoir. Hence, the establishment of new settlement areas is easily adopted.

Conflict Resolution Mechanism:

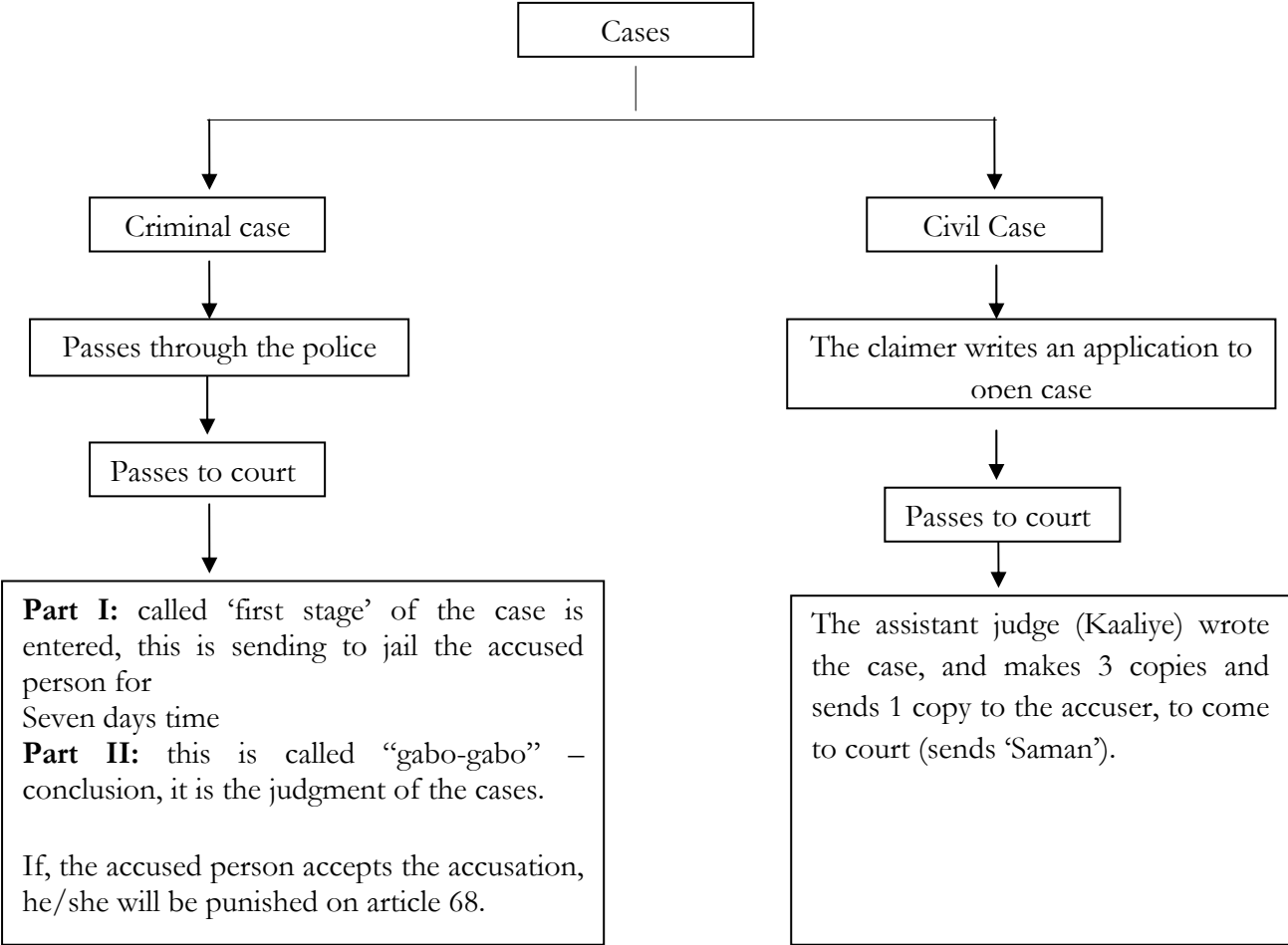
Mostly, a case of land conflict goes into three parallel resolution mechanisms. Cases are brought to either of these parallel mechanisms by the people; these are of the three institution: the courts and local governments – commonly the state system, the traditional system, or the sharia system.

However, the majority of nomadic people (pastoral and agro-pastoral) bring their cases of conflict to be judged over in the customary mechanism. The reason is that, people always believe that cases which will be judged in the customary mechanism will take less time, it is less costly, and there will be no corruption.

According to this, there are some cases which went into courts – the state mechanism of judging conflict cases. Most likely, there are cases which are suspended because they are too long and too expensive, as in the below case (see Case B). The following

chart shows the flow process of cases – the Criminal and the Civil – and how they go into courts:

Figure 1.1:



Case B:

Title: “Gara-garacad Project” at Balliga-cabdi Faarax:

Narrater: Mr. Iiman Batuun Hoori - [District Court Judge]

Ex. Odweyne Police District Commisioner.

The conflict was about farm ownership. The site of the farms was in an area intended to implement grazing protection project at Balliga Cabdi Farax, a place very close to Xaaxi village. The area of the project is about 3miles wide of pure grazing land, with few dispersed crop farms privately owned by some individuals. The conflict started after the claim of Mr. Mohamed, the claimer,

has argued that a man called Mr. Aadan has taken and holds his farm land at Xaaxi through use of supremacy at the time of the Somalia regime. Mr. Aadan is the owner of the farm at the time of accusation, Mr. Mohamed reported his claim in the police security of the Odweyne district. However, at this point, as the case has been submitted to the police security, it was put as a criminal case, referring to the statement of the claimer. The police security, called Mr. Aadan for further investigation, also the Chief of the clan of the two men has been called to listen to the issue. After hearing the statement of Mr. Aadan, the police security ordered the disputant parties to bring within ten days their confidential witnesses for further clarification of 5 witnesses each. At this point, since the accused man has claimed that he owns the land, the case has changed into civil case. At this stage Mr. Mohamed, who was the claimer, did not appear in front of the police during the ten days. The police, however, has listened and written down the statement of Mr. Aadan's witnesses. The witnesses have stated that Mr. Mohamed Cawad, who is the father of Aadan, belongs to the land and Aadan, as the son of the Mohamed Cawad, is the responsible person of the land of his father and belongs the land.. The witnesses were also sworn. Mr Iiman – the police security officer – has written down a letter recommending about the case, and clarifying that Mr. Aadan is the owner of the land and the case was closed.

However, Mr. Iiman – the police officer – was replaced to be the district court judge of Odweyne. Soon after, Mr. Mohamed again renewed the case, and opened his case again in the court. The court has submitted “Saman” to Mr. Aadan to come in front of the court. And the case was re-opened.

When Mr. Aadan came, Mr. Mohamed was asked, the legal claim of ownership of the land.

Mohamed: “I have these documents, and Mr. Deeq has given me this land as written in the documents he said”.

The court has called Mr. Deeq and asked: “do you give a land to Mr. Mohamed”

Deeq said: “Yes”.

The court asked Deeq: “have you seen physically the place that you have given to Mr. Mohamed”,

Mr. Deeq said: “No”,

The court again asked to Deeq: “then how do you prove that you have given that land to Mohamed?”

Mohamed claimed that the land was given by him by the time of project of ‘Ayaxa’.

The court has read the letter that Mr. Iiman has written for Mr. Aadan, which was dated to bring their witnesses within 10 days. It was written also, that the land was belonging to Mr. Aadan from 1964 which is 43 years since then. And Mr. Mohamed was claiming that he has owned the land for 24 years.

At that point, since Mr. Iiman is now part of the court, and he is the judge and knows that case since its beginning, the judge was replaced and the case was suspended.

Thus, many cases that go to court are not completed. Reasons can either be found in that government officials are reshuffled to other positions or in the assumed corruption in the courts.

4. Urban Land Conflicts

a. Background & Institutional Set-up

As in the rural context, urban land conflicts are characterised by different and overlapping systems of law. Theoretically, three different systems can be distinguished: formal, positive law; traditional mechanisms based on *xeer*, and shari’a law.⁶ While land allocation and management is theoretically regulated by formal law, actual practice often differs considerably.

What exists of the law is incomplete and can often not be implemented, due to a number of reasons. Formally, three levels of law exist: The Supreme Court, based in Hargeisa, six regional courts as well as several district courts. These are supposed to implement “Law No.

⁶ Le Sage (2005: 7) distinguishes a fourth system law, “civil society and private sector initiatives”, quoted in Höhne (2008: 22). This however is not important for the context of urban land conflicts.

17/2001”, which was passed in 2001 and was intended to serve as the primary frame of reference. The law however is unclear on

- How to obtain a permission to construct something on a piece of land;
- The system which is to be installed for the registration of land;
- The institutional framework and the competences of the different bodies responsible for the allocation and management of land.

Recent (in 2008) amendments have not brought much improvement but have rather evaded the actual problems. The law is equally unclear on the process of conflict resolution, ignoring one of the most important aspects of the development of Somaliland.

Shari'a law

As already noted, Somaliland law is not unified, different systems of law exist at the same time, interact and influence each other, and sometimes are in conflict with each other. On a very basic level, *Shariah* law distinguishes between seven different institutions for land management:

1. acquisition of unowned land through reclamation
2. land grants
3. lease of state-owned lands
4. charitable endowed lands and buildings
5. a reserved area of land which is controlled by a set of special regulations in terms of the extent and the intensity of utilizing its resources
6. inviolated zones of land
7. the office of public inspection (Safei-Eldin without date)

Shariah law is one of the parallel laws that exist in Somaliland; the services of the Shariah law are delivered through Shariah law affairs offices licensed by the ministry of Justice. The judges there have mainly academic training in Shariah law from Middle Eastern institutions. The conflicting parties present their case to the Shariah court on their consent expecting their dispute resolved within the Shariah frame. As the Shariah judgments represent absolute truth it has higher legitimacy than other parallel laws. Since reconciliation is enshrined in Islam, the

court often harmonizes relations between the conflicting parties. Like the other parallel laws the Shariah court gives the contestants the opportunity to appeal against the verdict.

Though there is no coordination between the Shariah courts, they operate in the same legal framework. Because of its complexity, the courts are not keen on resolving land-based conflicts so it constitutes only a small percentage of the cases presented to the courts. Conflict on inheritance is the most referred land-based conflict to the Shariah court. The bulk of the caseload in the court is on family affairs.

The Shariah courts have distinct gender perspectives, with the exception of adultery women can testify before the Shariah court, but woman witnesses weigh less than male-two female witnesses are equivalent to one male witness. The Shariah court maintains a horizontal relationship with the customary law as it seeks the cooperation of community elders of the conflicting parties to convince the court judgment to their respective subjects.

The Shariah court decisions have more legitimacy than the state court decisions, because the conflicting parties come to the court willingly and that contributes to the acceptance of the court decisions. Shariah law courts have the following noted strengths (FGD Shariah law experts).

The strength of the Shariah law application is:

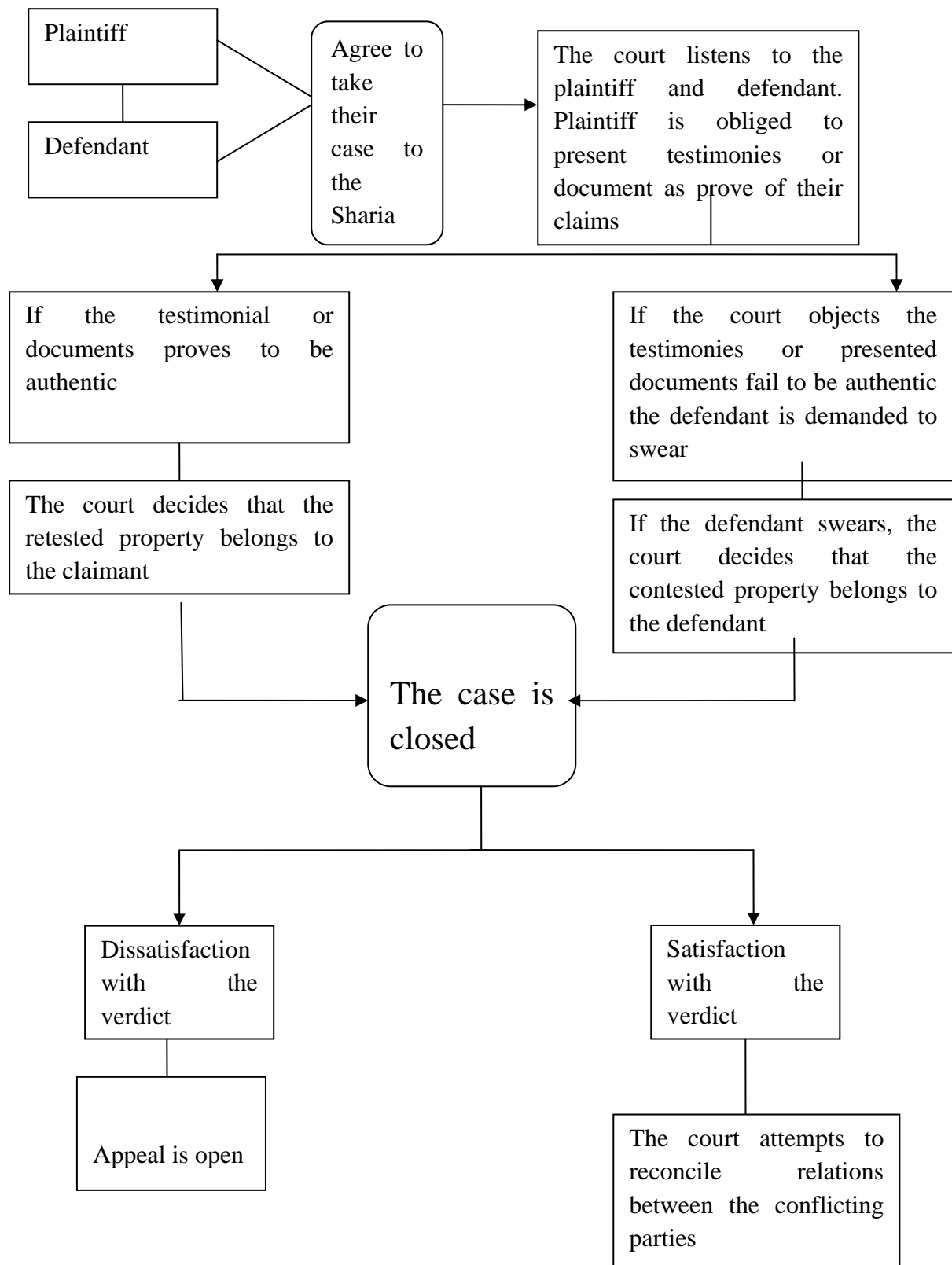
- ⊖ That the conflicting parties come to the court on their consent.
- ⊖ It is quicker and less expensive than the formal litigation process.
- ⊖ It combines adjudication with reconciliation.
- ⊖ Shariah courts apply the same law.
- ⊖ More flexible than the formal judiciary process.
- ⊖ By representing the absolute truth of the word of God, their legitimacy is increased.

The Shariah courts don't have authority to enforce their decisions, but they do use the influence of the community elders for the implementation of their decisions. The levels of appeals against Shariah court decisions to other Shariah courts are rare; but either side of the conflicting parties may decide to switch to State court systems. This may cost the client a lot

of time and financial resources. The Shariah courts system has the following weaknesses (FGD with Shariah court Judges)

- ⊖ The court lacks enforcement capacity.
- ⊖ Poor working relationship with other parallel laws.
- ⊖ Shariah Courts are not coordinated

In Shariah court procedure, cases are assigned to panels of judges that listen to the facts and arguments presented by both conflicting parties. In resolving typical land-based conflicts, it starts hearing with the plaintiff who has to present evidence supporting his/her argument. If the evidence proves to be authentic the contested land is judged for the plaintiff; on the other hand if the presented evidence fails to attest or is objected by the defendant on reasonable grounds in the context of Shariah, the court calls the defendant to swear before the court on the holy Koran that the contested asset belongs to him/her. The Shariah court system does not require lawyers as the conflicting parties present their cases to the court, which addresses the needs of both parties within the Shariah framework.



b. The Stakeholders

Returnees

Until 2002, 76 % (about 138, 000 persons) of the returnees had settled in Hargeisa, leading the Somaliland authorities to rethink the settlement policy and leading to an attempt to settle returnees increasingly in smaller villages and towns, instead of focusing on Hargeisa.⁷ Due to the absence of cadastral data, land grabbing is a common issue in Hargeisa. Usually, families arrive at the outskirts of Hargeisa and grab a piece of land in order to settle there.⁸

Hargeisa Municipality

The Municipality is supposed to document and allot land in and around Hargeisa. There are however serious gaps in the ability of the municipality (see below)

The Diaspora

The civil war had the effect that many, especially educated, Somalilanders fled the country. This Diaspora (of which the biggest communities can be found in Great Britain), exerts significant influence nowadays, especially through the system of money transfer.⁹ The inflow of money has also led to an increased speculation market for land.

Businessmen

Land has emerged as lucrative commodity in most of the urban centres of Somaliland; the increasing urbanization is a clear manifestation of the growing demand for urban land. Businessmen acquire urban public land in prime locations by striking backdoor deals with competent authorities and this impairs the trust of the public in government as custodian of the public properties. In the case of land related conflicts, businessmen wield more clout and receive preferences and tend to influence decisions made by land management institutions.

Property Brokers

Property brokers are one of primary actors of the urban land market. Even though they are differentiated by the size of the transaction they involve, they are unclassified and the

⁷ Atkinson et al. (2003: 10).

⁸ Growing urbanization is not only a problem of Hargeisa, but frequent droughts have also driven more and more nomads to Gabiley for example.

⁹ As with the Khat-Trade, it is almost impossible to acquire reliable data as to how much money is flowing into Somaliland from the diaspora. What can be said for sure is that the money transfer companies (esp. Dahabshil, the biggest company) are the one branch of Somaliland services that works almost perfectly.

occupation doesn't need special skill or to undergo legal procedures to be recognized as property broker. In typical transaction of land sale, there could be one person or group of property brokers from each side of the transaction.

The functions of the property brokers mainly focus on price mediation but not on the authenticity of the parcel of land for sale, they by-pass to register sale transaction in the respective municipality to avoid taxation. The fact that the property brokers do not refer the transaction to the municipalities leads to the necessity to check that the plot exists at all and is not already occupied. This in turn can again lead into conflict. Clan plays into the functions of the property brokers as well. Because conflict is rampant in the urban land context, a property broker of the same clan is often entrusted to testify for the authenticity and potential of a parcel of urban land.

c. Core Problems

A few core problems can be identified from the research for the urban context, although not all have been dealt with in the necessary depth. Among the core problems are:

- Sedentarization and real estate speculation in the context of an accelerated urbanization process
- Heritage of War: Return of displaced people
- Economic Trend: The booming real estate market
- Illegal forging of documentation; claiming of land

These developments in turn lead to and are in part aggravated by:

- Public greed on land
- Unequal power relationships among neighbouring communities
- Corrupt judiciary system
- Low enforcement capacities
- Lack of human and technical resources

Unequal Power Relationships: are often historically determined and can refer to neighbouring communities or differences between clans. For example, when two houses of a merchant were auctioned because he had overdue credits, one was sold to a person from the Isaaq-Clan, the other to a person from Gabooye. The former owner did not resent the selling

of his house to an Isaaq, but seized the house that was sold to the Gabooye person by force and occupied it. This in turn led to wider conflict in the Gabooye community.

d. Intervening Variables

Urban Land Market

Understanding the urban land market is fundamental to the interface between the supply mechanism and the demand function. The urban land in Hargeisa can be segmented into inner city, suburban and peri-urban. Traditionally the government has the sole authority of land distribution but the government doesn't have the power any more to control the land supply to adjust the balance between land supply and demand.

The primary source of urban land supply is the conversion of agricultural land into urban land, which itself encourages land grabbing on the fringes of the big towns, which are then registered as a farm in the ministry of Agriculture. The intense competition for scarce urban land defines land and real estate inflation, the urban land prices also skyrocket for the given fact that the supply mechanism cannot keep abreast with the rate of urbanization.

The Diaspora community, which has been able to accumulate some wealth, has found land as viable investment. It purchases most of the urban land on sale, it is estimated that 90% of urban land transactions involve the Diaspora community. The interest of the Diaspora community lies in the suburban areas, where the plot size is bigger than the inner city. **Access to piped water, peripheral urban centres and the parcel size** are the primary determinants of the land price, so the price of land in Hargeisa varies considerably by location and level of social service infrastructure.

The loss of ownership entitlements due to displacement by the civil war was a common fact among the urban population. Town municipalities had to re-issue the ownership entitlements to the rightful owners, the system of identifying the authentic owners of the land property however has loopholes in it. Some employees of the municipalities issue dual ownership entitlements for a single plot of land and when such a parcel of land is put on the market it causes conflict between two claimants, each with a genuine entitlement. Inheritance of land is another issue in the urban land market, a member of a family may put a parcel of inheritance land for sale without the consent of other family members, this type of land sale transaction

arouses conflict between the buyer and the other family members of the selling party. To avoid conflict most of the potential demand is guaranteed by collateral asset in case conflict erupts.

Resource Management

These problems could be solved if the administration used the available resources in a positive and progressive way. There are however serious problems hampering the resource management. The state has frequently used land sales for personal enrichment, thereby individuals profited from the sale of land, where instead the money could have been used to improve the existing system of land management. The gaps in the legal system have been exploited, especially with regard to the expansion of urban areas. Parts of privately owned farms have been converted into urban plots, thereby fuelling the speculation market. Another critical issue is the registration of land ownership in fragile settings, for example Burao. Here, the volatility of the political situation contributes to the insecure registration of land.

e. Conflict Management

Conflict Management under the Modern System

Before 2005, there were the following formal possibilities to solve land conflicts. The plaintiff had to lodge his complaint to Hargeisa Municipality, if one of the parties was not satisfied; the case could be passed on to the appeals committee of Hargeisa Municipality. If this did not work out as well, the case could be passed on to the district court, which had to finalize the case within one month. The advantage of this process was that the Municipality had the knowledge about the allotted plots of land, but it used to be a heavy workload and in general the employees of the Municipality are content about not having to deal with the issue any more.

In 2005, land conflicts were transferred to the courts, but due to the law being incomplete and weak (see above), this did not contribute to the efficiency of the management of land conflicts. Most interviewees named the following shortcomings of the formal conflict management system:

- Lack of competence on the part of the municipal staff, such as documentation,

- Limited capability and knowledge in conflict resolution mechanisms
- In addition to that, corruption is also prevalent, leading to biased and unfair decisions.

These developments are dangerous. Since land is such a hotly contested issue and the trend towards urbanization is steadily increasing, lack of capacity of the Municipalities leads to suboptimal outcomes. This in turn undermines the trust of the population in government institutions, thereby undermining the sovereignty of the state. These problems have therefore to be dealt with immediately, in order for the state to gain legitimacy and acceptance.

It is however not always easy to distinguish between formal and informal mechanisms of conflict resolution. For example, if there is a conflict over land in Gabiley District, the following mechanism is used: An ad-hoc committee is set up, which consists of members of the committee for peace and security, one supporting member from the committee of land, members from the central government and Elders. This group tries to de-escalate the conflict first and tries to mediate between the conflicting parties in order to achieve a sustainable solution. This mix of modern and traditional mediation has proven to be rather successful, about 500 conflicts have been solved through this mechanism, and the trend of conflicts is steadily decreasing – about 70% during the last three years. One reason for this success is the acceptance and sustainability of the solutions, the population approves of this method.

Conflict Management under the Traditional System

Off-court or traditional mechanisms of conflict resolution can have advantages, but are also seriously hampered by disadvantages. On the positive side, off-court solutions are often less expensive than formal mechanisms, they consume less time, are compromise-oriented and tend to be more sustainable than the formal ways. This is mostly due to the acceptance within the population of traditional mechanisms and the relative distrust against governmental institutions. And yet, this leads to an institutional overlap, the so-called forum shopping.

Therefore, off-court cannot simply be equated with “traditional” or “Shariah”, but it is always a mix of the different systems. As recognized in the rural context however, the traditional system also has a range of shortcomings:

- members of the mediation committee often biased and not neutral
- reactive rather than proactive

- often late and slow, getting the committee together often takes a lot of time during which the conflict escalates
- usually, women and younger men are not included in the process
- verdicts not necessarily binding, both parties have to accept the judgement and implement it (see APD 2008)

Conflict resolution through customary law has its roots deep in the Somali culture, ever since the collapse of the former government of Somalia the community elders have taken up the role of governing local issues and in the absence of government institutions, customary conflict resolution emerged as the only acceptable recourse to resolving conflicts among the communities. The customary conflict resolution has gained its momentum amid increasing land-based disputes in the urban context. Conflicting parties turn to customary law in the face of inefficient judiciary and weak enforcement of the state.

The role of customary conflict resolution in the overall conflict management is increasing and it constitutes now 80 percent of the conflict of the land-based conflicts (FGD customary law experts). A distinct feature of customary conflict resolution is the participation of the closest kin of the conflicting parties in the mediation process. The inclusion of these groups is meant to observe the implementation terms of the resolution in their respective sides.

The following reasons contribute to the increase:

- a) The short length of the resolution process.
- b) The costs are lower.
- c) More participatory than the formal judiciary system.
- d) More loyalty by the mediation committees.

The costs involved in customary conflict resolution are quite low in comparison to the judiciary system, and do not vary with the value of the contested land. The mediation committee often consider the capacities of the conflicting parties.

As harmonising relations between the conflicting parties is ingredient in the customary resolution process; it is likely to be more sustainable than the judiciary system, which sparks dissatisfaction on either side of the conflicting parties as a win-loose situation emerges. The group also noted that the legitimacy of their power among their communities gives them access to the cooperation with the security organizations such as: the police force and the

ministry of interior. The customary resolution judgements also include measures for potential violations of the agreement.

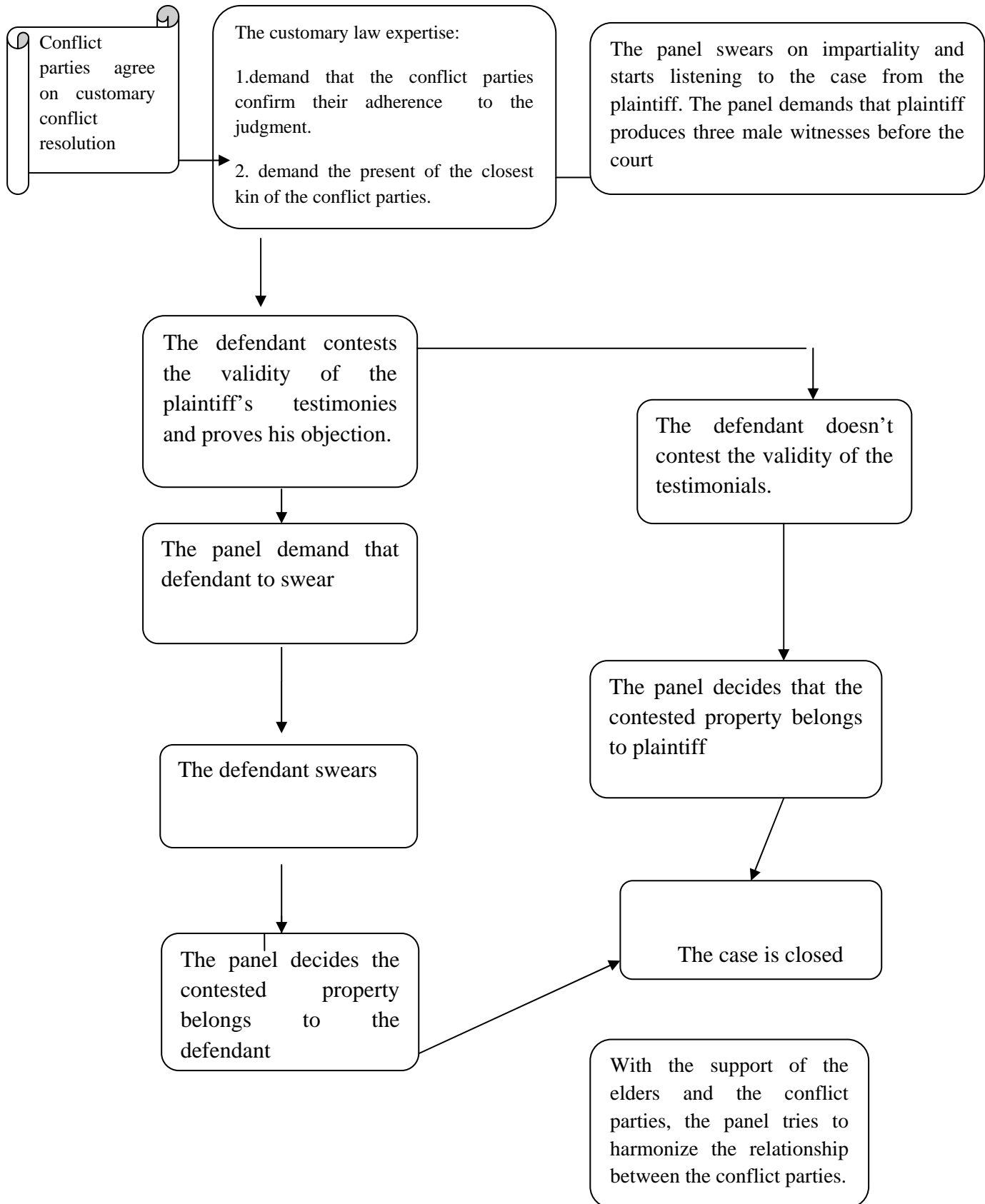
The perceived strengths of the customary conflict resolution (FGD customary resolution experts) are:

- 1) The customary conflict resolution takes less time.
- 2) Community elders are more loyal than the corrupt judiciary system.
- 3) Elders of the conflicting parties, who have the capacity to implement the resolution agreements, participate in the resolution process.
- 4) The mediation committee collect facts from the neighbours of the contested land.
- 5) Customary conflict resolution ends at harmonising the relations of the conflicting parties.

In the court procedure, customary conflict resolution has some similarities with the Shariah court e.g. in gender perspective – woman testimony weigh half of male testimony and in setting up a customary law court, religious persons are included in the panel of customary judges, and Shariah may in some points refer to the customary resolution process. The customary law has two different versions of application, the strict and the compromise version; the complexity of the conflict situation dictates the version that would be applied. The customary conflict resolution is not proactive but only reflects past events of conflict. The fact that there is no uniform code of law referred to customary law is often practiced within the context of peace-building and reconciling the conflicting parties. The most common weaknesses of the customary conflict resolution (FGD customary resolution experts) are:

- 1) The judgement is not based on absolute (Shariah) or established secular law.
- 2) Customary conflict resolutions lack enforcement capacities.
- 3) For the sake of reconciliation, judgements may be compromised.
- 4) It does not involve women and young men.

The process of customary conflict resolution



5. Land Conflicts in Afghanistan

Land conflicts in Afghanistan show some characteristics that are similar to those in Somaliland and some differing aspects. Conducted in the south-eastern provinces of Nangarhar and Paktia, research followed basically the same lines as it did in Somaliland. SSIs and FGDs with various interviewees were conducted in order to determine the scale, origin and impact of land-based conflicts. Developing long-term strategies and entry points to strengthen civil conflict resolution was one of the aims of the project.¹⁰ However, the overall security situation deteriorated massively during 2008, thereby also reducing the possible impact of the project.

a. A Recent Survey

Land conflicts are a specific challenge for war-torn (post-)conflict societies such as Afghanistan, which had to accommodate a record number of five million refugees to date and an estimated three million refugees-cum-potential-returnees in Iran and Pakistan.¹¹ According to the International Displacement Monitoring Centre, forced displacement and various groups / waves of returning refugees is a major problem of contemporary Afghanistan and directly linked to disputes over infrastructural resources and land. Nearly half of returnees face housing problems, according to UNHCR figures, although the government promised otherwise. The scarcity of land, combined with increased property prices, land grabbing practices and a challenging registration system are further exacerbated by a weakened social fabric due to displacement, exile and conflict.¹²

“Despite the government’s promise of land for every returnee, the scarcity of land has meant that returnees are often allotted land 50 kilometres from urban centres, and usually in areas where they have no means of livelihood, transport or family connections. (...) Land and property disputes continue to prevent return. Disputes normally arise from illegal occupations of houses and land, their redistribution

¹⁰ Basically, the Afghan part followed the same methodological path as the Somaliland part. Thus, further details will not be included here. For more information see section 2.

¹¹ Cf. Al Jazeera, 12.08.2008, Aunohita Mojumdar, Afghanistan’s refugee challenge, <http://English.aljazeera.net/focus/2008/08/2008812135027967466.html> (as of 13.11.2008).

¹² International Displacement Monitoring Centre (IDMC 2008), Afghanistan: Increasing hardship and limited support for growing displaced population, 28.10.2008, www.internal-displacement.org (as of 13.11.2008), pp. 10-11.

of reallocation to other families in the absence of the original owner, or disagreements over sharing inherited property”.¹³

Surveys from the US-based Asia Foundation showed that the majority of Afghan people hardly contact government officials or parliamentarians (five percent of respondents) in case of land or property disputes, but prefer to rely on elders of local shuras/jirgas (33 percent) or district authorities (21 percent), among other actors. At the same time, more than half of the respondents indicated that problems were solved when addressing traditional institutions and/or security forces compared to a third of respondents reporting successful interventions in case of governmental officials / agencies.¹⁴ In the 2007 Asia Foundation survey, respondents were asked if there are problems which concern the whole community and cannot be resolved by individuals alone. Out of the sixteen percent responding positively (fifty percent answered “no”), land conflicts were the type of problem with the highest number of answers (twenty-eight percent), ahead of concerns over lack of resources and infrastructure and even security problems (eight percent). Most of respondents asked for mediation and support from elders of local shuras/jirgas (forty-eight percent) or members of parliament (thirty-three percent).¹⁵ Trust in the formal judicial system continues to remain low, with conflict parties rather opting for informal mediation processes or conflict resolution via social networks and contacts to power-holders.

¹³ IDMC 2008: 10

¹⁴ Asia Foundation (2008), Afghanistan in 2008. A Survey of the Afghan people, <http://asiafoundation.org/resources/pdfs/Afghanistanin2008.pdf> (as of 03.02.2009), pp. 61-63.

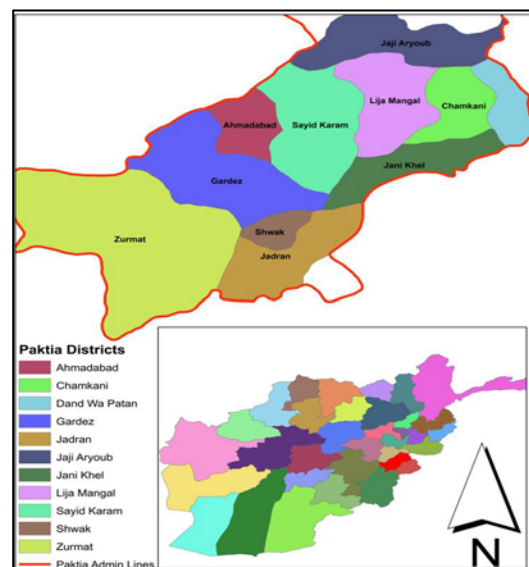
¹⁵ Asia Foundation (2007), Afghanistan in 2007. A Survey of the Afghan people, <http://asiafoundation.org/resources/pdfs/Afghanistanin2007.pdf> (as of 03.02.2009), pp. 61-62.

b. The Stakeholders and the Conflict

Three main groups of stakeholders could be identified in Afghanistan:

1. The conflict actors as the primary stakeholders: different tribes and the government
2. Secondary stakeholders like corrupt government officials or corrupt tribal elders
3. Additional governmental institutions like the court system, provincial shuras¹⁶, jirga, tribal elders and (international) non-governmental organizations such as the Norwegian Refugee Council (NRC), the Afghan Independent Human Rights Commission and the United Nations Assistance Mission in Afghanistan (UNAMA).

For the study, two pieces of land were chosen in Terra Valley, Paktia Province. One part of land comprises 750 Jaribs¹⁷ and is the origin of the conflict between Terrawals, Gardezies and the government. Another piece of land is 201 Jaribs which is the cause of the conflict between Terrawals and a Garmashi tribe household.



c. Formal Methods of Conflict Resolution

There are two types of land-based conflict cases which are being frequently registered in the state institutions for resolution. One is the land dispute between two persons or tribes while another is the land conflict case between the government and a person or a tribe. The first type of conflict which is between two persons or tribes is being registered in two levels; district level (in rural areas) and provincial level (in urban areas).

- A) When a person or tribe claims land which is grabbed by another person or tribe at district or rural level, he has to make a petition to one of the two authorities;

¹⁶ A shura is a council which is held in district and provincial level regularly on its expected times. A jirga is also a council but it is held by taking complete authority or Waak from the conflicting parties in response to a sudden condition.

¹⁷ 1 Jarib equals 2.000 m².

1. One is the indirect start of case through the *Huquq* (Rights) Department of the Ministry of Justice in the relevant district. After being completed in the district Rights Department, the file of the case goes to the Directorate of *Huquq* (Rights) Departments, which is in the provincial level. If not being solved in the Directorate of *Huquq* Departments, it proceeds to the *Dewaan Madani* (civil department of urban primary court), which is a part of the judiciary system. Then it might proceed to the appeal court, the Supreme Court up to the *Shura Aali* (the commission of twelve Supreme Court judges).
 2. Another option is the direct start of a claim through the district primary court, which is a part of the judiciary system. If the case is not solved in the district primary court, it is referred to the appeal court at the provincial level. If the opposition party does not accept the decision of the appeal court, it is transferred to the Supreme Court in the capital Kabul (central level). If not being solved by the Supreme Court, it is reviewed by the *Shura Aali*.
- B) When a person or tribe claims a land which is grabbed by another person or tribe at provincial or urban level, he has to make a request to one of the two authorities.
1. One is the indirect start through the Directorate of Rights Departments. If the case is not solved in this organ, it goes to the *Dewaan Madani* or civil department of urban primary court. Afterward it is referred to the appeal court at the provincial level. If the opposition party does not accept the decision of the appeal court, it is transferred to the Supreme Court in Kabul. After not being solved by the Supreme Court, it is reviewed by the *Shura Aali*.
 2. Another option is the direct initiation of the claim in the civil department of an urban primary court. Afterward it is referred to the appeal court at the provincial level. If the opposition party does not accept the decision of the appeal court, it is transferred to the Supreme Court in Kabul. After not being solved by the Supreme Court, it is reviewed by the *Shura Aali*.

In the above instances of case registration the government and state institutions such as courts, Rights Departments and other organs play the role of mediators. In every stage of the case both of the conflicting parties can confess over the decision of the court and the case is being finalized till it reaches to the *Shura Aali*.

The second type of land-based conflict which is between the state and person or tribe is being admitted in two levels; district level (in rural areas) and provincial level (in urban areas).

- A) When the land conflict between the state and the person or tribe emerges, there are two possibilities; in one instance, the government claims the ownership of a land, which is in the hands of person or tribe; in another instance, the person or tribe claims the ownership of the state land and makes a petition on the government.
1. When the government claims the ownership of land, which is grabbed by a person or tribe at district or rural level, the government asks the person to come to the Directorate of the State Cases Department of the Ministry of Justice, which is in capital of the relevant province and initiates the case with him.
 2. When the person or tribe claims the ownership of a piece of land, which is allegedly said that belongs to state, there are two kinds of commencements of cases:
 - a. If the one person or one tribe claims the ownership of state land, the person make a petition in which he mentions his problem with the government to the governor of the province. After getting orders from the governor house, he is referred to the Directorate of the SCD. As a result of this process the case between the government and the person or tribe starts.
 - b. In the district level, sometimes two persons claim the ownership of state land. Both of them make petitions for claiming the ownership of land to the district primary court. The district primary court asks for ownership documents from petitioners and evaluates the documents. If the documents do not prove ownership of the claimants, the court directly refers the case to the State Cases Department of the Ministry of Justice at the provincial capital. When the case came to the SCD, this department does not run the case with both of the disputants. Instead it excludes one of them who can not attend ownership documents on which the courts make decisions.

When the conflict between the government and a person or tribe started, the State Cases Department of the Ministry of Justice asks the person to attend his documents for evaluation or sometimes the SCD issues letters to diverse state offices to confirm the ownership of the claimant. If the SCD verified the ownership documents of the disputant, it does not have the right to accept or confess¹⁸ on it and give the land to the person. Instead the SCD has to appoint one of its lawyers or attorneys as delegate for tracking this case in the Judiciary

¹⁸ According the formal law of Afghanistan no any of the state officials or attorneys has the right to acknowledge the decision in a court or any other state institution.

system. When the case is sent to the Public Rights Department or *Dewaan Hoquq Aamma* by the SCD, it go through different courts till it reaches the *Shura Aali*.

Gender Dimension: Within this procedure, persons are always identified in terms of grammar as male (he/his). Thus, women have hardly any means to claim property / land without the mediation of a male. This in turn makes possession of land for women extremely difficult, including the diminishing of income possibilities from said land. This again massively influences the possibilities for further development.

Impact

These conflicts have had severe impact on different aspects. Refugees for example could not return because their land was grabbed. The conflicts do also have profound economic impacts, because it is very expensive to follow these cases and to pay for negotiations etc. The Terrawals for example stated that they have sold their lands in other places to pay for the expenses of the case and they have spent almost 75.000-100.000 US-\$. This is an enormous sum with regard to the poverty of the population living in the Terra Valley. The land conflicts, which are present in Gardez city, have increased the social instability in Paktia. Before the emergence of these conflicts, the Terrawals had very good relationships with Gardezies and Garmashies. But after these conflicts appeared, their relationships are very badly affected by them. Nobody of the Terrawals is ready to marry their sons or daughters to the sons or daughters of Gardezies or Garmashies anymore. Similarly, the Gardezies and Garmashies have stopped inter-marriages with Terrawals. The land conflicts do also have a profound impact on the health of the involved persons; most of them live in a state of continued fear and insecurity. This in turn is reflected in their state of health.

There are further impacts on the side of the government, for example there were some development projects which could not be implemented due to the conflicts. Furthermore, a general sense of insecurity evolved from these conflicts.

d. Informal Methods of Conflict Resolution

In Afghanistan as well as in Somaliland, formal law is in most cases not the decisive body of law for the settling of land conflicts. Informal and traditional methods still play an important role; often they do even play the major role. Basically, two systems can be distinguished (see TLO, Final Report 2007, p. 22):

- **Customary law** (*rawaj*) refers to established group norms and accepted community practices that determine how land is owned and transacted. These rules and regulations are rarely codified and tend to change over time (Wily 2003). The most elaborate customary law in Afghanistan is the *Pashtunwali* – the Pashtun customary law and traditional code of conduct structuring social behaviour in Pashto dominated areas (see Steul 1981).
- **Religious law** (*shariat or shari'ia*) refers to the original rules set down in the *Qur'an* and is applied in formal courts, whenever the Civil Code does not cover an issue. It is also used, to a varying degree, in informal customary procedures. It is locally interpreted and commonly referred to in both formal and informal settings. One example of this is the practice of swearing on the *Qur'an* in the presence of witnesses.

e. Structural Causes and Conflict Dynamics

One of the most important **structural causes for land conflicts is simply the scarcity of land**. Returning refugees and settling nomads increase the problem even further. Interestingly enough, the fact that Terra Valley comprises many different tribes does not appear to be a structural cause. This seems to be rather a conflict-accelerating factor, but not a problem in itself. As is often the case, the different origins of the conflict parties can easily be instrumentalized, worsening the conflicts.

With regard to the conflict dynamics, some developments could be distinguished during the research. Often, **refugees** which were supposed to be repatriated, could not return to their original lands because it had been grabbed by other parts of the population or because the population had increased and more land was in use now.

Interestingly enough, **former regimes** are also responsible for land conflicts. For example the communist government did build bases on the private land of the population. After Russia removed its troops, the new governments claimed this land, which in turn contributes to the present conflicts. In addition to that, former regimes did also distribute land to returning refugees, which in turn increases the potential for land conflicts.

As is also observable in Somaliland, the **destruction of documents** through the war and the forging of documents contribute massively to land conflicts. Different persons can only claim the same land if documents have been forged or are nonexistent. Also comparable to

Somaliland is the weakness of government institutions and the insufficient implementation of existing regulations.

6. Conclusion

a. Comparison: Causes for Conflict

Reducing an issue as complex as land conflicts to a few “structural causes” or “core issues” is always a challenging task. Especially in environments as insecure and unstable as Somaliland and Afghanistan, determining factors can change quickly, altering the context massively. The studies which were conducted and quoted for the present Final Report cannot claim to cover the issue of land conflicts in their entirety. Nevertheless, some general points with a certain amount of validity can be made.

As most other conflicts too, land conflicts are always the **result of different developments** at once. **Social, political and environmental dynamics** contribute to the upsurge of land conflicts. In order to determine the origins and dynamics of these conflicts appropriately, more studies like the ones from the project at hand are necessary.

What has become clear, however, are the **differences between rural and urban land conflicts**. Whereas rural land conflicts are often a matter of survival in an (agro-)pastoralist environment, urban land conflicts are regularly about monetary profits. As could be gathered from the Working Note on urban conflicts, this in turn leads to a greater reluctance of interview partners to speak to the researchers, because serious money is often at stake. In addition to that, the role of the Diaspora could only be hinted at.

b. Comparison: Conflict Mediation

What has become relatively clear is the fact that both Somalis and Afghans usually prefer traditional methods of conflict resolution over formal systems. This is partly due to the actual weakness of both states, partly to the perception of government officials as being corrupt and greedy. Whereas the traditional systems cannot be distinguished 100% from religious systems, the advantages of the non-formal system seem to prevail for the conflict-affected population. And yet, these systems have disadvantages as well, as was detailed above (see 4. E).

From the current point of view, clear advice cannot be given. Supporting the formal system through the education of lawyers and experts on land management would be one possibility.

Supporting the implementation capacity of traditional committees in order to increase their capacity would be another. Aiming for the inclusion of the traditional system into a modern framework would probably be the most promising way, but this would also be the most difficult way. Since both systems follow their own internal logic quite thoroughly, a reconciliation between those two might prove to be even more problematic than the other two options.

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8. Baseline Data of Land Conflicts in Somaliland

No	Name	Region/District	Type of Resource	Actors	Period	Interventions	Resolved/Not
1	Harirad	Zeyla district	Group and urbanization of rural communal land	Ciisse and Gadabursi	1991-2007	Ministerial delegations	Not resolved
2	Daroor	Zone five in Ethiopia	Water sources and grazing land	Habaryoonis (Reer Sugule) and Idagale (Yoonis)	2006/2007	Guurti, Traditional elders, government, parliament, civil societies, Ethiopian troops, other communities.	Resolved
3	Dumbuluq Incident	Maroodi-jeex Region, Hargeisa city (Ahmed Dhagax Zone)	Communal land ownership (privatisation of state land)	Idagale and Arab	2006	Guurti, Traditional elders, religious leaders, police, military forces, the government, Hargeisa local council, Mayor of Hargeisa	Resolved
4	Tog-wajaale	Maroodi-jeex Region	Privatization of communal land	Samaroon (Reer Maxamed Nur) Jibril Abokor (Aadan Cumar)	1993 – 2006	Traditional Elders, Guurti, and Gabiley Local council	Partially resolved

5	Egato	Zone five Ethiopia, (25 Km south of Wajaale)	Private land ownership (farm)	Yoonis (Jibril Abokor) and Akisho	2006	Traditional elders and Guurti	Resolved
6	Horufadhi	Tog-dheer region, Buuhoodle district	Water source (Berkad)	Clans that inhabit the area	2006	Regional governor, traditional Elders, police securities, mayor.	Resolved
7	Batalaale	Saahil Region, Berbera district, East of Berbera city	Land for settlement of clan inhabitant	Ciise Muuse and Habar-jeclo	2006	Mayor of Berbera, regional governor, traditional Elders, the Guurti.	Resolved
8	Hargeisa City	Maroodi –jeex Region	Communal land (mainly ownership of the land)	The state(military army) and community	2006	Ministry of Interior, traditional elders, Local government	Resolved
9	Faro-dhidar	Sool Region, Boocane district, south-east of Laascaanood city	Land ownership (grazing area and water sources 'berkad')	Dhulbahante clan	2006	Traditional Elders	Resolve
10	Haleeya	Maroodi-jeex Region	Private land ownership	Sooyaal veterans and the Government (Ministry of Agriculture)	2006	NA	NA

11	Hargeisa city (New-Hargeisa village)	Maroodi-jeex Region	Private individual land ownership/communal	Member of House of Guurti and the local government	2006	Traditional Elders, local government administration and Ad hoc Committee for solving land conflict.	NA
12	Sha'ab area (Hargeisa city)	Maroodi-jeex Region	Private/communal land ownership (privatization of state land)	Individuals: Sh. Muuse (Jibril Abokor) and Saxardiid (?)	2006	Ministry of Interior and the local government	Resolved
13	Garage Ali Dualeh area (Hargeisa city)	Maroodi-jeex Region	Land ownership	Mohamed Ismail Bullaale and the Local government	2006	Mayor of Hargeisa and Ministry of Interior	Resolved
14	Daarasalaam District	Maroodi-jeex Region	Grazing land	Vice mayor of Hargeisa and Inhabitants of Daarasalaam district	2006	NA	NA
15	New Hargeisa village (Hargeisa city)	Maroodi-jeex Region	Communal land	Community in New-Hargeisa city and Local government	2006	Local government, Mayor of Hargeisa	Resolved
16	Diinqal	Maroodi-jeex Region	Farming land	Ministry of Agriculture and business women	2006	Ministry of Agriculture	Resolved

17	Boorama	Awdal Region	Farming land	Reer Nuur (Makaahiil Dheere) and Reer Maxamed (Maxamed Case)	2006	Traditional Elders, Guurti, Local Government, Mayor, Security forces	Resolved
18	Sha'ab area (Hargeisa city)	Maroodi-jeex Region	Privatization of land	TOTAL company and individual	2006	Ministry of Interior, Local government of Hargeisa	Resolved
19	Boorama city	Awdal Region	Privatization of public land	Livestock brokers and Borama local government	2006	Traditional Elders, chiefs and suldans	Resolved
20	Balli-busley	Sanaag Region	Water sources and grazing land	Reer Maxamud (Warsangeli) and Sacad Yoonis (Habar Yoonis)	2006	Regional Authorities, Traditional Elders, and the APD outpost office in Burao	Resolved
21	Yayle	Sool region	Water sources	Dhulbahante and Habar-jeclo	2006	Traditional Elders, Las Aanod authorities, Burao authorities, the togdheer governor, APD outpost office in Burao	Resolved

22	Cali Xaydh, Garbo-dadar,, waraqa-dhigta, Fardo lagu xidh,Ceel-la-helay,, Cabdi Geedi, Ceelsheekh	Maroodi-jeex region and Awdal region	Distribution of districts under regional levels	Regions and District governments	2005	Regional Traditional Elders, Suldans, and Communities	Resolved
23	Naasa-hablood area (Hargeisa city)	Maroodi-jeex Region	Land for settlement	Communities inhabiting Naasa- hablood	2005	Local Government, police, Traditional Elders.	Resolved
24.	Sha'ab area (Hargeisa city)	Maroodi-jeex Region	Illegal enclosures and grazing land	Inhabitants of that areas	2007	Local Government	Resolved
25.	Areas North of Hargeisa City	Maroodi-jeex Region					



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This project receives generous support from the German Federal Foreign Office
and the Institute for Foreign Cultural relations

