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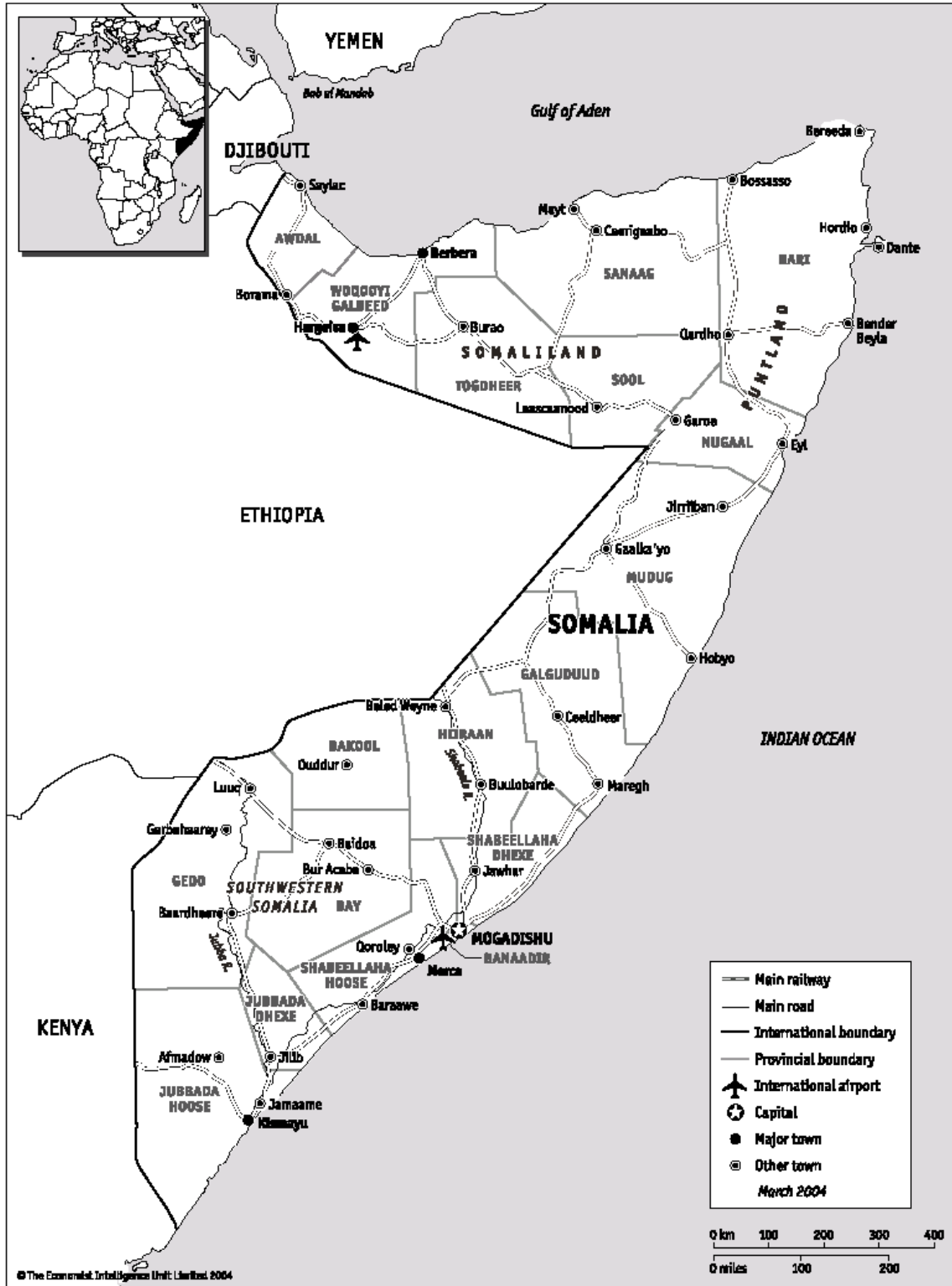
**The Land Legal Framework**

**Situation Analysis**

**United Nations Human Settlement Programme**

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# Map of Somalia



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## **Scope and methodology of the study**

The aim of this paper was to develop a basic knowledge of the land legal framework in Somaliland and Puntland. It provides a description of the current situation in both regions concerning the land management with an emphasis on the land laws, registration system and land disputes and the institutional framework. As part of a global process aimed at developing a land management system for the whole country, this study may be used as a tool for a better understanding of the existing situation.

The analysis is based on information from several of sources:

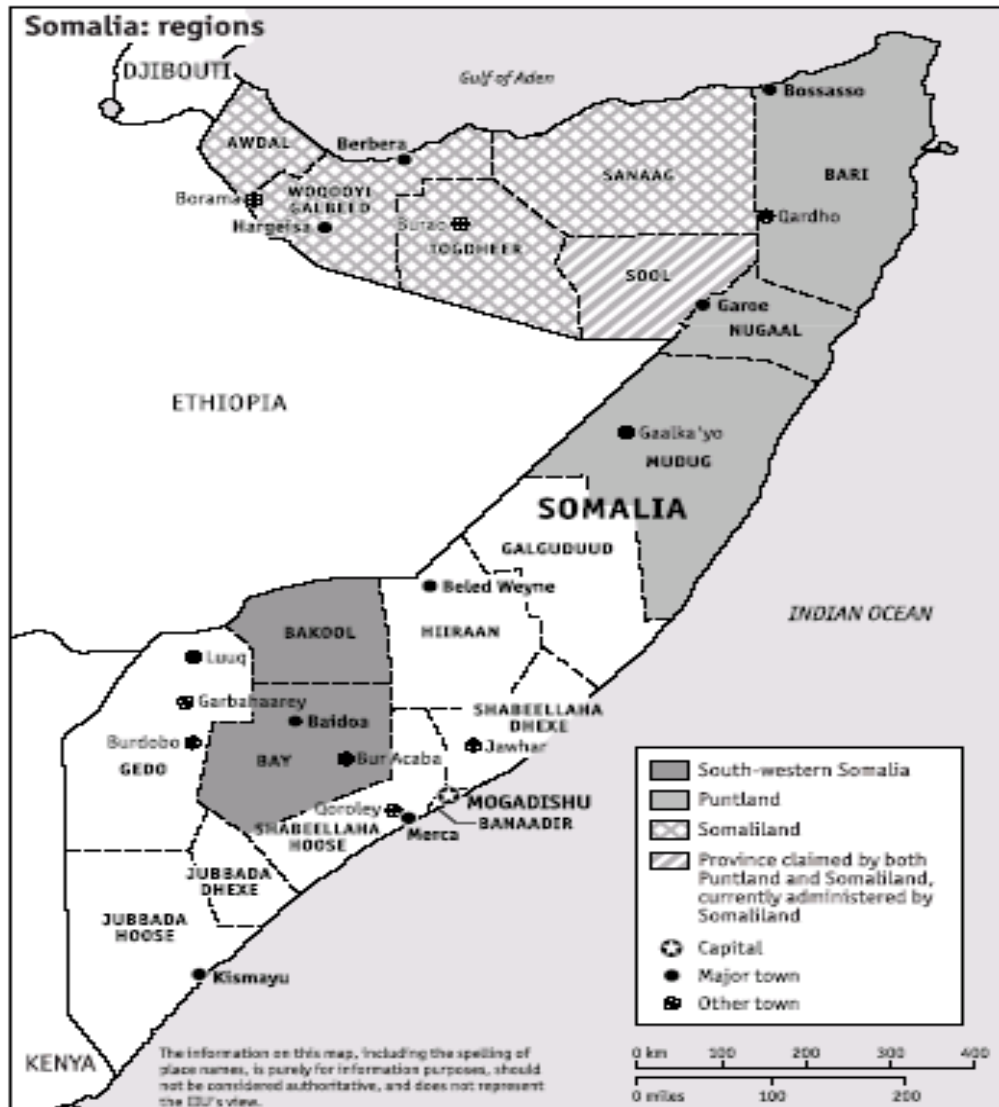
- 1- Documentary evidence in the form of academic and government publications, including workshop materials
- 2- Structured interviews with representatives from land professionals in the Municipality in Hageisa, Bosasso or Garowe, members of Parliament in Somaliland and Puntland, legal department and the Shari'a department within the Universities

However, as information is not easily accessible in Somaliland as well as in Puntland uncertainty remains concerning some of the information contained within the present document.

# Chapter 1: Introduction: Somalia, Somaliland and Puntland

## 1.1 Background

Basic data from UNDP Somalia 2003



Somalia is located in the Horn of Africa with an area of 637,677 square kilometres and its climate ranges from tropical to subtropical and has either an arid or a semi-arid character. About 20 % of the territory is covered with forest while the country has a coast of more than 3000 km. Average temperatures are around 28°C, however, in the mountainous regions they may well drop to freezing point.

The population of Somalia is about 10.4m (2004 Economist Intelligence Unit estimate) out of which more than 50% is nomadic moving in search of better pasture for their livestock.

### **Main towns**

Mogadishu (capital) 800,000

Hargeisa 500,000

Gaalkayo 160,000

Kismayu 100,000

Bossasso 80,000

Laascaanood 60,000

Berbera 35,000

Borama 30,000

### **Religion**

Close to 90% of the population is Sunni Muslim

### **GDP**

\$4.809 billion (2005 est.)

Somalia is a poor country where livestock production is the primary economic activity representing about 50% of the gross domestic product and more than 80% of the export revenue. There are some petroleum refining but most of the extracting industry were closed during the civil war.

### **Labour forces**

The Somali people between the ages of 15 to 64 working or are available for work are considered economically active group among the population. They constitute 47.5 percent of the total population. This gives an estimated labour force of 3.23 million consisting of 1.03million in urban area and 2.2 million in rural and nomadic areas.

### **Employment**

Total employment (comprising self-employment, paid employment, unpaid economically productive family work) among the economically active population is estimated as 42.3percent for urban, 57.2 percent for rural and nomadic and 54.5 percent for the country. Therefore, the rates of unemployment amount to 57.7 percent for urban, 42.8 percent for non-urban and 45.5 percent for the all country. These figures are only estimates, as they do not take into account the extent of under-employment, seasonal unemployment etc. More surveys that are detailed are needed to estimate the age and gender-specific labour force participation rates, the extent of child labour and the magnitude of unemployment and under-employment. In terms of sectoral distribution of employment, agriculture (including fishing, forestry and mining) accounts for 65 percent, industry (including construction and utilities) 11 percent and services 24 percent.

Employment was defined to include unpaid economically productive family work (excluding normal household chores), paid labour and self-employment. Child employment rates in the age group 5 to 9 years is 9.7 percent for males and 8.2 percent for females.

The corresponding figures in the age group 10 to 14 years for males and females are respectively 22.6 percent and 24.3 percent. There are substantial variations in the child labour force participation rates between urban and non-urban areas. For example, while 4.3 percent male children and 1.9 per cent female children in the age group of 5 to 9 years work in urban areas, the corresponding figures for rural and nomadic are respectively 15.3 percent and 15.7 percent. In the age group 10-14 years, the employment rate for children in rural and nomadic areas is twice of that in urban areas. Self-employment and employment as casual labour tends to be confined to urban areas due to better opportunities. In rural and nomadic areas, child employment predominantly takes the form of unpaid farm labour. Child employment rate is significantly higher for females compared to males.

Income from self-employment constituted 50 percent of the total income levels and wage employment constituted 14 percent. Income from remittances is estimated as \$360million, accounting for 22.5 percent of total income. (The estimated transfer of remittances handled by Somali remittance companies is about \$700-800 million per year. Some of these transfers are made as part of business transactions. They also include remittances sent to Somalis in neighbouring states).

Other sources of income such as rent and aid accounted for the remaining 13.5 percent. There are considerable differences for income derived from wage employment and from self-employment between urban and non-urban areas.

## 1.2 Recent history of Somalia

The regime of Mohamed Siad Barre was ousted in January 1991; turmoil, factional fighting, and anarchy have followed in the years since. In May of 1991, northern clans declared an independent Republic of Somaliland that now includes the administrative regions of Awdal, Woqooyi Galbeed, Togdheer, Sanaag and Sool. Although not recognized by any government, this entity has maintained a stable existence, aided by the overwhelming dominance of a ruling clan and economic infrastructure left behind by British, Russian and American military assistance programmes.

The regions of Bari and Nugaal and northern Mudug comprise a neighbouring self-declared autonomous state of Puntland, which has been self-governed since 1998, but does not aim at independence; it has also made strides towards reconstructing a legitimate, representative government, but has suffered some civil strife. Puntland disputes its border with Somaliland as it also claims portions of eastern Sool and Sanaag.



The mandate of the Transitional National Government (TNG), created in August 2000 in Arta, Djibouti, expired in August 2003. New Somali President Abdullahi Yusuf Ahmed has formed a new Transitional Federal Government (TFG) in October 2004 consisting of a 275-member parliament. Numerous warlords and factions are still fighting for the control of the capital city as well as for the control of other southern regions.

### 1.3 Clans

See the presentation about Clans and Customary. Annex I

### 1.4 Somaliland

The Republic of Somaliland known as the Somaliland Protectorate under the British rule from 1884 got its independence from Britain in 26 June 1960. On 1 July 1960, it joined the former Italian Somalia to form the Somali Republic. The union did not work according to the aspirations of the people and the strain led to a civil war from the 1980s onwards and eventually to the collapse of the Somali Republic. After the collapse, the people of Somaliland held a congress in which it was decided to withdraw from the Union with Somalia and to reinstate Somaliland's sovereignty.

The country has a republican form of government. The legislative assembly is composed of two chambers - an elected elder's chamber and a house of representatives. An elected President and an elected Vice-president head the government. The President nominates the cabinet, which is approved by the legislature. There is an independent judiciary

The country has three political parties: DUB Party, Kulmiye Party and UCID party. The current President of the Republic is H.E Dahir Riyale Kahin and the Vice-president is H.E Ahmed Yusuf Yasin both of UDUB party who were elected on April 2003 for a five-year term. The term of the current government ends in early 2008. The major problem the Government faced is the lack of capacity, human resources and financial structure.

Somaliland elects on a national level a head of state (the president) and a legislature. The people elect the president for a five-year term. The Parliament (Baarlamaanka) has two chambers. The House of Representatives (Golaha Wakiilada) with 82 members, elected for a five-year term. The House of Elders (Golaha Guurtida) with 82 members, representing traditional leaders. Somaliland has a multi-party system, with numerous parties in which no one party often has a chance of gaining power alone and parties must work with each other to form coalition governments.

## 1.5 Puntland

Puntland is a region located in north-eastern Somalia, centred around Garowe (Nugaal region), which leaders in 1998 declared it to be an autonomous state. The current government apparently sees the move as an attempt to reconstitute Somalia as a federal republic. Unlike neighbouring Somaliland, it does not seek outright independence from Somalia.

Puntland considered itself as an autonomous state within Somalia. In 1969, when Somalia's government was toppled in a "coup d'état", years of war and chaos followed. Somalia remained unstable and, in 1998, Puntland declared its autonomy. It is a tribal-based separation under the presidency of Mahamoud Muse Hirsi and has a nation with clan confederation as one of its top priorities. Since 1998, Puntland has been in territorial disputes with Somaliland over the Sool and Sanaag regions.

Unlike the self-declared state of Somaliland, Puntland is not trying to obtain international recognition as a nation. It seeks to become part of the united Somalia that is a federal republic. However, the two so-called "lands" have one thing in common: both base their support upon tribal elders and their way of organization along lines based on tribe and kinship. In December 2004, Puntland sustained serious damage to its infrastructures during the tsunami as a result to the Indian Ocean Earthquake.

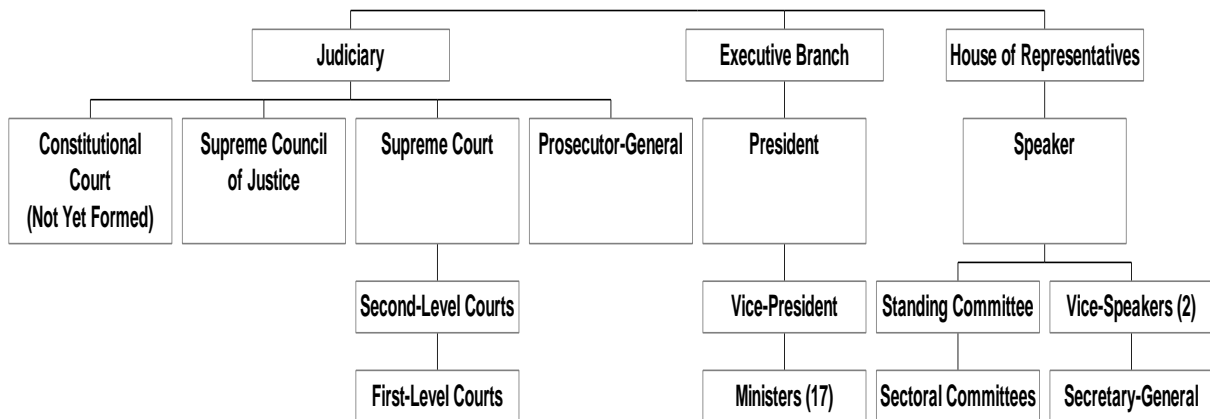


Table 1: Institutional structure of government in Puntland:

## 1.6 Land through History

Estimates vary, but from 46 to 56 percent of Somalia's land area can be considered permanent pasture. About 20% percent is classified as forest. Approximately 13 percent is suitable for cultivation, but most of that area would require additional investments for it to be usable. The remaining land is not economically exploitable. Over the last centuries, land has always been a common asset ruled by the customary system.

Practices concerning land rights varied from rural to urban areas but were mainly ruled by the customary laws. In pre-colonial times, traditional claims and inter-clan bargaining were used to establish land rights. A small market for land, especially in the plantation areas of the south, developed in the colonial period and into the first decade of independence. The socialist regime sought to block land sales and tried to lease all privately owned land to cooperatives as concessions. Despite the government's efforts, a de facto land market was developed in urban areas as opposed to rural areas where traditional rights of clans were maintained.

### 1.6.1 Under colonial rules

Under colonial period, the Italians ruled one part of Somalia while the British ruled another part. Like in many countries, land has been confiscated by the colonial authorities and ruled under a western tenure regime, in which individuals can exclusively and privately own land.

After a disorganized period, the Italians first tried to regulate the tenure system with land laws but limited to the taking of land for urban development and for the settlements of the white people.

In reaction to these laws, the Somali whose land had been taken began to claim their land back. To solve the problem Italians introduced in 1926 the 50 years lease agreement signed with the elders' community. The customary rules were not recognized any more and Somali lost their ancestral rights.

### 1.6.2 After independence

In 1960, the Democratic Republic of Somalia was born, the first constitution issued in June 1960, amended in 1996, stated that land belongs to the State with also equal rights to access the land for residence and cultivation. Land is the property of the State and administered by the Government

The main event about land happened in October 1969 when the Government turned to a socialist system where land was then nationalized and redistributed. In 1975, the first land law was for agricultural purpose. All the land was transferred from the traditional authorities to the government. The law stipulated that previous landholders were authorized to register, within a six months timeframe, a limited amount of land as state leasehold or concessions for 50 years with different possibilities for the government to revoke the agreement.

Transactions were not allowed and farms and cooperatives received preferential treatment in the registration process. Once again, the customary rights were totally abolished. Because of a weak enforcement of the law, large disparities appeared between customary tenure system and statutory law. Meanwhile the government declared that in order to make the land productive, land was to be given to the cooperatives and production were only to be sold to Agricultural Development Cooperative ADC. All farms belonging to foreigners were nationalized. Due to the lack of competition, agricultural product prices became unaffordable and farmers reduced their productivity to minimum. Community elders never accepted the new regulations regarding land allocation and often contested the title allocated. Land grabbing became really worst in 1975 with the new land law placing all the land under control of the State.

The contradictory laws have created the condition for the appropriation by those who have a strong power and have exacerbated the clan divisions.

## **Chapter 2: Identification of needs and problems related to land**

For the peace process to bear fruit and produce a stable and democratic Somalia, it is in everybody's interest to resolve the land disputes in a fair and impartial manner. It represents a precondition to restoring the rule of law and the protection of human rights. In the final analysis, economic recovery and foreign investment will take place once land and property disputes are resolved and a property regime is put in place.

Urban land ownership remains contentious, a number of cities such Hargeisa, Bosasso, Galkayo and Mogadishu are experiencing real estate booms because of one million Somali in the Diaspora sending money to their relatives to build property. There is a rush for land and the value of the plots has gone.

In Hargeisa the law (?) requires landowners to develop their plot within six months but this law is fully disregarded and speculators continue to acquire land and anticipate making profits in the future.

### **2.1 Land conflict**

Because of more than a decade of no clear central government authority and subsequent erosion of legal systems, land and property in Somaliland and Puntland has become the subject of major concern, as illegal occupation and land grabbing remain the main source of violent conflict.

At the current stage of peace building and reconstruction, unresolved occupation of land and property requires sustainable solutions before medium and large-scale investments, proper urban planning, macroeconomic stability and a lasting peace are possible.

In Somaliland and Hargeisa in particular, the chaotic situation involves local authorities, internally displaced persons (IDPs), refugees and the private sector without any land management system. Land therefore means speculation and source of income and land dispute are more frequent and violent.

#### **A CASE STUDY OF LAND DISPUTE RESOLUTION, HARGEISA 12 JANUARY 2006**

The land dispute case concerned an unbuilt piece of land located in one of the poorest settlements on the hillside. As this land is located on the edge of the city, it is assumed that its value will increase significantly. The previous municipality allocated the land to the military forces in 2001. After two years, the local community started to claim the ownership because they have occupied the land in accordance with the municipality by-laws.

## The resolution approach

Under the supervision of the Mayor and the Governor of the district and in the presence of a police officer and a district officer, an investigation was carried out after an inspection visit to the plot. Witness statements were taken into account. Conciliation procedure started with separate statements made by the claimants and proofs of the ownership were examined. Elders were represented and heard during the procedure.

It appeared that, during the occupation by the local community the plot had been divided into two or three smaller plots. At the end of the hearings, all the necessary security precautions were decided upon in order to avoid provocation and violent conflict. In such cases, the procedure starts with an attempt of conciliation followed by a meeting of the Land Committee. Finally, if no agreement can be reached the district court becomes the option. As the final decision is made under a framework, which includes customary authorities and officials of the Municipality it's generally recognised that it has the force of law. It appeared that both sides were able to provide legal documents to prove the ownership. This is a common case in both regions and it is not rare to see this sort of conflict degenerate into violent conflict that leads to death.

In rural areas, disputes arise because of boundaries, water points and pasture. Often conflicts arise between neighboured clans crossing each other's boundary for grazing and watering of livestock without permission. The customary land law, which provides a complex set of rules about land, seems to be less and less able to solve these disputes.

### **2.2.1 Source of the conflict**

First of all the Somali regions have inherited three systems of law: secular, customary (xeer) and the Shari'a law. All these coexist today. The following describes the situation in Somaliland and Puntland:

- 1) The Customary law, (Xeer), is a highly specialised institution adapted for administering, managing and regulating common property such as pasture, grazing land, forests and water. The elder's court of the clan constitutes the source of Xeer and has the role of the supreme guardian. Customary laws forms the more sophisticated system applied in all regions.
- 2) Secular law is much more complex to evaluate as most of the laws have been lost or destroyed during the war. Those that are applied are inappropriate and highly inefficient. New laws being developed lack legal precision and risk being difficult to enforce.
- 3) The Islamic law should be viewed as the primary source of law in both regions where Sharia has been officially recognised within the constitution. Currently Islamic law governs mainly family related issues as marriage, divorce and inheritance.

Somaliland constitution: Introduction:” Islam is the religion of the nation, and the promotion of any religion in the territory of Somaliland, other than Islam, is prohibited”

According to the Puntland constitution:” The laws of the nation shall be grounded on, and shall not be valid if they are contrary to Islamic Sharia”

Apart from the Constitution of 2001, the current land management system in Somaliland has been built upon the system established during the pre-war government and aspects from these three legal systems remain. Family laws remain under Sharia principles while rural land is mainly ruled under Xeer or criminal laws under secular system. The plural nature of the legal system and the *diya* customs make it difficult to prevent further violence in some instances.

Consequently, it has been clearly identified that the first priority is to resolve the extensive land conflicts partly created by this overlapping systems. It is about a precondition for the creation of a healthy land management system. Moreover, the situation has been exacerbated by the fact that many cities have had to face the return of numerous IDPs and refugees who claim the land they previously occupied.

In Somaliland as well as in Puntland people have grabbed the land during the last decades and illegal occupations are very widespread. In Somaliland, maybe more than in Puntland one factor aggravates the situation: value of the land goes up and speculation over the last ten years became a common practice to increase wealth. All valuable open land surrounding the towns has been grabbed. Although declared illegal by the municipalities, land speculation has, according to some sources, increased prices up to 5000USD per 20mx20m plot(Transaction in May 2006 located in city centre: 4000 USD for a 36X24 m plot)

In Bosasso, the poor have grabbed most of the land and IDPs and people remain in an illegal situation and without security of tenure. Facing this major problem the municipality has decided to take measures and has started to regularise these illegal occupations.

According to the municipality of Bosasso, someone who wants to develop grabbed land needs first to get a title. The applicants can submit the matter to the Islamic Court which could deliver an order of ownership confirmation with the condition that the claimant must be assisted by four witnesses who are able to swear on the Koran.

The Bosasso municipality has launched another process; people can regularise their situation within 30 days if they manifest themselves to the municipality. Claimants have to declare their plot, location, size and duration of occupation; then they have to pay the related taxes. It is likely that claimants cannot afford such taxes and the land in such case will probably go back to the municipality, which could evict the occupants.

At the time this document was being written, the regularisation process was ongoing. Therefore, land dispute cases might be varied and complex as historical and legal factors are involved.

### **2.2.2 Type of conflict**

Conflict may occur under different circumstances related to institutions malfunction, illegal occupation or massive return of displaced people. Based on a number of interviews, meetings and discussions, the major causes of urban land disputes appear to vary.

Many people lost their title deeds in the civil war. The Somali government or, prior governments had issued these in 1960 under the British administration. In some cases it appears that, a deed had not been issued for a property at all.

A very common land conflict appears when the same plot had been allocated to two different people by two different authorities both providing legal documents. In Hargeisa many people have been allocated a plot which has been already allocated before the current municipality or even before by the current regime. The situation remains today where one might have been allocated a plot by the municipality while someone else has received a title for the same plot delivered by the previous Ministry of Public Works.

Another common situation involves refugee and IDPs who claim a piece of land they previously occupied. Claimants have a legal document. The actual occupier also has legally acquired right. Among other causes, destruction of legal document and disappearance of the plot demarcation are also relevant.

In Hargeisa, entrepreneurial behaviour whereby land is invaded as a business is common. Considering the value of the land, people also claim a plot even without legal documents. Land dispute is mainly a question of speculation in Somaliland.

Family tenure problems are also common. A person sold a piece of land, in which other family members believed they had an interest and in their opinion the seller was not entitled to sell the land without consulting all the interested parties in the family. The family then attempted to reclaim the land from the buyer. It has been alleged that neighbours slowly moving boundary markers (a line of stones in the case described) separating two parcels have created violent conflict.



## 2.2 IDPs and refugees

In 2004, rough estimates were that up to 400,000 people were internally displaced in Somalia, out of a total population of 6.8 million (UN, 18 November 2004; UNDP, 2004). Children and women make up 75% of the IDP population. The great majority of IDPs about 250,000 live in Mogadishu

During the Somali crisis in 1991-1992, over one million Somalis fled the war and famine to seek refugee status in neighbouring countries. Kenya and Ethiopia hosted the majority of these refugees, whereas Yemen, Djibouti and Tanzania were also major destinations for Somali refugees. About 465,751 Somali refugees have been repatriated since, of which half (214,302) have returned to Somaliland. It is estimated that about 400,000 Somali refugees remains worldwide, of which 144,129 are registered in Kenya, 67,433 in Yemen, and 37,498 in Ethiopia.

Land dispossession in areas of origin and lack of access to land in areas of refuge are the most serious problems affecting IDPs. Those from minority groups and those outside their clan home area usually do not have access to land other than rented plots. Land in Somalia are controlled by specific clans. The dominant clans inhabiting the regions where IDPs seek safety would not easily sell land to “outsiders” or members of other clans (Lindgaard, 23 March 2001). Even where possible, buying land could increase the risk of IDPs being dragged into conflicts, which they normally want to avoid given their particular vulnerability.

In addition, there is not enough public land available that could be allocated to IDPs by local authorities. As a result, the vast majority of IDPs rent plots on privately owned land while the rest squat temporarily on government sites or abandoned buildings. Most IDPs are unprotected and can be evicted by property owners or authorities at any time. The insecurity of land tenure and ownership was cited as the primary concern of IDPs during a survey conducted in 2002 (UNCU, 30 July 2002).

### Somaliland’s IDPs situation

Some IDPs, according to some surveys in particular in Somaliland, are not willing to buy land because they wish to return to their areas of origin in South-Central Somalia once the security is guaranteed. In Somaliland, IDPs are also interested in avoiding any legal or social problems. Since they do not originally come from Somaliland and are to some extent considered as “illegal migrants” by the host community, they are considered not to be entitled to land as non-Somalilanders.

Interagency assessments conducted in eight areas around Hargeisa (Somaliland) in returnee and IDP settlements (June 2002), give some indicative figures. Thirty percent of the IDPs reports that they owned property before the war and virtually all report having no access to it now, citing war and insecurity as the primary reasons.

Almost half of the residents state they ‘own’ their current plot. The rest of the households live on land owned by the government (primarily Stadium and State House residents) or by private individuals (primarily in Daami). Three out of four households currently ‘owning’ their land were allocated the land by the government. Somalilanders IDPs generally own their own land, while Southern Somalis generally do not (rent).

The Government of Somaliland wants to resettle returnees/IDPs from the spontaneous settlements of State House, Stadium, Independence Garden, Hargeisa water storage area, Dami and Pepsi Cola to permanent settlements in Ayaha and Aw Adan. 44% of the IDPs from South-Central Somalia prefer local integration.

#### Puntland IDPs situation

The IDPs in Puntland can be subdivided in two groups when it comes to opportunities for security of tenure: The visible internally displaced persons with no clan or kinship affiliation to the community they reside with and the invisible displaced who integrate into the communities due to family ties or clan affiliation.

In Bosasso (Puntland), the issue of land tenure of IDPs is largely related to urban planning. IDP settlements are built on privately owned land and since the municipality hardly owns any land, it is difficult to find a plot to relocate IDPs. The lack of land records make it difficult to determine who the land belongs to. Agencies are reluctant to provide services to land with unclear ownership since this has often resulted in multiple claims once the works were about to start.

Displaced communities from South-Central Somalia do not own their land and pay Sshs 10,000 to 40,000 on monthly rent. The fact that IDP settlements are built on privately owned land undermines provision of basic services, which are often privatized by property owner. Although many fires destroyed IDP houses, IDPs would not build with better materials, because on private land they risk forced evictions at any time. IDPs recurrently evicted incur high re-settlement expenditure. It is difficult for the authorities to relocate IDPs, because the municipality owns hardly any land, and has no money to buy it.

There may be potential disagreements between municipal and central authorities, with regard to a long-term policy towards the IDPs in Bosasso. For example, while the Mayor of Bosasso is quite willing to entertain the permanent settlement of these populations, the Minister of Interior informed us that he envisages the eventual return of these IDPs to their original areas. In short, prior to any coherent policy with respect to the IDPs, it is vital that a clear and coherent policy be agreed upon both between local authorities as well as with the Puntland administration. (UNCU, 30 July 2002).

IDPs from the South have at this point no option of returning to their area of origin due to recurrent conflicts. Most IDPs are from minority groups and are afraid of returning to their home areas for fear of attacks from the clans that at present occupy their land. The unresolved issue of transfer of property and land seemingly goes back to clan nepotism, which was dominant during the Siad Barre time. Most IDPs from the South-Central Somalia have not integrated into their host communities in Northern Somalia. Reintegration is complicated by general poverty, scarcity of water, lack of services and unemployment.

### **2.2.1 Land Tenure option for IDPs**

See the studies on:

Land Tenure Options for IDPs/Returnees – Annex II  
Land, Housing and Property right restitution – Annex III

## **2.3 Limited capacity**

Examples of land management problems in Somaliland:

The Land Department of the Municipality of Hargeisa has been undertaking land regulation, allocation, mapping and registration for five years without agreed procedures. Consequently, multiple claims can be provided to a single plot (one by the Ministry of Public Works, another by the municipality).

In the city of Berbera, where the port is increasingly used by Ethiopia for import and export, the local press reports that wealthy, powerful groups take advantage of the absence of proper legal framework and grab land with potential high value and economic development potentials. The situation was described as ‘a time bomb waiting to be exploded’

Now, there are no sufficient local or national organisations and data management capacities in land and property sector in any region. The current land management system originates from the previous government. Therefore, the Somali regions are in a transitional period where statutory laws are generally not applied and are either inefficient or disconnected from the reality on the ground. Land disputes are a part of a larger problem, the land control conflict between clans. Decisions of various authorities representing the law and order are based on customary traditions and equity, especially concerning the land disputes. As a first priority, one must consider to harmonize the legal framework and to work out a clear sharing out of the competencies among the different stockholders.

In terms of laws, there is confusion and overlapping of different laws in both regions. In Puntland, for instance, the Land Law of 1975 has been less or more replaced by the customary land tenure (Xeer).

“This regime of ‘lawlessness’ (there clearly are some legal or quasi-legal arrangements in place though of an informal nature) operates at three levels: the allocation or occupation of land without formal approval; the development of land without formal approval and dealings with land – sales, leases and the like – without formal approval.” (Patrick Mc Auslan)

### **2.3.1 Human resources**

Lack of human resources significantly obstructs the development of a proper administration. Furthermore, the lack of education is a curb on the efficiency of the current administration.

The land administration is facing the same problem; understaffed and with a basic level of competence, the administration is unable to fulfil its mission. In Bosasso, the Land Department, in charge of land allocation, planning, land regulation and other mission is made up of eight staff only.

Low remuneration as well is a serious obstacle to the development of the institutions. The salaries of judges and law enforcing officials are low. The amount of salary paid to the ordinary police officer is about US\$60 that does not suffice the basic needs of the individual.

Poor facilities and equipment should be seen as real concern especially within the Land Department in both regions. To be effective, the land administration as well as the justice and law enforcing institutions should possess enabling facilities and equipment. Apart from few transport vehicles and working offices, everything has disappeared. There is a high need of computers, printers, mapping equipments and office stationery.

### **2.3.2 Capital city syndrome**

Although rapid urbanisation is to be found throughout Africa today, in Somalia this has been exacerbated by the civil war and now the migration of returnees, internally displaced population (IDPs) and in general the drift of rural – traditionally nomadic – population to the urban centres. The urban growth rate in the north is estimated to be between 5% and 8% per annum according to the World Bank/UNDP estimates, the urban population now being around 34%. No censuses have been taken in recent years, however, population estimates of the towns and cities are approximate.

This urbanisation process has been extremely ad hoc, based on traditional forms of settlement growth with little intervention of formal planning and management but with the addition of largely privately supplied modern services of water and electricity supply and telecommunications. Hargeisa or Garowe, like most capitals in developing countries, holds almost all the country's commercial infrastructure. Government agencies such as the registration office are concentrated in Hargeisa (Somaliland) along with many property professionals and the head offices of all major financial and governmental institutions.

## Chapter 3: An institutional framework for land administration

### 3.1 Existing land administration

#### **3.1.1 In Somaliland**

Hargeisa is divided into five districts. There are 25 members on the Hargeisa City Council: One Mayor and 24 Council Members. The voters of the City elect the entire Council. Each member serves a staggered 5 year term. The Mayor, elected the following year. Term limits are now in place, which means the mayor and council members may serve in their respective seat for a maximum of 10 years, or two consecutive terms.

The Mayor and Council appoint the City Secretary, who serves as Chief Administrator of the City organization. Hargeisa practices a "Mayor form" of government.

The Hargeisa City Council has regular weekly meetings each Friday. Assisted by the City Secretary, who is appointed by the Board of Council to oversee the daily operations of the City, advice, and administer the policies and procedures of the Council and enforce city by-laws and actions passed at city meeting. The Secretary's authority and responsibilities are established in the Secretary-City manager Act of 1999. Efforts are underway to create a high performance organization culture within which the City Secretary shares power and decision making with the Mayor and the management in concert, the City Secretary and other members of the management team set the direction of the organization by defining a mission statement supported by a strategic plan with defined goals and objectives.

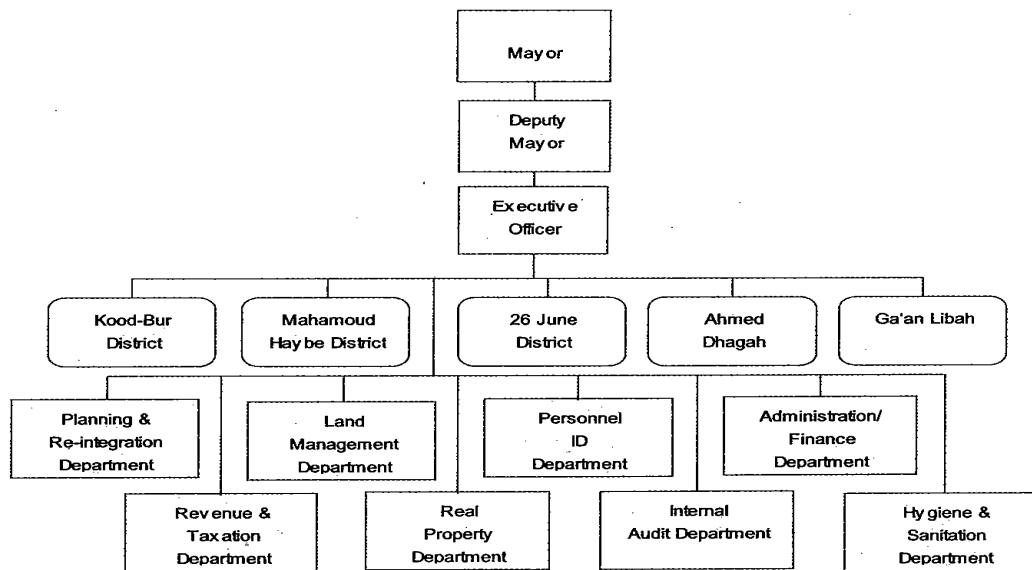


Table 2: The Hargeisa municipality administration.

In terms of land institutions, in Hargeisa the Municipality has a Land Department in charge of land regulation and allocation but beyond all legal system. Apart from the land department, an independent section is in charge of transfer of ownership and building permits registration.

A third independent department called Physical Assets and Land and Tenure Section is responsible for the issuance of the title deeds.

Firstly, for those who want to develop a plot or obtaining a building, permit is a compulsory process that should be introduced at the district level (five districts in Hargeisa). The central registration office within the municipality is responsible for the centralization and the recording of each permit that has been delivered within the district. The process will be described later under the paragraph 6 on the registration system.

Secondly, the owner could obtain a title deed from another section called Physical assets and Land Tenure. Once a permit has been issued, a landholder can apply for a title deed to the building, not the land. This section is responsible for the collection of rent of the public assets granted to private individuals, (mainly market places). However, the main mission of the section is to deliver title deeds for those who have a developed plot. This is a non-compulsory process, most people considering that the recorded building permit is sufficient. At the time this survey was conducted, Hargeisa had 60 000 developed properties but only 3000 titles have been allocated (figures from the municipality).

Finally, the last independent section within the Municipality, land records transfers, is responsible for the registration of the transfer of ownership and inheritance certificate registration following an order from the judicial system. All the private land transactions are subjected to the validation of the public notary.

Investigations have been conducted at the District level. Interviews in two Districts showed that questions related to land are brought firstly to the District level. Among different missions concerning the public and social services, the District is also responsible for the land management.

Individuals request to legalize a private sale agreement signed under the auspices of a public notary are introduced to the District. The District that assigns a surveyor to check the property and to measure the plot keeps copy of the sale agreement. Once the buyer has paid the fee, the District calls neighbours to witness the occupation by the buyer. The file is then transmitted to the Municipality, signed by the Deputy Mayor, the Mayor and registered by the office in charge

An application for building permit follows the same procedures and is registered in the municipal's permit registration office. In the "26 June", District there is only one surveyor while the "Ibrahim Koodbuur" District counts 3 surveyors. The District is also the first level to solve a land conflict that might happens in its jurisdiction.

The District Commissioner with other members of the local committee carries out an attempt of conciliation based on evidence and witnesses. If no agreement can be reached, the case is brought to the Court. Neighbourhood disputes, boundaries disputes or deeds contestation are some of the common cases that the District has to know.

### 3.1.2 In Puntland

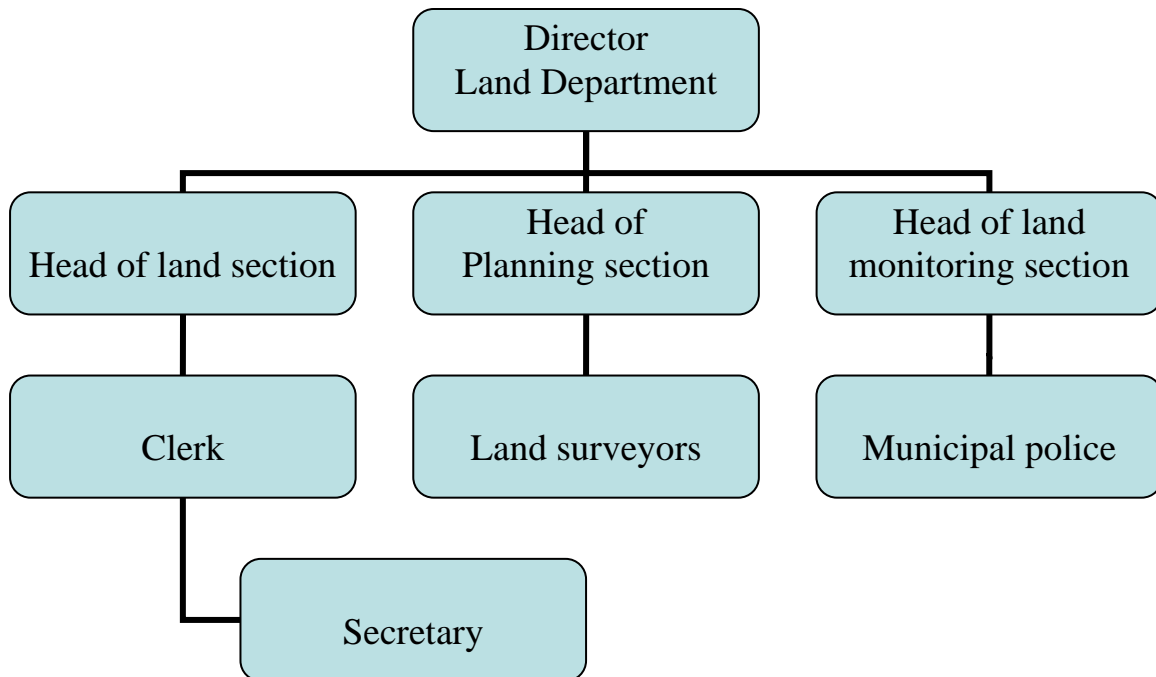


Table 3: The land administration in Puntland-Bosasso



The Land Section is in charge of land allocation, registration and records keeping while the Planning Section is in charge of planning and mapping with surveyors.

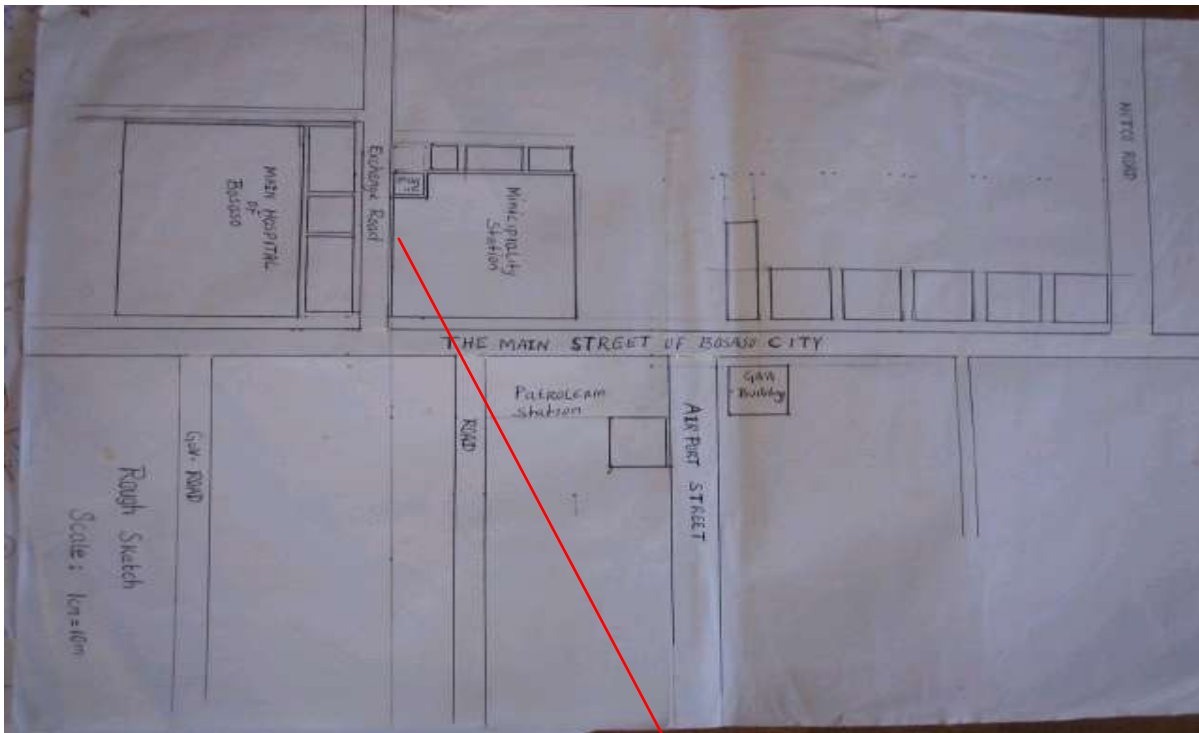


Figure 1: map of Bosasso produced by the mapping section

The whole structure is under the control of the Monitoring Section which mission is to check the compliance with the regulations.

The land department has only eight staff members available. In addition to the land department, there are engineers [private sector] who have been responsible for the major town extensions to the east. The land department uses Siad Barre's land laws as a basis for operation and has registered approximately 6000 plots at the time of the assessment.

It was reported that approximately 200 plots are registered every year for building permits. Engineers then record the property in a diagram affirming the legality of the exercise. An idea of zoning exists to control areas of land-use like industry or housing.

## 3.2 Existing judicial system

### **Somalia**

The constitution of 1961 provided for a unified judiciary independent of the executive and the legislature. A 1962 law integrated the courts of northern and southern Somalia into a four-tiered system: the Supreme Court, Courts of Appeal, Regional courts, and District courts. Shar'ia courts were discontinued although judges were expected to consider the Shari'a when making decisions. The Siad Barre government did not fundamentally alter this structure; nor had the provisional government made any significant changes as of May 1992.

At the lowest level of the Somali judicial system are the eighty-four district courts, each of which consisted of civil and criminal divisions. The civil division of the district court has jurisdiction over matters requiring the application of the Shari'a, or customary law, and suits involving claims of up to 3,000 Somali shillings. The criminal division of the district court had jurisdiction over offences punishable by fines or prison sentences of less than three years.

There were eight regional courts, each consisting of three divisions. The ordinary division had jurisdiction over penal and civil cases considered too serious to be heard by the district courts. Somalia's next-highest tier of courts consisted of the two courts of appeal. The court of appeals for the southern region sat at Mogadishu and the northern region's court of appeals sat at Hargeisa. Each court of appeal had two divisions. The ordinary division heard appeals of district court decisions and of decisions of the ordinary division of the regional courts, whereas the assizes division was only for appeals from the regional assizes courts. A single judge presided over cases in both divisions. Two non-professionals assisted the judge in the ordinary division, and four others assisted the judge in the assize division. The senior judges of the courts of appeal, who were called presidents, administered all the courts in their respective regions.

The Supreme Court, which sat at Mogadishu, had ultimate authority for the uniform interpretation of the law. It heard appeals of decisions and judgments of the lower courts and of actions taken by public attorneys and settled questions of court jurisdiction.

The Supreme Court was composed of a chief justice, who was referred to as the president, a vice president, nine surrogate justices and four non-professionals.

The president, two other judges and four non-professionals constituted a full panel for plenary sessions of the Supreme Court. In ordinary sessions, one judge presided with the assistance of two other judges and two non-professionals. The president of the Supreme Court decided whether a case was to be handled in plenary or ordinary session, based on the importance of the matter being considered. (Federico Battera and Alessandro Campo "The Evolution and Integration of different Legal Systems in the Horn of Africa: the Case of Somaliland")

### **3.2.1 Judicial system in Somaliland**

The Legislative Decree No. 3 of June 12 1962 is the most recent law on the Judiciary adopted by Somaliland but the Law No. 41 of 11/08/1993 is considered as the fundamental base for the judicial system.

According to these laws, the judicial process comprises three levels: the Supreme Court, the Court of Appeal; and the Regional and District Court. The territory of Somaliland is composed of six regions and several districts. Each Region shall have its own District Courts, Regional Court and a Court of Appeal. The Supreme Court sits in the capital city of Hargeisa, and has jurisdiction over the whole territory.

Elders settle out of court the majority of disputes by applying custom, whereas the official courts are responsible for settling minor civil and criminal cases. The official judiciary system applies only in a second time and only if the parties (the family of the plaintiff and the defendant) do not agree on the elder's resolution.

The Court of appeal is also competent for land disputes if the land dispute committee does not give satisfaction to one party. Law from previous regime mainly general, civil and criminal laws are applied. The Supreme Court is called in last resort.

### **3.2.2 Judicial system in Puntland**

Islamic Shari'a and Customary laws served as the legal systems that regulated the Somali society judicial system. The customary, Shari'a and secular courts operate side by side, a structure that confuses uniformity of the legal systems in issuing verdicts. Most formal courts' (Sharia and Secular) personnel exhibit low professional skill and expertise.

Professional adjudicators are rarely found in secular courts, as the few available ones are reluctant to serve the justice administration under the prevailing circumstances and would prefer working privately. Moreover, as mentioned before most adjudicators or judges of Sharia courts, which constitute the largest group of the existing judges, have neither formal academic qualifications nor experience in court procedural techniques.

Here are the recommendations issued during a workshop on Good Governance in Puntland in September 2003.

- There is an urgent need to reduce the size of Puntland Security Forces, which absorb a sizeable portion of annual income revenue
- Recruit the police and judiciary personnel on merit, including women and minority groups
- Encourage women to participate in judiciary and law enforcement jobs and positions. Improve the skill and know-how of members of the police and judiciary
- Upgrade remuneration of police and judiciary to dissuade or minimize nepotism and corruption
- The Legislative, the Executive and Higher institutions of Justice must maintain strict control over police and judiciary performance

The administration must improve and upgrade health and living conditions in prisons and transform them into correctional centres. Cases of young offenders should be treated at Juvenile Courts, following international standards. Respect for human rights and protection of weaker section of the population must be guaranteed

However, the first priority is to build training capacity.

## 3.2 Land and Tenure

### 3.2.1 Access to land in both regions

"All land in Somaliland belongs to the state of Somaliland as per Article 12 paragraph 1 of the constitution. The authority to manage, appropriate land shall lie with Somaliland Government." (Land Management law, Art 1) Just like in Somaliland, in Puntland the land belongs to the State and the government is only able to allocate land. It must be noted that over the last decades most of the land in urban areas have been grabbed for settlement and again by businessmen out to make a kill due to the expected rise to the land value.

Traditionally, the ordinary people (pastoralists, small traders, returnees or ex-combatants) were the main group involved in land grabbing in the aftermath of the civil war. But that is no longer the case as powerful politicians and business leaders become involved. A large number of buildings and plots that previously served the public are now controlled by private individuals with commercial interests (usually members of the new dominant clan group) or by IDPs/returnees.

During the civil war, a large number of people, both professionals and unskilled workers, returned to their original clan-areas (especially in Puntland), leaving behind properties (buildings, farms) which have been taken over by other groups and it is said that new occupiers pay rent to the displaced 'owners'.

In rural areas: due to the war, the geographic clan-map of Somalia was redrawn as stronger clans took possession of the best agricultural and pastoralist areas and mostly displaced minority groups to urban areas.

Interviews conducted in Hargeisa and Bosasso highlighted that land can be accessed in three ways — purchase, inheritance and donation. In Somaliland, once somebody is given a plot the process starts with a legalization of the land introduced at the district level. The file is transmitted to the municipality that delivers a certificate of legalization, which includes very basic information. At this stage, the owner can start the process to obtain a building permit, also delivered and registered by the municipality.

In Puntland, the regime is almost the same with an attempt to put in place expropriation for public interest. Most generally the municipality in Garowe registers private transaction between private individuals.

A surveyor can intervene in case of necessary survey and the titles are kept within the municipality with name, dates, size of the plot and location. It has been told that these informations are used to collect the taxes.

In Bosasso access to public land through the Municipality (Land Department) requires a letter of application with location and size of the plot. This application form is sent to the monitoring section within the land department, which carries out checks on the plot. If the plot has not been allocated or reserved for a public purpose the title can be issued by the Land Department. This authority falls within the Municipality only if the plot is for a temporary use. In case of a plot with permanent use, the applicant should address his/her application form to the Ministry of Public Works

In Puntland where the Islamic influence is more perceptible it seems that Islamic concept of access to land are taken into account. Under the Shari'a, the principal way to acquire ownership on a plot is for the one who wants to become the owner to be able to develop the land. Priority is given to the one who has marked the plot and who is able to value it.

Demarcation and marking of the plot confer right to use but not the full ownership. But only the valuation of the land confers full ownership. It seems that the Islamic law is widely applied in rural areas in Puntland. Serious problems appear in the urban areas where secular laws applied during the Barre's regime are still valid and applicable despite the fact that laws are unclear and inadequate.

## Chapter 4: A legal framework for land administration

Facing these major difficulties with the legal framework both Somaliland and Puntland authorities have decided to pass a new urban land management law in order to build a structured system able to manage the land.

### 4.1 In Somaliland

First, it would be necessary to consider the Somaliland Land Policy before considering the law since the law should reflect the national policy and might be interpreted with regard to this policy. However, the national policy has not been precisely define and harmonised. A clear political will exist with regard to the IDPs resettlement, the creation of a land management system and the resolution of land disputes but these different components have never been set up as national policy.

#### 4.1.1 Laws

Copies of the laws of both the former Republic of Somalia and the British Administration appear to be unavailable. They may be in Mogadishu, or they were destroyed during the civil war or respondents in this study were unaware of their whereabouts or they may exist in Somaliland.

The newly developed Land Management Law No17 covers the following subjects; the allocation of land; the planning and control of development of land; aspects of land tenure including registration of title; appropriation of land for public use and compensation; demolition of buildings; land disputes; and building regulation. These are matters, which in many other jurisdictions would be the subject of five or six separate laws. The law is still under discussion and amended in the Parliament.

If the land is owned by the Republic of Somaliland its management, transfer and lease proposal lies on the government which should pass decree for public purposes. It is noted that public purposes do not include land for urban poor.

The new National Urban Planning Institute under the Ministry of Public Works would be in charge of the creation of the urban land physical plans, which in other words is the Master plan, but there are no provisions within the law on to how this Plan should be established. For example, it would have been appropriate to remind the principle of participatory process with surveys in different areas. The law is more explicit on how to revise the Master Plan rather than on how it should be created. This is probably the main gap in the law since each decision should be taken with regard to the Plan. While the details of preparing a plan can be left to regulations, some basic provisions should be in the primary legislation.

With regard to the allocation of land the law refers to the regulation under the principle that a person can only be registered as an owner of the land if she or he has the witnesses of at least the three neighbours who owns land legally within the neighbourhood. Two categories of land could be allocated for residential purposes, permanent and temporary but in absence of any indication as to the length of temporary right of use, this clause is not significant. Clearly, the length of a temporary occupation will determine the willingness of an occupier to invest in building the land.

In case of land with permanent use, it must be developed within the first one year starting from the date of the registration; three months in case of temporary right. The clause 13 is also unclear and incomplete. Article 13 states that a landowner will receive a construction permit from the management of the relevant local authority and the Ministry of Public Works but there is absolutely no guidance on the procedure to get the permit — what document should be brought or which form should be filled in.

The Land Management Law clearly states that low-income people will be allocated land for temporary use. The principle of equity and social responsiveness is breached by the provision that permanent land, will be denied to those who do not build a structure of bricks, stones or concrete. By this provision, security of tenure is not granted and the law only allows poor people a temporarily occupation.

Whole communities can be moved without any opportunity to challenge the proposal. They are given at best three months notice to vacate their land. They have no right to challenge the amount of compensation they may be awarded. Where under clause 18, the Ministry of Public Works blocks their construction “on reasonable grounds” or because of a new plan for the area; they cannot challenge that decision and receive no compensation for any losses that they might sustain which could be very substantial. The provisions on land registration are a further example of lack of clarity, comprehensiveness and certainty. It is not clear at all what kind of registration system is to be established under clause 27.

A thriving urban land market already exists without any official form of registration. Only if registration can demonstrate comprehensible benefits then will people use the available systems. They need to exhibit too that registration may help reduce the incidents of land disputes

One could note that there is also a gap between reality and the law No17. The Proclamation, Article 12 states that a registered owner must develop their land within a year of registration unless they pay their land taxes. Failure to develop or pay taxes within two years means that they will lose the plot ownership. However, Article 19(a) states that land is owned in perpetuity.

To whom the land reverts if an owner does not meet these conditions or eventualities such as death occurs and or heirs cannot be traced is still unclear. If the owner defaults on land taxes, does the land automatically revert to the state, or is it available for another individual to occupy and claim ownership over the course of time (concept of prescription/adverse possession)? Such are the questions that arise within the discrepancy of the law.

In May/June 2006, an amendment was still under discussion in the Parliament about the Land Committee as the institution in charge of conflict resolution. Revised Article 28 of the law 17 stipulates that all land disputes cases concerning vacant land will be resolved within land committee in which seats ministry of internal affairs, public works, agriculture, justice and city council representative chaired by the regional Governor.

To conclude, the law No17 remains incomplete and many gaps have been identified. First, the law should include primary disposition on how to build the Master Plan within a participatory process and secondly, it should take into account the urban land for the poor and IDPs. This is essentially a framework law and still appears to be in draft form. It lacks definitions and regulations that are yet to be published. However, it can be viewed as the primary land law policy document.

#### **4.1.2 Institutional organisation**

The Land Law No 17 seeks to build a new institutional framework to manage the land with an aim of dispensing the authority at different level. At the central government level the National Urban Planning Board will be in charge of drafting the Bill, regulation and decree while the allocation and urban management comes under the decentralized local government.

Each level will be placed under control of the National Urban Planning Institute (NUPI) that will oversee the suitability of local land allocation to the approved urban physical plan (Master Plan). This Urban National Planning Institute which comes under the control of the Ministry of Public Works, will act at the zonal, district and national level.

The NUPI will prepare the urban land physical plan by demarcating urban zones for example, residential, industrial, commercial and public zones that are listed within article 3 of the law. As stated below nothing is mentioned with regard to urban land for the poor and IDPs. However, once the Master Plan is completed, the National Urban Planning Board, made up of several Ministers approves it.

Article 9 of the law on basic principles of land allocation declares that the Municipality Executive Committee with the confirmation of the Municipality Planning Department is the local authority able to allocate a plot for use permanently.



If this provision attempts to build the institutional framework at the municipal level it could only serve as a basis since it does not provide any information neither on this Executive committee nor on the Planning Department. In every case, the municipality has the right to decide whether a plot should or should not be allocated but no detailed mention of the structures of authority that has to be adopted by the Municipality. This empowerment of the municipality without details about the legal form remains a constant problem within the law and it is feared the mayor will concentrate all the powers.

## 4.2 In Puntland

Since the establishment of Puntland there have been some significant changes. First, the Constitution of Puntland provides that Islam is the state religion and all laws must conform to the Constitution and the principles of Islam. In Puntland as well as in Somaliland, the actual laws in operation are classified into three primary categories: Sharia law Customary law (Xeer) and the Secular law. Secular law in turn may be classified into two sub-categories: Legislation of the State of Puntland which is in conflict with laws of the old State of Somalia. The old laws of the State of Somalia, are applied partly if it benefits the people with the rest being abolished.

### 4.2.1 Law

First, there was lack of clarity among interviewees on whether the existing town planning law should be applied or whether a new more up-to-date law was required. Second, it was not clear what the existing law on town planning was. One informant referred to an old 1950s Italian town planning law and to an integrated town planning law for the former Republic of Somalia, which existed. Secondly, an old land law of 13 September 1973 seems to be valid.

In 2005, the government of Puntland issued a new land law, which is currently under discussion in the Parliament. However, based on the same structures and principles as the land law of the Somaliland, this new land law covers different aspects of land management such as the institutional framework, land allocation and building authorization.

Nevertheless, some gaps and uncertainty remains. First, land management falls within the authority of the Ministry of Local Government and Rural Settlement. The local governments of all districts are responsible for the general Master Plan that must classify land for residential, industrial, commercial and public utility.

The article 1 of the law that refers to the plan does not provide any explanation on how this plan should be arrived at. Nothing is mentioned about the participatory process. If regulations are necessary to guide the Master Plan process, main principles should be stated in the primary legislation.

Secondly, article 3 refers to the types of land that can be issued. Land for permanent use requires that buildings or structures on it should be of concrete materials while land for temporary right of use includes such structures with soft materials. There is no provision on the length of the temporary use.

The laws on land allocation states that every citizen has the right to have a plot and to build on it but there are no clear provision on urban land for the poor even though it could be a useful basis to build the necessary legal framework to include legal land tenure option for IDPs.

With regards to building permit, the remarks made on the same provision for the Somaliland land law is also pertinent. The local government is responsible for the issuance of the permits according to the article 5 but there is no provision neither on how the permit should be delivered nor on how the request should be introduced.

In the same way, it is stipulated that the sale of an undeveloped land is prohibited. The land could only be used for the purpose it was allocated for and in a situation where the owner cannot develop the land within the allowed period, the municipality is in a position to recover the land after refunding the paid price. The system to advertise the issuance of permanent land use is also in place with a 30-days delay to contest the allocation.

To conclude, it is vital to develop a clear primary legislation on the making process of the master plan.

Reconsidering the newly developed land law is also advised in order to complete gaps.

#### **4.2.2 Institutional organisation**

With regard to the institutional aspects, again the law remains unclear. The Ministry of Local Government seems to be the national authority responsible for the land and at the decentralized level, the districts local government have been empowered to deal with land management.

The Mayor, with the approval of the municipal council has the authority to issue land with permanent right. This authority can be delegated to a committee appointed by the Mayor himself.

A technical committee whose responsibility is to analyze and make recommendation on the general town plan, construction layout and all other relevant issues concerning the land for settlement also assists the local government, according to the article 22. Composed of professionals, technicians and health officers this technical committee will be the subject of regulations as mentioned within the law. Uncertainty remains though about the Ministry of Public Works as for its role in the land management system.

### 4.3 Land conflict resolution

Lack of a clear land management system can be considered as one of the main causes of current land disputes. This results to insecurity and forces government institutions to dedicate most of their time on conflict resolution. It is also a main constraint for land development and urban planning, potentially hampering significant foreign or domestic investments in physical, service or industrial infrastructure investments.

Example of the effect of land dispute on a local urban project:

Unresolved dispute forced the suspension of a market development project and its implementation in Berbera, Somaliland for 6 months. The situation also posed a critical threat to the cooperation between project partners therefore hampering the trust and goodwill that the partners had natured in the past.

Only limited experiences for this issue are in place today. Two examples can be drawn upon.

- UNDP have supported a project in Gabiley district (North West Somalia / Somaliland) where agricultural land has been mapped and certificates of ownership issued to the relevant farmers. This process is being conducted successfully and has dramatically reduced conflicts over land issues. However, Gabiley is one of the most settled communities in Somalia and has not experienced open conflict for more than 10 years.
- The Municipal Land Committee is an ad hoc institution established and mandated to solve land disputes. Its chaired by the Mayor and members mainly comprise of municipal authorities (the Land Department, the District Police Office) and traditional leaders. At the municipal level, this land committee is summoned whenever there is a land dispute that has not been submitted to the Court or to the elders.

The municipal land committee, which is one of the five specialized commissions within the Municipal Council, is not automatically able to solve a conflict. Most of the cases are now being referred to the district Court but taking into account that most likely the matter will be send back to the clan elders.

However, when a land dispute case is heard in Hargeisa and if that case is deemed fit for the municipal hearing and determination then the case is sent to the municipal committee, which takes over the matter. But where a conflict falls under the private property aspects the disputes is then referred to the district Court.

The procedures followed during hearings within committees are described below:

"Under the supervision of the Mayor and the Governor and in the presence of a police officer and a district officer, an investigation is carried out after an inspection visit to the field. Witness statements are heard. A conciliation procedure starts with separate statements made by the claimants and proofs of the ownership are examined. Elders are also represented and heard during the procedure. At the end of the hearings, all the necessary security precautions are decided upon in order to avoid provocation and violent conflict."

Land disputes resolution procedure starts with an attempt of conciliation at the district level followed by a meeting of the Municipal Land Committee in case of serious conflict or violent dispute. Finally, if no agreement is reached then the district court becomes necessary for the case.

The Land Committee in Somaliland, which includes traditional mechanisms, can be developed into a legal institution that has a single strong authority over land related legal activities at the district level. Once institutionally embedded, the key function of the Committees is to ensure secure and stable land tenure by systematic statutory land disputes resolution, prevention of illegal land grabbing and land negotiation tool for IDPs/returnees. Consequently, the Land Committee should be institutionalized in the Land Management Law, and regulations should be adopted with regard to its authority, access, formation and costs. It should be established as a permanent structure, well equipped together with a provision for staff training.

To assist the Land Committee with legal and technical expertise and to function as a land registry capable of recording land ownerships after the land disputes have been settled. A Technical Land Secretariat could be created and ruled by regulation.

A clan land management system should be considered as a pillar for the establishment of these committees. It must be noted that until 2004 each district in Hargeisa had its own land committee responsible for the conflict resolution. As we put together this report, an amendment was underway in Parliament.

Article 28 stipulates that all land disputes cases concerning vacant land will be resolved within a land committee in which seats ministry of internal affairs, public works, agriculture, justice and city council representative chaired by the Regional Governor.

Finally, the new land law in its article 26 institutionalizes a gazette notice within the press and on the municipal board in case of plot allocation for those who want to oppose the allocation within 60 days beginning from the date of publication. This provision tends to prevent potential land disputes. Nevertheless, nothing is said about how to introduce the claim.

Another way to solve land dispute in both region is to call the customary law (Xeer) and the elder. Xeer provides a complex system of rules to manage conflict based on mitigation, both for civil and penal, collective or individual cases. These rules are traditionally applied for different types of conflict especially in rural areas but these are basic principle that are more or less applied to deal with conflict and land dispute even in urban area.

Ergo is a conflict mitigation strategy, aimed at facilitating communication between parties, based on emissaries sent by the parties to prepare the ground for holding a Xeer court to settle the case. Then traditional jury is formed and a Xeer lawyer can assist the defendant. Formation of the court is more complex, both Islamic Shari'a and secular rules can be mixed with the Xeer. Judgment is based on evidence, neighbours' witnesses and statement from community representatives. A complex body of procedures also rules appeal and judicial review in case of new evidence.

In Puntland the land dispute situation is also really critical but the recourse to the Land Committee can vary according to different areas. In Bosasso the Islamic Court and the municipality are both competent to solve land dispute.

More precisely in case of built plot, the Islamic Court has the ability to hear land disputes but in case of un-built plot, the municipality has to be involved through the Land Committee. This Land Committee is almost an official institution make up of 8 to 10 appointed members. The Director of the Land Department is part of the Committee. Conflict resolution, planning, land allocation and land regulation are the main areas that fall within the Committee's jurisdiction. However, in Garowe the Land Committee does not exist in such form but rather at an embryonic stage.

Finally, in Bosasso, where Islamic influence is relevant, land dispute are generally settle before the Islamic court or within the elder's community. It appears that the Islamic court apply the Shari'a to settle land conflicts, based on the fact that the one who has developed the land is the owner. But the secular law and the legal document provided by the parties are considered as well. Land Disputes under the Islamic law can also be brought to the religious authorities in charge of an arbitration process based on Islamic ways of property acquisition.

## Chapter 5: Analysis of the registration system in both regions

Land ownership in Somaliland as well as in Puntland is currently recorded using a manual paper based system by municipal staff with a chronic shortage of tools. In both regions, the registration system has been destroyed and operates on a very basic model. In Somaliland some sources indicated that the title deeds registration system provided for by the Registration of Documents Ordinance (Cap. 82 of the 1950 Laws of the Somaliland Protectorate) is a much simplified system of registration designed to assist the operation of the land market and would be satisfactory for Somaliland in foreseeable future. However, this point needs to be further investigated.

However, during the last mission of the consultant in May 2006 it appeared that the Municipality of Hargeisa experienced a new system of registration through a computerized system with software designed to record the building permit.

### 5.1 Range of services

In Somaliland the registration office is part of the Municipality but independent from Land Department. The section is subdivided in several sections such as Building permit, Transfer of ownership or Physical asset and Land tenure. The Land Department is facing an extremely rapid growth of the city and does not have the capacity to respond adequately. The link between the registration office and the mapping section is very weak. The mapping section employs two staffs to develop basic maps of Hargeisa on which appears only little information. On a district level, 6 to 8 inspectors are in charge of surveying but without the necessary equipments.



Figure 2: map of Hargeisa produced by the mapping section

#### Primary land registration and building permit process:

A number of departments process building permits. The following outlines the process of obtaining a permit. The permit tends to be regarded as a primary written evidence of permanent tenancy. There are three forms involved in the process; the last of which comprises the permit. Once a permit has been issued, a landholder can apply for a title deed to the building but not the land.

#### Step 1: Application

The landholder applies for a 'land legalisation' certificate and/or a building permit to the relevant District Commissioner (there are five districts in Hargeisa). The applicant must have an Identity Card to be granted a 'land legalisation' certificate and/or a building permit.

The payment of application fees (\$8.00) is checked before an investigation will proceed. Field Surveyor (geometer) inspects the sites. S/he notes the dimensions on the application form (e.g. 12m x 12m) and notes if the site is developed or not. There are no parcel identifiers, and so the surveyor writes a property description on the application form in long form — e.g. west of street xxx, building number yyyy from northern corner. District Planner verifies the surveyor's information and writes this on the application form. Then the form is sent to Mapping Section of the Lands Department in the main municipal office. Chief Surveyor verifies that parcel is developed or undeveloped and may be allocated for private development and occupation.

- Is the land identified in public road or is it designated for public use?
- Is it designated as privately held land in terms of city master plan? (The Master plan does not appear to exist)
- Chief surveyor does a locality sketch on the file folder cover
- Then parcel is noted in pen on die-line print of a type of block plan – it shows only the city blocks in a district

## Step 2 Application to Legalise Land

- New form filled out by District Commissioner
- Signed by District Commissioner, Director of Planning, Land Director
- Included in the file for the parcel

## Step 3 Taxation Department

Taxation Department checks if taxes have been paid and collects new taxes.

## Step 4 Auditing (Administration and Finance Department)

- Double-checks if taxes have been paid
- Transaction tax of \$80 as a one time fee levied

## Step 5 Land Department Mapping Section

- Checks if land has been allocated/building permit registered to someone else already
- Check on registered building permit property plan (annotation in ink)

## Step 6 Archive Section: Building Permit Generated

- Information from two forms in file assimilated on a building permit form
- Signed by Executive Officer, the Deputy Mayor, and the Mayor
- Copy of permit to Applicant
- Data entered into building permit database on computer

## Step 7 Development

- Land is developed by erecting a building and/or building as a minimum a foundation wall around the perimeter
- District surveyor ensures that perimeter is fenced / walled according to plan and that encroachment does not occur



## Step 8: Registration

Once the land is legalised and a building permit, one can apply for a title deed to the building in the Physical Assets and Land Tenure department for sh100,000 (±\$16). This is a title deed to the building and not the land. Title deed has far more information than legalisation certificate e.g. photo of owner and family information.

Until May 2006, the registration for the building permit was made manually and records were kept in books, since the 8th of May 2006 the office has been using computerized system to register building permits. The software called "Archive Municipal System" allows registration of more detailed data. However, no maps showing the location of the developed plot are linked to the system so it is still necessary to refer to the file to consult the map, which remains unclear.

Procedure within the Transfer of ownership section:

- Responsible for the registration of property transfer deeds, this section applies a fee of 3% of the value of the land to register the transaction
- The contract is drawn up by a public notary and each party receives a copy
- Basic facts are registered on a book

This procedure too is applied for the inheritance certificate under the circumstance that a Sharia Court delivers a confirmation of the inheritance right. Once again, no maps are linked to the system.

Interviews indicate that getting the transaction noted in the municipal records is not compulsory. It is a private conveyance system. One could transfer land by means of a cash sale, without involving a public notary or getting the transaction noted in the municipal records. However, there are obvious risks associated with this.

Procedure within the Physical asset and Land and Tenure section:

- Once the property has been developed the owner who seeks a title deed to confirm the full ownership should introduce a request through an application form
- At the time of the survey 3000 titles have been delivered in Hargeisa that counts about 65 000 properties
- This section delivers titles that are in fact confirmation of the building ownership. These titles should be considered as title deeds but for the property itself and not for the land itself. The delivered title is manually recorded within the section which then keeps a copy

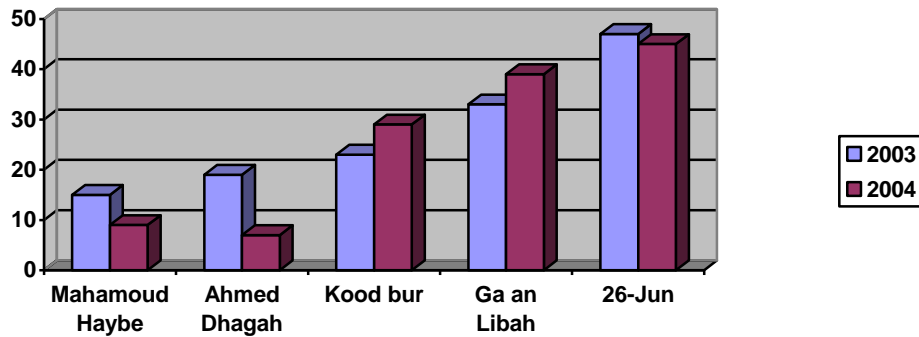


Table 4: Number of new title deeds issued for buildings in Hargeisa-2003-2004

In Bosasso, the registration office has the authority to register ownership, land taxation, building permit, rehabilitation authorization and inheritance certificate but this is not a compulsory process. It should be indicated that the Islamic Court in Bosasso is also authorised to register the same range of legal document. This is a commonly used competence that citizens seek the recognition of their rights under the Islamic law.

## 5.2 Degree of security

The system has a very low degree of accuracy in respect to parcels and rights. Any parcels are delineated on diagrams or plans framed by land surveyors and nothing have to be approved by the office. It is only a matter of getting an official stamp that certifies that the document has been recorded. More worrying is the fact that land information collected by the different registration offices are not shared among them. Each office must transfer land information to the district responsible for the updating. Lack of updating leads to mistakes about the identity of the owner.

## 5.3 Degree of sophistication

The service provided by the registration office is reduced to a minimum because everything has been destroyed over the years. But the main problem remains the lack of financial and human resources. There are no computers and document are produced using only one typewriter and then officially stamped. Depending on the different district in Hargeisa one cannot count more than two or three surveyors per district.

#### 5.4 Cost of registering transactions

It is often said that in both regions the cost of registration is affordable for all; the cost of registering transfers depend on the value of the property. In Hargeisa registration cost for a full ownership title within the Land Tenure section is approximately 50 USD while the building permits registration cost is 10 USD for the verification made by the surveyor. The fee to access the permit, which depends on the size of the plot, should be added and may be expensive. With regard to the registration of inheritance certificate, the cost is about 50 USD while it is 3% of the amount of the transaction to register the sale agreement in the same office. In Bosasso, the cost to register a plot of 20 X 20 would approximately be 100 000 Somali shillings while for the same size in Galkayo the cost is 400 000 Somali shillings.

#### 5.5 Time required for registering transactions

In general, in both regions the transaction is immediate. Currently there may be a small delay for a document to be registered although the delay was as long as several weeks in the past. In Bosasso, there are two different systems in place:

In case of registration of grabbed plot, the applicant should first obtain a court order to become the owner. With this order, the process takes one day. In other cases, the process approximately takes two days.

#### 5.6 Access to the system

Everybody can access the system and those who want to register a document.

## Chapter 6: Minimum requirements for implementing land administration other parts of the country

During the peace process, a commission was created to address land disputes and to make some recommendations. The "Land and Property rights review" focused on:

- Appropriation of public land and property
- Grabbed land
- Conflict resolution
- Small scale farmers whose land was illegally occupied by government officials

Among the different recommendations, one was the creation of two committees at the local level: One committee that would be in charge of conflict resolution on land and settlement while the other one would be responsible for farmland disputes. It has also been recommended to revise the Constitution to include principles of free land market, private ownership and land regulation by both federal and regional administration and land decentralization.

These recommendations together with the interviews conducted during the last months tend to demonstrate a strong willingness to build a land policy. However, as mentioned above, assessments for South-Central Somalia have been fairly limited so far due to lack of accessibility to the region (security), lack of documents for desktop review, and lack of clearly identifiable technical counterparts active in this area.

The Joint Needs Assessment in May 2006 noted:

### 1. Unclear land tenure:

Solutions for land and property related conflicts play a major role in enabling any large-scale rehabilitation and development efforts.

### 2. Absence of legal and institutional framework:

There are no land laws under development. No institutions exist at a regional level. At a local level, land management decisions are made as need arises by authorisation of the controlling group or Governor, or between competing informal authorities.

Examples of land management processes in South & Central regions:

In Kismayo, the controlling group authorises municipal decisions on ad hoc basis and there is no municipal regulations or public revenue collection exist on land and properties. In some areas in Mogadishu, land allocation for public purposes is managed at the neighbourhood level focusing on negotiations between the community members themselves. Due to the security constraints, data required to build a comprehensive picture, are lacking.

Opportunities:

TFG has stated that it will engage directly in a land reform as soon as it has established a seat in Somalia, using land records remaining from the pre-war time as a basis, together with traditional conflict resolution mechanisms.

See the study on land, housing and property right restitution. - Annex III

## Chapter 7: Gender perspective

Studies have shown that in the current Somali context, women have primary responsibility for household food security and tasks such as collecting water and firewood, child-care and care giving for the sick and elderly. This is a burden for displaced women in particular as they lack access to basic social services such as housing, health, education and employment opportunities. Gender disparity in education means that while the school enrolment ratio for boys is at 25%, it stands at 14% for girls. This is largely due to poverty, cultural pressure and the unsafe protection environment that force families to keep girls and women at home to help in domestic chores. The prolonged conflict has also had a negative impact on boys/men, limiting opportunities for education and employment and making them easy targets for recruitment by militias.

According to the NGO Nagaad, which is a local umbrella organization established to promote the development of women's rights founded in 1997, women are not facing any discrimination concerning their access to land. Women and men are equally treated in relation to buying and selling plots. From their own point of view, since land is only a question of money there is no discrimination compared to employment, education and politics.

The above consideration does not reflect the IDPs point of view, which needs to be clarified further. The Constitution in Somalia clearly provides equal rights for women and men but this rule does not apply to inheritance system as it conflicts the Shari'a law, which states that a girl inherits half of what boy inherits of a family property.

## Chapter 8: Land and HIV/AIDS

Although Somalia is less affected by the virus compared to other sub-Saharan countries, the large-scale internal and international movements is a serious risk. Since the land policy is not yet in place related impact on issues such as widows, orphans, land productivity and food security has not been addressed.

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### List of people interviewed

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#### 1-In Somaliland

Head of the Court of Appeal  
Judge Suleiman Irro

Private sector  
Mr Ahmed Ahmed Busin  
Mr Mohamed Jame Musa

Engineering Company  
Mr. Mohamed Abdi  
Mr. Abukar Abdi

Minister of interior  
Eng Ismail Adam Osman

Land Director  
Land Department  
Mr. Abdiaziz Mohamed Hashi

Municipal Land Committee  
Mr.Jama Ismail  
Mr. Adam A.Ali  
Mr. Ali Hassan  
Mr. Nur M.Amare  
Mr. Hassan A.Haid

Hargeisa District: 26 June  
Deputy Commissioner  
Mr.Hassan Jamac

Hargeisa District : Ibrahim Koodbuur  
District Commissioner  
Mr. Abdi Iidan

Elders

The mayor of the capital  
Mr Hussein M Jiciir

Academy for peace and development  
Mr Ali Egeh

Nagaad Umbrella association NGO  
Member of the Parliament  
Mr Saeek Elmi

Professor Ahmed Dirir Ali  
University of Hargeisa  
Member of the House of Elders

## **2-In Puntland**

Interview with the head of the Islamic Court

Interview with the head of the land department  
Municipality de Bossaso

Interview with Charia Department  
University of Bossasso

Puntland Development Research Centre  
Mr. Abdirakhman Abdulle Osman

Interview with the Minister of Local Government  
Garowe  
Mr Ali Abdi Awaare

Director of the Garowe land department  
Mr. Abdi Ali Shire

## **Laws**

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### **In Somaliland**

The following are applicable laws and policies. It appears that only the Constitution, District and Regional Planning Law 23/2002 and the National Urban Land/Planning Proclamation No 17/2001 have been passed by parliament.



## **National Law and Policy**

Constitution of the Republic of Somaliland  
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District and Regional Planning Law 23/2002  
National Urban Land/Planning Proclamation No 17/2001  
Somali Appropriate Building and Urban Codes of Practice

## **Hargeisa Municipality**

### **City of Hargeisa (Government) Law 2004 (City Charter)**

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## **Historical Laws, Policies and Land Management Institutions**

Town Planning Board set up by British in 1945

Town Planning Ordinance of 1947 (Cap. 83 of The Laws of the Somaliland Protectorate, 1950 edition) (TPO)

Registration of Documents Ordinance (Cap. 82 of the 1950 Laws of the Somaliland Protectorate) (RDO)

Somaliland Charter 1960-1 set up Town Planning Board and Surveying and Mapping Board post independence

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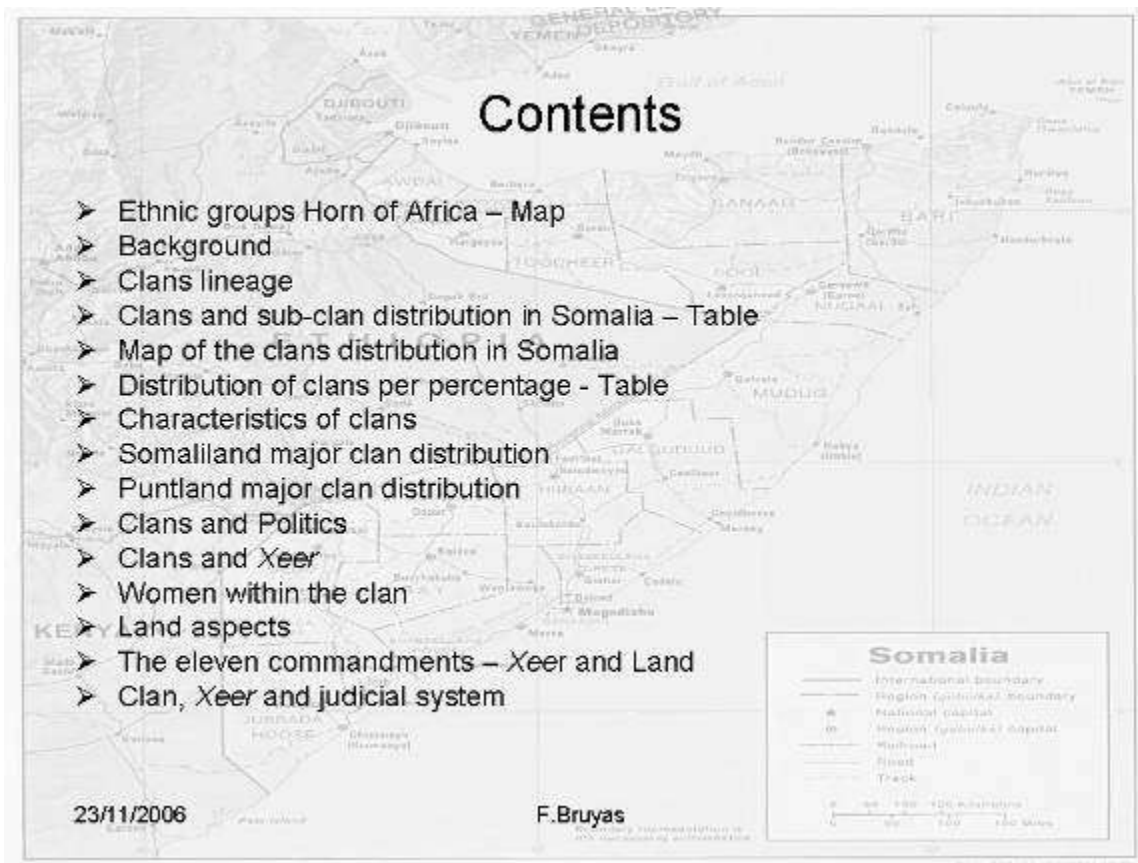
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## Annexes

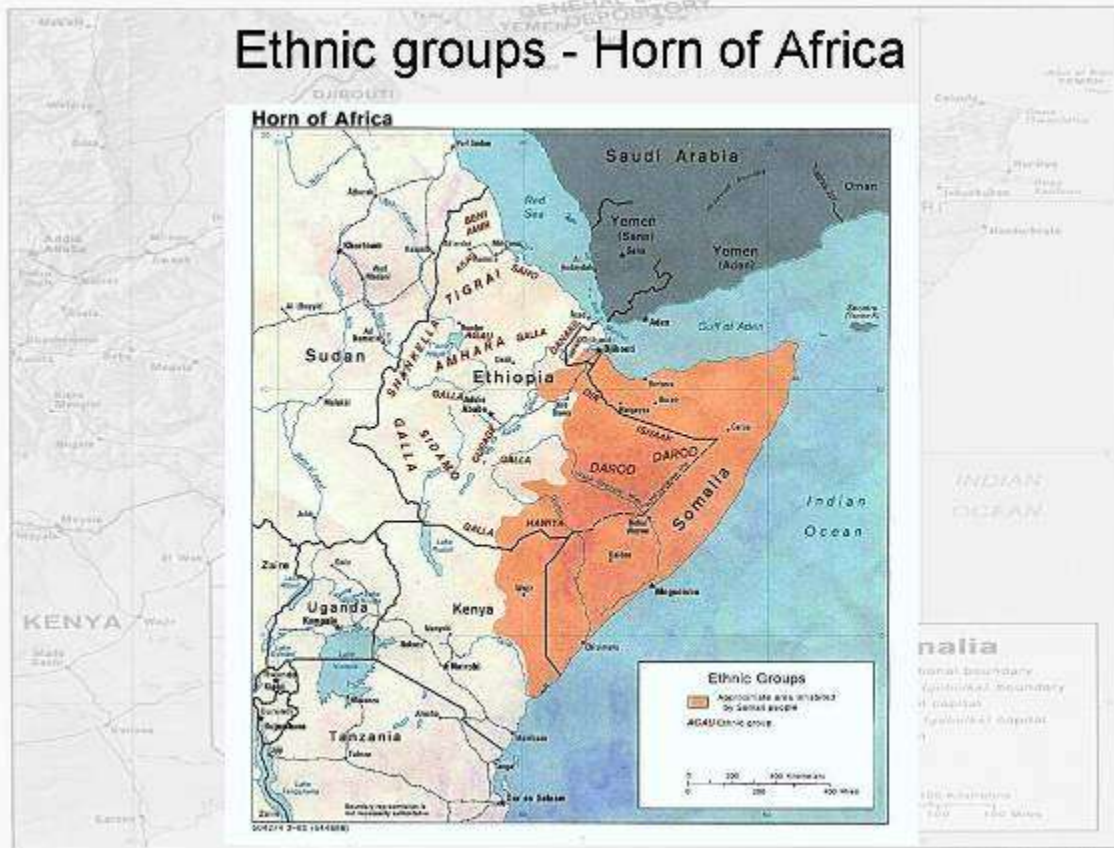
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### Annex I

#### Somalia Situation Analysis: Clan and Customary



# Ethnic groups - Horn of Africa



## Background

- **Origins of the Somali people: Cushitic linguistic group**
- **Appeared around the 6<sup>th</sup> or 7<sup>th</sup> century A.D in the northern part of Somalia**
- **Emergence of pastoral clan groups in the next centuries in southern and western part of the country**
- **10<sup>th</sup> century: introduction of Islam by Muslim Arabian migrants along the Somali coast**
- **Close to 100% of Somali are Sunni Muslims today**
- **Sharia has long co-existed with Xeer-unwritten Somali customary law**
- **Introduction of imperialism during the 17<sup>th</sup> century (Omani protection) deeply broke the balance of the powers**
- **Colonial period accelerated the emergence of profound disparities between clans and ethnic groups**

### Somalia

- International boundary
  - Regional (national) capital
  - Railroad
  - Road
  - Track
- Scale: 0, 50, 100 Kilometers / 0, 50, 100 Miles

## Clans lineage

- "The social context of human development in Somalia cannot be understood without reference to clan affiliation. Lineage identity is a central organizing force in Somali society. At the grassroots level, clan elders and other community leaders play a vital role in providing most of the day-to-day governance throughout Somalia, in the absence of effective state authority, and are often instrumental in maintaining local stability". (IRIN -2001)
- "In Somali culture, clan is the inherited patriarchal lineage of ancestors, passed down orally in detail, generation to generation, determining origin, social standing, and access to territory, property and power". (IRIN-CEA - 2001)
- Based on their patriarchal kinship, there are six major clans numerous sub-clans and minority groups
- Those who fall outside major clan lineage divisions are minority groups
- Minorities make up about 20 per cent of the population
- Bantu minority groups tend to be small scale farmers
- The legal framework throughout the country remains poor and minorities or displaced people, either outside the clan system or outside their area of origin are not protected by customary law

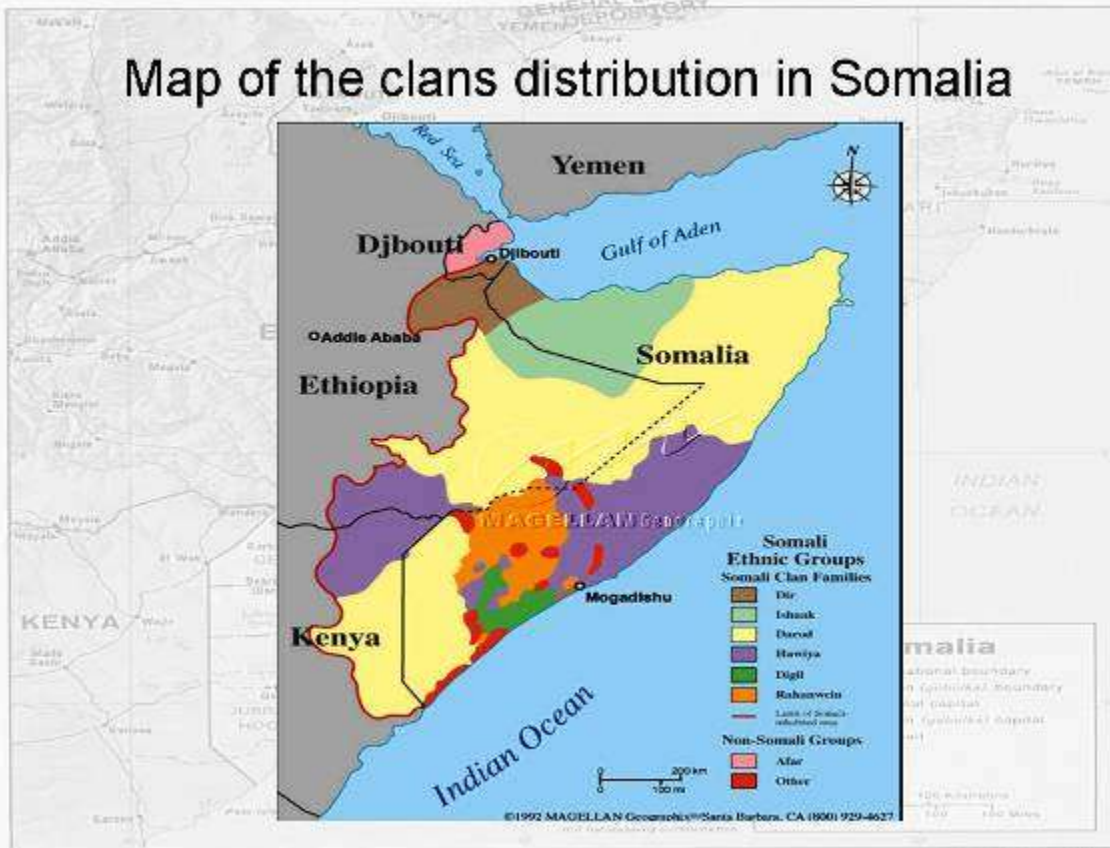
## Clans and sub clan distribution in Somalia

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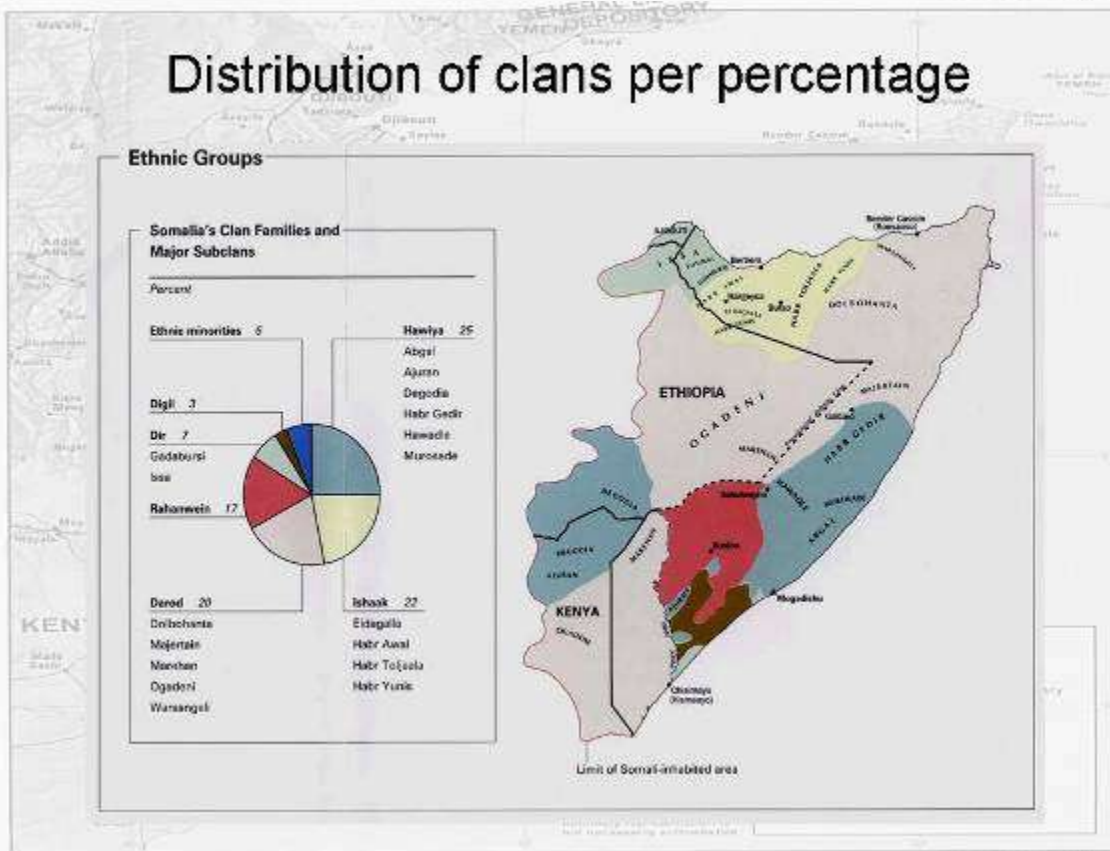
graph TD
    Root[SOMALI (SAMAAL)] --> DAAROOD
    Root --> ISAAQ
    Root --> HAWIYE
    Root --> DIR
    Root --> RAHANWAYN
    Root --> DIGIL

    DAAROOD --> DAAROOD_Subs[OGADEN, MAJEERTEEN, MAREEHAAN, DULBAHANTE, WARSANGALI, YUUSUF, KABLALAH]
    ISAAQ --> ISAAQ_Subs[HABAR YOONIS, HABAR AWAL, HABAR TOL JAALO, HABAR JAALO, IIDAGALE]
    HAWIYE --> HAWIYE_Subs[HABAR GIDIR, ABGAAL, BIYAMAAL, HAWAADLE, MURURSADE, UJUURAAN]
    DIR --> DIR_Subs[GADABURSI, IISE]
    RAHANWAYN --> RAHANWAYN_Subs[ ]
    DIGIL --> DIGIL_Subs[ ]
  
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# Map of the clans distribution in Somalia



# Distribution of clans per percentage



## Characteristics of clans

- “Somalia is a lineage-based society, in which virtually all members of society enjoy membership in a patrilineal clan-family” (Menkhaus, UNHCR, August 2003, )
- Each clan-family is in turn subdivided by clan, sub-clan, and sub-sub-clan, all on the basis of the Somali's extended family tree.
- Depending on circumstances, different levels of lineage identity can be mobilized politically, making Somali clan system very fluid and unstable in nature.
- In a system of lineage segmentation, one does not have a permanent enemy or a permanent friend, only a permanent context
- A clan may be cohesive against an external threat one month, only to fall prey to internal disputes the next month
- Clan system has a range of virtues – it provides its members physical security, a social welfare safety net, and a rich body of customary law (Xeer) designed to minimize and manage conflict
- Blood payment (diya) groups: when a man commits a homicide, the guilt does not remain with him solely as an individual murderer as in most Western societies; the crime is attributed to all of the murderer's kin, who become guilty in the eyes of the aggrieved party by reason of their blood connection with the perpetrator. The compensation is paid collectively.
- Clan can also be a force for division and fragmentation, especially when manipulated for political purposes (Menkhaus, UNHCR, August 2003, )

## Somaliland major clan distribution

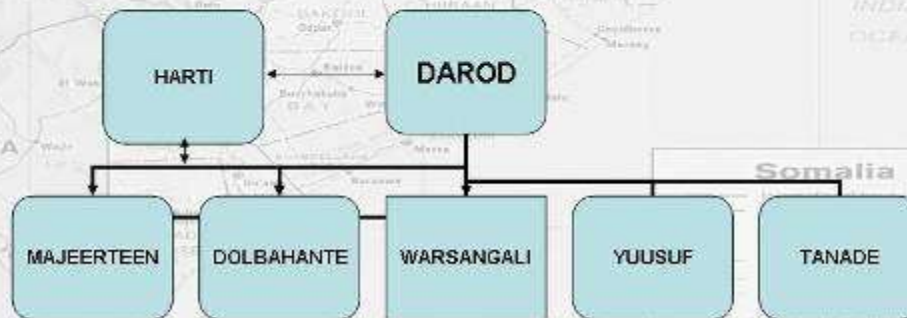


- The numerically and politically dominant clan is the Isaaq, which is divided into rival sub-clans. The two major armed clashes in Somaliland in 1994 and 1996 were both intra-Isaaq affairs, pitting the Habar Awal against a rival Isaaq sub-clan, the Habar Garhajis
- Isaaq also monopolize the top positions in commerce, dominating the lucrative import-export trade out of Berbera. In order to maintain the legitimacy of Somaliland as a state, the Isaaq have had to ensure the participation of non-Isaaq clans. This has worked to the advantage of the Gadabursi clan, which populates Awdal region in western Somaliland
- The Warsengeli and Dolbahante (Harti –DAROD) are badly divided internally over allegiance to Somaliland, Puntland, or to the TNG in Mogadishu, and will likely remain divided over political affiliation for some time to come
- Finally, the Issa clan inhabits the coastal portion of Awdal region. The Issa have historically been stakeholders mainly in Djibouti politics, which they dominate, but also seek representation and rights in Somaliland. There are members of other Somali clans but Somaliland considers only Thelsaaq, Gadabursi, Issa, Warsengeli, and Dolbahante to be “indigenous” clans. All others are considered foreign guests, with citizenship in Somalia, even if some have lived their entire lives in Somaliland



## Puntland major clan distribution

- Puntland is unique in Somalia as a regional administration as it corresponds almost perfectly with clan identity. It is, in other words, an ethno-state, comprised of the Harti clan.
- The Harti of northeast Somalia are divided between the largest clan, the Mijerteen (which inhabit Bari, Garowe, and north Mudug regions up to Galkayo) and the Warsengali and Dolbahante clans, inhabiting the eastern portions of Sool and Sanaag regions claimed by both Somaliland and Puntland. While the Mijerteen clan is in solid support of Puntland, the Dolbahante and Warsengali are divided in their affiliations, with some preferring to remain linked to Somaliland. Rivalries between Mijerteen sub-clans dominate the politics of Puntland.



## Clans and Politics

- Clan has been recognized as the operative principle of representation in Somalia during Phase III of Mbagathi peace talks (2003) that agreed on the **"4.5 formula"** in which the four major clan-families (Dir, Darood, Hawiye, Digil-Rahanweyn) are represented in equal numbers in the transitional Parliament, while minority groups hold half as many seats.
- Each clan had to allocate its share of seat- 61 for each clan and half (31) for the minorities, with 12% of seats (approximately 32) reserved for women, to be allocated by the clans.
- The Charter, adopted during the peace talks, specified that members of Parliament should be selected by the clans at sub-sub clan level and according to the different minority groups. An Arbitration Committee was set up to resolve disputes arising from each group's selection, consisting of members of each clan, with members of the clan with a dispute withdrawing for that decision.

## Clans and Xeer

- The ancestral unwritten system of laws known as *Xeer* was formulated over centuries by nomads and farming communities
- *Xeer* is an highly specialised legal institutions well adapted for administering, managing and regulating common property such as pasture, grazing land and forests and water
- The elder's jury of the clan constitutes the source of *Xeer* and has the role of the supreme guardian
- *Xeer* is a vital element in the clan based social system, acting as a powerful factor cementing clan unity and political solidarity through the institution of the *Diyah*, system of collective responsibility for homicide and other serious crime (blood value)

The map shows the geographical context of Somalia, with labels for neighboring countries: Ethiopia to the west, Kenya to the south, and Yemen to the southwest. Major cities like Mogadishu, Hargeisa, and Baidoa are marked. A legend in the bottom right corner identifies symbols for international boundaries, regional boundaries, national capitals, roads, and tracks. A scale bar indicates distances up to 200 kilometers.

## Women within the clan

- Traditionally, Somali women were considered to play a passive role in both family and public spheres. However, it is now thought that they are becoming more active in the economic and social front after the civil war
- Traditionally in some communities women were denied the right to inherit capital assets such as animals or buildings. This tradition is declining today and women tend to received half of the assets according to the Sharia
- Marriage is a way to enhance inter-clan relationship and marriage must therefore ensure an economic benefit for the clan. *Xeer* recognises four different forms of arranged/forced marriage
- According to *Xeer* husbands can beat their wife for a wide range of transgression, always within "tolerable limits". Practice which tends to disappear. A jury of elders can examine the case if injuries.

➡ Important to note: great disparity between rural and urban areas.

The map is identical to the one above, showing the geographical context of Somalia with labels for Ethiopia, Kenya, and Yemen, and major cities like Mogadishu, Hargeisa, and Baidoa. A legend in the bottom right corner identifies symbols for international boundaries, regional boundaries, national capitals, roads, and tracks. A scale bar indicates distances up to 200 kilometers.

## Land aspects

- Land is divided along clan lines and commonly called by clan names as *Isaaq Land* or *Dir Land*
- The second level of land division follows the primary lineage lines: *Land of Marjerteen, Land of Warsengeli*
- Beyond these geographical division land is shared and as land is a common asset for all, migration in search of pasture to areas that others clan control is a tradition regulated by Xeer
- Constitution of the former republic of Somalia stipulates that land belongs to the State and no one can claim full ownerships
- During the colonial period:
  - Agricultural land: right to 50 years lease
  - Urban land : right to unlimited lease

} Revocable for public interest

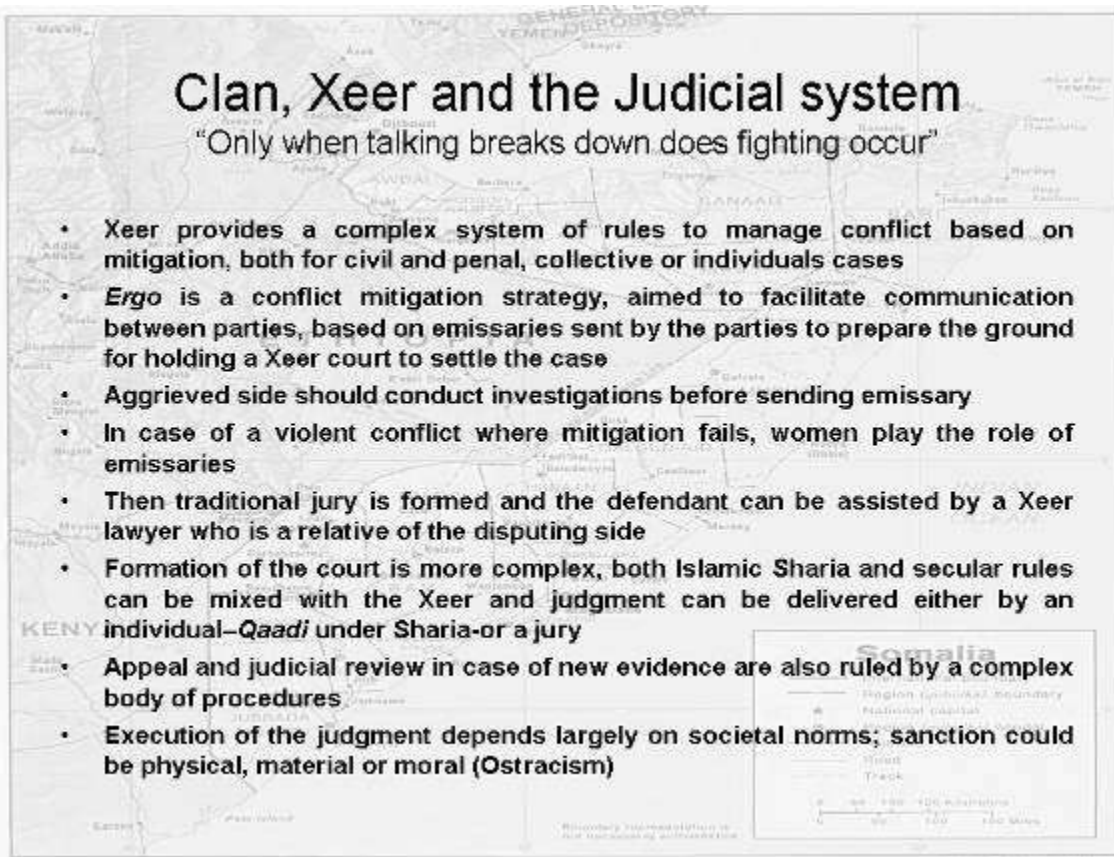
## The eleven commandments Xeer and Land

1. Land and any resources found on it are common assets of the clan or the primary lineage that permanently lives on it
2. Pasture is free for all pastoralists irrespective of clan affiliation in time of need
- 3- Pastoralists should preserve and not burn, deserted thorn pens for animals..
4. Generally nomadic can not settle in the grazing valleys. However, in some regions pastoral hamlets may be allowed to settle in the middle of grazing valleys
5. Individual pastoralists should not destroy shared pasture and fruit bearing trees
6. Neither visiting grazers nor local pastoralists may establish commercial camps on grazing land
7. Private enclosures or farms on grazing lands are prohibited. No one is allowed to cut grass and transport it in an other area
8. Visiting grazers must respect Xeer and maintain peaceful co-existence with host communities
9. A committee of elders from the visiting group and the local community is empowered to resolve conflicts
10. Kinsmen should assist each other in hard times, particularly during long migrations
11. To reserve an old pen or his own use, the head of a pastoralist group should clearly leave a mark in the front of the pen

# Clan, Xeer and the Judicial system

"Only when talking breaks down does fighting occur"

- Xeer provides a complex system of rules to manage conflict based on mitigation, both for civil and penal, collective or individuals cases
- *Ergo* is a conflict mitigation strategy, aimed to facilitate communication between parties, based on emissaries sent by the parties to prepare the ground for holding a Xeer court to settle the case
- Aggrieved side should conduct investigations before sending emissary
- In case of a violent conflict where mitigation fails, women play the role of emissaries
- Then traditional jury is formed and the defendant can be assisted by a Xeer lawyer who is a relative of the disputing side
- Formation of the court is more complex, both Islamic Sharia and secular rules can be mixed with the Xeer and judgment can be delivered either by an individual—*Qaadi* under Sharia-or a jury
- Appeal and judicial review in case of new evidence are also ruled by a complex body of procedures
- Execution of the judgment depends largely on societal norms; sanction could be physical, material or moral (Ostracism)



## Annex II

### Land Tenure Options for IDPs/Returnees

The objective of this paper is to examine the different land tenure options to ensure durable resettlement solutions.

*In 2004, rough estimates were that up to 400,000 people were internally displaced in Somalia, out of a total population of 6.8 million (UN, 18 November 2004; UNDP, 2004). Children and women make up 75% of the IDP population. The great majority of IDPs about 250,000 live in Mogadishu*

#### **Property, return and resettlement**

Land dispossession in areas of origin and lack of access to land in areas of refuge are the most serious problems affecting IDPs. IDPs from minority groups and those outside their clan home area usually do not have access to land other than rented plots. Land in Somalia tends to be controlled by specific clans. The dominant clans inhabiting the regions where IDPs seek safety would not easily sell land to “outsiders” or members of other clans (Lindgaard, 23 March 2001). Even where possible, buying land could increase the risk of IDPs being dragged into conflicts which they normally want to avoid given their particular vulnerability.

In addition, there is not enough public land available that could be allocated to IDPs by local authorities. As a result, the vast majority of IDPs rent plots on privately-owned land while the rest squat temporarily on government sites or abandoned buildings. Most IDPs are unprotected and can be evicted by landlords or authorities at any time. The insecurity of land tenure and ownership was cited as the primary concern of IDPs during a survey conducted in 2002 (UNCU, 30 July 2002).

#### **Somaliland’s IDPs situation**

Some IDPs, according to some surveys in particular in Somaliland, are not willing to buy land because they wish to return to their areas of origin in South-Central Somalia once the security would be guaranteed. In Somaliland, IDPs are also interested in avoiding any legal or social problems. Since they do not originally come from Somaliland and are to some extent considered as “illegal migrants” by the host community, they are not considered to be entitled to land as non-Somalilanders.

Interagency assessments conducted in 8 areas around Hargeisa (Somaliland) in returnee and IDP settlements (June 2002), give some indicative figures. 30% report they owned property before the war and virtually all report having no access to it now, citing war and insecurity as the primary reasons. Almost half of the residents state they ‘own’ their plot. The rest of the households live on land owned by the government (primarily Stadium and State House residents) or by private individuals (primarily in Daami). Three out of four households currently ‘owning’ their land were allocated the land by the government. Somalilanders generally own their own land, while Southern Somalis generally do not (rent).

The Government of Somaliland wants to restle returnees/IDPs from the spontaneous settlements of State House, Stadium, Independence Garden, Hargeisa water storage area, Dami and Pepsi Cola to permanent settlements in Ayaha and Aw Adan. 44% of the IDPs from South-Central Somalia prefer local integration.

#### **Bosasso IDPs situation**

The IDPs in Puntland can be subdivided in two groups when it comes to opportunities for security of tenure:

- ➔ The visible internally displaced persons with no clan or kinship affiliation to the community they reside with and
- ➔ The in-visible displaced who integrate into the communities due to family ties or clan affiliation.

In *Bosasso* (Puntland), the issue of land tenure of IDPs is largely related to urban planning. IDP settlements are built on privately-owned land, and since the municipality owns hardly any land, it is difficult to find a plot to relocate IDPs. The lack of land records make it difficult to determine who the land belongs to.

Agencies are reluctant to provide services to land with unclear ownership as often this has resulted in multiple claims once the works are about to start.

Displaced communities from South-Central Somalia do not own their land and some of them have to pay between 10,000-40,000Sshs monthly rent while some other are settle for free on private land. The fact that IDP settlements are build on privately-owned land undermines provision of basic services which are often privatized by landlord. Although many fires destroyed IDP houses, IDPs would not build with better materials, because on private land they risk forced evictions at any time. IDPs recurrently evicted incur relatively high re-settlement expenditure. It is difficult for the authorities to relocate IDPs, because the municipality owns hardly any land, and has no money to buy it.

There may be potential disagreements between municipal and central authorities with regard to a long-term policy towards the IDPs in Bosasso. For example, while the Mayor of Bosasso is quite willing to entertain the permanent settlement of these populations, the Minister of Interior informed us that he envisages the eventual return of these IDPs to their original areas. In short, prior to any coherent policy with respect to the IDPs, it is vital that a clear and coherent policy be agreed upon both between local authorities as well as with the Puntland administration.” (UNCU, 30 July 2002).

IDPs from the South have at this point no option of returning to their area of origin due to recurrent conflicts. Most IDPs are from minority groups and are afraid of returning to their home areas by fear of attacks from the clans that at present occupy their land. The unresolved issue of transfer of property and land seemingly goes back to clan nepotism, which was dominant during the Siad Barre time. Most IDPs from the South-Central Somalia have not integrated into their host communities in Northern Somalia. Reintegration is complicated by general poverty, scarcity of water, lack of services and unemployment.

### **IDP women’s access to land**

For most IDP women, who lost their husband in conflict or during displacement, access to land is more challenging. Traditionally women need a husband or male relative to have access to land. However people interviewed in Hargeisa and Bosasso in January 2006 claim that women do not face any kind of discrimination concerning access to land.

### **Relevant land laws**

Land Tenure options must be examined in the framework of the legal framework governing land issues. It would be coherent to integrate the different options within a legal system applied based on common consensus. However considering the complexity and the inefficiency of the land management, it’s unlikely that the tenure options for IDP could be legalized though the current legal system even if the new land law stipulates that every citizen has equal right in terms of access to land. Firstly, there are at present no relevant laws in place in Somaliland and Puntland but a confusing overlap of secular laws, Islamic laws and customary law. Secondly, national or even local political will to grant security of tenure to IDPs is not yet consolidated.

In Somaliland as well as in Puntland, governments have launched a process to build a new land management system. Land Management Law No17 in Somaliland and its equivalent in Puntland contain the necessary provisions to put in place urban planning, access to land and land tenure. Unfortunately none of these laws make provisions for urban poor and IDPs access to land.

One of the interesting concepts to study land tenure options for IDPs lies in land tenure Islamic theories. Following interviews conducted in January in Hargeisa and Bosasso about Islamic laws, it appears that the situation is different in Somaliland, where Islamic tenure type does not seems to be relevant, than in Puntland where the private sector has already started to introduce Islamic tenure form.

Types of land and land tenure in Islamic theory are categorized as: land in full ownership (mulk), state owned land (miri) and endowed land (waqf).

Individuals also have a right to reclaim waste or empty land (mewat) that is land without an owner which is uncultivated and undeveloped.

The State assumes land 'ownership' on behalf of God but for the benefit of the community. Islamic property rights incorporate a redistributive element, which is evident in institutions such as the endowment (waqf) and charity (zakat). In Islam, the poor have rights against the State as well as the wealthy.

Devotion to the way of God or the way of goodness or piety and a strong desire to win Divine approbation have been the root cause of the origin and development of the endowment. The Islamic endowment (waqf) arrangement permits the owner to settle his property to the use of beneficiaries in perpetuity and the property becomes 'waqf upon a declaration by its owner (the waqif) permanently reserving its income for a specific purpose. Ultimately, all endowments (awqaf) must be dedicated to charity

(M. Siraj Sait and Dr. Hilary Lim –Land Tenure laws and systems – 2006)

In Bosasso, a newly created private Islamic Bank expressed interest in supporting resettling urban poor and IDPs, facilitating access to land using the waqf system and providing access to micro-credits for shelter provision. It is the assumption that landowners will be much more inclined to donate land donation to the Islamic Bank than to the Local Authorities.

### **Recommendations**

Land tenure options must emanate from a participatory process and should take into account the fact that some IDPs will go back to their regions of origin if peace and security is ensured in their area of origin. As such two situations are to be considered.

#### ***IDPS with intent to return to their area of origin***

##### **Temporary Land Tenure option in their transitional area**

For those who seek to return to their place of origin, it is necessary to give them a temporary security of tenure for them to be able to improve their condition, to be protected against evictions and to find an alternative to the payment of unaffordable rent. Agreements for the temporary use of land and property for a renewable period (ex. 15 years, see annex) could be considered as a solution for the occupied transitional area

This agreement could be signed between the Municipality, in case of available public land, and individuals or groups. In case of private land, under the auspices of the municipality, the landlord could put the land at IDPs disposal for a period of time whereby the municipality commits to service the land.

It must be noted that the current legal framework does not ruled this kind of agreement which needs to be strictly framed.

##### **Land Tenure option in their area of origin**

As the land management system in South Central Somalia remains highly unclear it is much more complex to design proper land tenure option. However it is more or less certain that a massive return of IDPs will engender high number of land dispute.

As an immediate step it would be necessary to investigate the land situation in South Central Somalia and especially the existing mechanisms to solve land conflict in this area. Institutionalization at the local level of a land committee in charge of IDPs claims consideration is to be considered.

### ***IDPS preferring permanent local integration***

For those who wish to permanently integrate the host community in their actual location, the access to land is limited due to the land prices and lack of financing mechanisms. Some of them also claim property in their areas of origin which they occupied before the war.

The concept of public interest should be considered as a method to make land available for IDPs. Compulsory purchase or expropriation for public purposes might be used to recover unused public or private land. Legal requirements, that must govern this procedure, must be clearly codified. Land Management Law No17 in Somaliland and eventually the one in Puntland could incorporate land for urban poor as a public purpose. Therefore when new areas are planned for expansion, and serviced, a percentage of the newly created zone could be reserved for IDPs.

Identification of land rights that IDPs may have had before the displacement is one of the main concerns of the IDPs (Interviews in Bosasso 2005). A system to deal with claims should be put in place at the local level for both individual and community identification of rights.

Legal requirements must include procedures related to the identification of the claimant, individual or groups, the identification of contesting claims to land (either by neighbours, family members or a third party), the identification of boundary disputes (neighbours and witness), the consideration and resolution of contesting land claims, the confirmation of ownership rights and the registration of ownership rights.

Islamic tenure options are further to be examined. At present there is still a lack of information.

### ***Recommended strategies***

Based on the best available information, it appears that the current legal framework cannot accommodate security of tenure for IDPs, outside of the existing rental agreements issued by the municipality. This means that in the short term it is not possible to ensure security of tenure for IDPs within a legal framework. Therefore short term approaches which build non legal forms of tenure security are required. Also there should be a focus on including IDP security of tenure clauses into the new land bill under discussion, which can only reasonably be put in place in the medium to long term. Therefore 2 strategies are being recommended, a short term multi-strategy approach and then a medium to long term strategy.

#### **Short term strategy**

1-IDPs remain at their current location and are serviced by the Municipality, which provides services and rental agreements for those who are settled on public land. For those who are settled on private land (mainly in Bosasso)-, encourage local authorities and private owners to develop an approach based on the Islamic concept of endowment (*waqf*), whereby land can be made available for settlement by the poor. This pre-supposes financial resources and political will.

2-Closely related to the above point; raise the IDP issue to a high level both with government, NGOs and donors, with the aim of obtaining public political statements that the IDPs can stay in their areas and obtain services. Workshops of stakeholders could be used to raise the profile and discuss the issue.

3-Lobbying should start to include IDPs in the new land law. One suggested approach could be, in regard to security of tenure, the experience pursued in Trinidad and Tobago in 1986 to deliver secure tenure to informal occupants. In The State Land Act (1986) has created a Certificate of Comfort that has been issued to qualifying occupants of public land. This certificate is a letter that confirms protection against forced evictions without creating a registrable right in the land. This is a guarantee through a personal right against evictions that could be given to the IDPs during a transitional period. In other words it is an assurance of somewhere to live without giving irreversible rights. Obtaining of such certificate could also facilitate the connection with essential public services. This would get the areas currently informally occupied into the formal system through an application in a form of a sworn declaration supported by evidence of an actual occupation.



This Trinidad and Tobago approach requires a legal framework that could be discussed as a way forward through the new land law. But it will become part of a medium term strategy since it will be necessary to create the legal framework. Regulation will be necessary to build the process of Certificate allocation that could be lead by the Land Committee.

4- A review of best practices for IDPs security of tenure in other post conflict situations should be done both in Africa and world wide, to learn about options, lessons learned to assist in the development of the new land law.

5- If possible, ensure that the GIS and/or land records also include a description of the occupation of the IDPs to improve credibility.

6- With regard to Puntland, using Shari'a law with regard to *waqf* (religious land) to give security of tenure to IDPs, as a credible, even if not strictly legal, approach.

7- Identification of an adaptable framework for IDPs in view of the African Union paper on IDPs in Africa. African Union calls for the formulation of a comprehensive legal framework designed to codify the standards of protection, provide for the means and institutions of protection and assistance, and serve as a legal basis for coordinating various regional and international actors and agencies involved in providing protection and assistance to internally displaced persons in Africa. Return and resettlement of IDPs should be a component that must be included in this future legal framework.

### **Medium term strategies**

1- As a first and necessary step the government should consider as vital the development of a national land policy concerning IDPs.

2-In accordance with this new policy, the new land management laws in both regions must be revised to add clauses that could facilitate IDPs security of tenure either where they are or in new areas. This should draw on the best practices of other countries based on the review undertaken in the short term. It should also draw on the workshop discussions which took place in the short term strategy.

3-The Land Committee must be invested with the necessary competences related to IDPs tenure security, resettlement and allocation of land for vulnerable groups, both in terms of the legal framework as well as the human resource and financial capacity to undertake the administration side. A Somaliland level workshop could be organized to identify in a participatory manner what should be the range of competences that must be allocated to the Land Committee

4- Development of regulations after the law is passed, based on the land policy and land law as it applies to IDPs. Training of officials in the new regulations.

5-Implementation of the new law and regulations, including the updating of the GIS/land records.

## Annex III

### Land, Housing and Property right restitution

The objective of this paper is to examine the housing and property restitution process.

By 2005, despite the repatriation of more than 1 million refugees to Somalia over the previous 12 years there remained some 350,000 refugees in neighboring countries and the wider Diaspora. More than 400,000 are internally displaced people, many are women and children. The scale of the ongoing humanitarian situation in Somalia requires an integrated, comprehensive response from the international community. In August 2005, the United Nations Commission on the Promotion and Protection of Human Rights made a major contribution towards the realisation of restitution rights when it endorsed the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons. Generally speaking the law of restitution is the law of lost-based recovery. It is to be contrasted with the law of compensation, which is the law of loss-based recovery. Obligations to make restitution and obligations to pay compensation are types of legal response to events where people have been deprived of their assets.

In a post conflict situation the most serious problem faced by refugees and IDPs is the loss of land, housing and property during their displacement. Consequently for those displaced persons who want to return to their area of origin they are confronted with the occupancy of their previous property.

In the case of Somalia where displaced persons belong to different clans and where land conflicts are strongly violent, land, housing and property restitution is a primordial concept that needs to be addressed as a pillar of the peace process.

Land, housing and property restitution is above all a legal concept based on international legal instrument linked to human rights and therefore should be seen as a long term mixed approach.

#### **Recommendations**

Restitution is most complex in urban areas. Here the land has often changed (successive occupant, construction or new demarcation) since the dispossession took place, especially in Somalia, and straightforward restoration is often not possible. The restitution process must balance the needs of individual justice (the claims of those dispossessed) with the broader needs of social justice (the need for housing and development).

#### ***Recommended strategies***

Taken into account the fact that due to the general breakdown in the rule of law the legal foundation of the restitution process needs to be rebuilt, two strategies could be recommended, a short term multi-strategy approach and then a medium to long term strategy.

#### **Short term strategy**

The authorities should request the technical assistance and cooperation of relevant international agencies in order to establish provisional regimes for providing refugees and displaced persons individuals or groups restitution right.

1-Lobbying should start through the Land and Property Disputes Commission (art 68-Transitional Charter) to include land, housing and property restitution or compensation process in the political agenda as a major issue to consolidate the peace process.

2-Identification of the key challenges in South Central Somalia

-Scope of the resettlement in terms of approximate number of displaced persons that could choose to voluntarily repatriate.

-Identification of the major geographical areas that are affected.

-Identification of the existing land allocation rights, the scope of land conflict, the existing mechanisms to register land rights and the existing types of conflict.

-Organizational and financial skills

3-Identification of the key actors involved in the restitution process.

-Institutional framework at the national level

-Decentralized institutions

-Definition of the most suitable jurisdiction for the procedure.

4-Definition of an adaptable model of the restitution process for the Somali context

-Review of best practices: Kosovo (Housing and property Directorate) Bosnia, South Africa (Commission of restitution of land rights)

-Review of the different restitution types:

-“Natural restitution” (restitution of the claimed parcel of land)

-“Substitutional restitution” (restitution of a similar piece of land)

-“Compensation” in some non-land form: an ownership share in another entity, entitlement to a government benefit, or simply cash.

5- Develop a strategic mass awareness campaign including radio talk shows, community meetings, newspaper adverts. (“stake your claim” in South Africa)

As a first step a stockholder process should be develop through the creation of focus groups and capacity building organization.

### **Medium term strategies**

1-Recognition within the law of the right to return and the Land, housing and property restitution right principles.

2-Elaboration of the legal and technical framework within a primary legislation to be discussed by the transitional Parliament

3-Elaboration within a participatory process of a technical guideline that ensure the effectiveness of all the relevant procedures. (5 years in South Africa)

4-Identification or / and creation of local institutions responsible for registration of the rights newly restituted.

5-Building capacities in these institutions in terms of staff, funding, equipments and qualifications.

6-Creation of institution for dispute resolution and development of model for land restitution based on the Kosovo experiences.

