



DISPLACEMENT  
SOLUTIONS

## **Housing, Land and Property Rights in the South Central Somalia**

### **Preliminary Assessment and Proposed Strategies for Expanded Approaches**



**August 2008**

## **Abbreviations and Acronyms**

AfCHPR	African Charter of Human and People's Rights
HLP	Housing, land and property
IASC	Inter-Agency Standing Committee
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPR	International Covenant on Civil and Political Rights
IDPs	Internally displaced persons
IUC	Union of Islamic Courts
MoU	Memorandum of Understanding
SCS	South Central Somalia
TFC	Transitional Federal Charter
TFG	Transitional Federal Government
UNCT	United Nations Country Team (Somalia)

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## Executive Summary

1. This report examines the housing, land and property (HLP) rights challenges facing the people of South Central Somalia (SCS) and proposes a series of detailed and practical recommendations to assist the Inter-Agency Standing Committee (IASC) and the broader humanitarian community to define strategies to ensure sustainable HLP rights solutions for displaced persons in SCS.

2. The report initially examines the complex HLP rights contexts prevailing in SCS today, including the impact of the armed conflict on HLP rights, the differing ways in which displacement is manifested and a series of additional constraints in resolving HLP challenges. It then outlines a series of specific HLP rights concerns in SCS which require resolution. The report concludes with a detailed list of recommendations for practical action designed to improve the HLP rights prospects for the displaced population concerned. In general terms, this report recommends to the international humanitarian community in Somalia to gradually prioritise (wherever security conditions permit) durable HLP solutions for the displaced population, and to begin to focus on developing solutions which go beyond satisfying immediate emergency shelter needs.

3. While it is clear that there is at present no feasible permanent HLP solution available for all displaced persons in SCS given the highly volatile conditions in the country, and that there is no realistic expectation that a comprehensive HLP property restitution process to provide redress for all the HLP violations will be implemented in the near future, there are nonetheless a range of concrete, practical and ultimately necessary steps that can be taken to improve the eventual prospects for longer-term durable HLP solutions.

4. An increasing focus on return and local integration is important given the high concentration of IDPs in the SCS (two-thirds of all IDPs in Somalia) and the extremely vulnerable conditions in which they live, and which are exacerbated when what were meant to be temporary situations become effectively permanent.

5. The suggested adoption of durable HLP solutions for IDPs is based on the understanding that in the unpredictable environment in SCS great care and creativity will be required to find viable, rights-based ways of steadily improving the HLP prospects of the displaced population. The suggested recommendations are designed to avoid multiple IDP displacements from one to another 'temporary' settlement, and are aimed at giving alternative solutions to IDPs settled on private plots and who are unable to improve their unacceptably precarious living conditions.

6. This report proposes a series recommendations to assist in developing a broad strategy to resolve outstanding HLP challenges facing displaced persons, including:

- Integrate four basic principles into any future HLP initiatives in SCS: Adopt an all inclusive approach; Do not create new conflict; Cause no harm; and Do not create unrealistic expectations
- Determine where the sources of Somali law are compatible with one another
- Adopt sustainable HLP solutions parallel to emergency shelter responses
- Re-vitalise the *Somalia HLP Task Force* - and designate a field-based focal point in Baidoa.
- Avoid getting involved in directly resolving HLP claims or disputes when proposing sustainable HLP solutions

- Create conditions for sustainable return prior to its practical organisation
- Adopt a flexible, rights-based approaches in finding appropriate tenure forms for the local integration of IDPs
- Assist the local authorities to develop basic rental schemes
- Find appropriate forms of financial support to sustain IDPs to buy land plots below market value
- Assist the local authorities in SCS in finding durable HLP solutions
- Define in cooperation with the religious authorities (Sheh's) the possible use of Wakf for the IDP services or accommodation
- Consider developing pilot projects on return and local integration

## Section 1: Understanding the context of HLP rights challenges in SCS

### 1.1 Introduction

7. The displaced population of Somalia faces a series of housing, land and property challenges linked to the massive displacement that has taken place in the country during the past two decades. The lack of a central State authority, prolonged armed conflict among different clan-based militias, perpetual lawlessness and violence, the destruction of economic and social infrastructure, repeated natural disasters and an ever unclear prognosis of Somalia's political future, have all combined to create one of the world's most complex HLP rights quagmires where more than 850,000 people are currently classified as IDPs, and a further one million citizens as refugees.<sup>1</sup>

8. Many of the HLP challenges in Somalia have been thoroughly outlined in a recent report commissioned by NRC, UN Habitat and UNHCR in 2008, and these will not be repeated here.<sup>2</sup> The present strategy paper draws on the results of the larger 2008 report, and highlights in particular the question of what creative measures might be taken by the international community now - despite ongoing insecurity in Somalia - to begin to process of more structurally addressing the HLP rights of internally displaced persons within the volatile and unpredictable environment of South Central Somalia (SCS).

9. It is clear that any planned initiatives by the humanitarian community in the SCS to restore or increase the HLP rights of the displaced population will face a plethora of structural hurdles. At the most basic level, the absence of the rule of law and HLP rights enforcement mechanisms within the country makes it practically impossible to even imagine invoking international human rights instruments as tools for ensuring the minimum respect for HLP rights.<sup>3</sup> Although it is clear that the central Somali government does not have effective control over the territory recognised by the international community as the Somalia, the effective presence of State authorities in South Central Somalia, while limited to two cities - Baidoa and certain districts in Mogadishu - nonetheless does generate certain legal obligations that these authorities should be assisted to uphold.

10. It is also important to emphasise that although Somalia may lack a central governing authority which is responsible, capable and willing to enforce basic human rights standards, the basic HLP rights of Somalia's citizens remain firmly in place. All of Somalia's displaced people, both within and outside the country, possess the full spectrum of internationally recognised housing, land and property rights, including the rights associated with the restitution of housing, land and property and the right to return to one's place of habitual residence.<sup>4</sup> These rights are encapsulated in a range of

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<sup>1</sup> This category could be divided into 400,000 protracted displaced persons and 450,000 newly displaced persons due to the 2007 fighting between IUC and TFG when the latter retook the control of Mogadishu.

<sup>2</sup> Greg Norton, *Land, Property and Housing in Somalia*, NRC, UN Habitat and UNHCR, 2008.

<sup>3</sup> This is despite the fact that the State of Somalia remains legally bound to a far larger number of human rights treaties than is commonly assumed. For instance, Somalia has signed, acceded to or ratified a series of binding human rights instruments, including the Convention on the Rights of the Child (signed, 9 May 2002), the Convention Against Torture (accession on 24 Jan 1990), the International Covenant on Civil and Political Rights and Optional Protocol (accession to both treaties on 24 Jan 1990), the International Covenant on Economic, Social and Cultural Rights (accession on 24 Jan 1990) and the International Convention on the Elimination of All Forms of Racial Discrimination (ratified 26 August 1975). Together with the Universal Declaration on Human Rights (which is binding on all countries), these human rights treaties provide a more than sufficient international legal basis to hold accountable whatever State agents are functioning, and a clear legal basis upon which the international community can build initiatives to encourage the authorities to respect, protect and fulfil the relevant housing, land and property rights provisions.

<sup>4</sup> The Pinheiro Principles (Principles 3-9) elaborate specific rights that require the attention of the relevant authorities, including: the right to non-discrimination, the right to equality between men and women, the right to be protected from displacement, the right to privacy and respect for the home, the right to peaceful enjoyment of possessions, the right to adequate housing, and the right to freedom of movement.

international standards, most notably the UN's Pinheiro Principles on Housing and Property Restitution (2005) which provide in Principle 2:

*2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.*

*2.2 States shall demonstrably prioritise the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.*

11. Principle 10 of the Pinheiro Principles continues:

*10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin.*

*10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations.*

*10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.*

*10.4 States should, when necessary, request from other States or international organisations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.*

12. This report seeks to provide ideas as to how these and other HLP rights of Somali IDPs can be subject to ever greater degrees of respect and enjoyment, in full recognition of the exceptionally difficult parameters of contemporary South Central Somalia. It should be noted from the outset that this does not imply, of course, immediate support for large-scale returns to the original homes of IDPs, nor does it presume that return or restitution are the only HLP solutions which should be available to IDPs. What is required is a well thought out, integral approach to the HLP challenges confronting IDPs in SCS by the international community, and one which creatively and innovatively seeks to build the foundations for the successful application of HLP law and policy in the months and years to come. When considering the HLP rights of displaced persons in the SCS the starting point must be discerning how best to design feasible humanitarian interventions within the highly fractured political and security realities of Somalia today. If answers can be found to this query, subject to developments within the political domain, the ground can be paved for significantly improving the HLP prospects now and into the future.

## 1.2 Displacement types in SCS

13. The prolonged absence of any central authority in Somalia has deeply impacted the enjoyment of HLP rights of the Somali citizens. The manipulation of ethnic identities, which has led to antagonism between the various ethnic groups, intensified not only the struggle for political power but also competition over the control of the economic assets, in particular land. As a result, the struggle for land and the corresponding deprivation of land have been and remain central elements of the Somali armed conflict. With the conflict without any clear end in sight, belonging to a clan became the exclusive social identity of citizens when the central Government collapsed in 1991. This in turn had a marked impact upon the role that land was to play in the intervening years. People often moved to their clan land or abroad, which culminated in fighting for the occupation of the vacated land where each clan tried to consolidate and enlarge their power over the given territory at the expense of the other clans. In practical terms, the fighting and displacement usually took place on the most important strategic points or over the most valuable and fertile lands. In such conditions, the deprivation of housing, land and property, as well as killings and forced displacement became systematic attributes of the Somali armed conflict, and they remain so to this day.

14. The armed conflict (and natural disasters) in the SCS have generated different types of HLP abuse at different periods and in different areas and, as a result, have produced three different forms of internal displacement: Continuous, multiple displacements within urban centres (Mogadishu); Rural->urban displacement; and Urban->rural displacement:

### *Continuous and multiple displacements within urban centres (Mogadishu)*

15. This pattern of displacement has been an almost routine practice in urban centres, especially Mogadishu. Frequently, local warlords and their clan-based militias in Mogadishu fought in certain geographically limited areas of the town to attain control over certain strategic points. Such fighting was generally low-intensity and limited to certain neighbourhoods. These circumstances forced Mogadishu citizens as well as a growing number of displaced persons temporarily hosted in the city to continuously change their place of residence and to move from high-risk to safer areas. Many interlocutors confirmed that IDPs had been forced to change their places of residence more than ten times within a period of one or two years.

### *Rural->urban displacement*

16. The second type of displacement manifests in two distinct patterns. On the one hand, rural->urban displacement affects minority clans settled in rural areas of SCS when stronger clans expel them in order to take over their valuable agricultural land. Members of the minority clans (Bantu and its sub-clans in particular) are often unarmed and forced to leave their traditional settlements, and in process are deprived of their assets and livelihoods. In armed conflicts carried out in the rural areas of the SCS, minority clans are more visible and consequently an easier target for the enemy militias. In these specific situations, members of the clans being expelled from their settlements often choose to relocate to urban areas, in particular Mogadishu, where they have a better chance of hiding themselves from the enemy clan members. In addition, rural->urban displacement has also been caused by natural disasters (drought and floods), with affected populations moving to big cities (especially to Mogadishu) looking for economic and residential opportunities.



### *Urban->rural displacement*

17. Urban->rural displacement, on the other hand, escalated when the fighting between IUC and TFG to take control of the Somali capital broke out, and which eventually led to the forced withdrawal of IUC troops from the city. The result was a massive flight of IDPs from Mogadishu in 2007 who are now the largest group of IDPs in Somalia. It is estimated that more than 50% of the Mogadishu population have fled the city, with estimates of 700,000 having been forced from their homes.<sup>5</sup> The main fighting and displacement has been from the southern part of the city, which is populated primarily by the Habr Gadir sub-clan. The vast majority of Mogadishu IDPs fled to the Lower and Middle Shabelle regions.

## **Section 2: Key HLP Rights Concerns in SCS**

18. SCS faces nothing less than an HLP rights quagmire, the difficulties and complexities of which rival the most challenging HLP rights crises anywhere in the world today. Overcoming these many HLP challenges will hinge primarily upon developments within SCS, but at the same time a clear understanding of the key HLP rights concerns in SCS by the international community will be requisite to the development of effective policy approaches in this regard. Eight key concerns appear to most central to any renewed attempts at resolving the HLP crisis in SCS.

### **2.1 Illegal confiscation and allocation of land**

19. The illegal confiscation and allocation of land (land grabbing) has been common in the rural and urban areas due to widespread lawlessness and insecurity. It has been practised by both clans and individuals, though often for different purposes. For the clans, the absence of public order allowed them to enlarge their traditional territories to gain a better position for possible future bargaining with other clans as bargaining chips for withdrawing from these territories. Land grabbing is mostly carried out by individuals or by persons commissioned for economic/speculative reasons; eg. occupation for resale or for the construction of large buildings. The Somali Diaspora and local businessmen are particularly active in this regard. Many of the public land grabbers presented themselves to IDPs as 'lawful' private landlords asking the IDPs to pay for the land they now occupy; a practice which will complicate the search for durable HLP solutions in the future.

### **2.2 Tenure insecurity in rural areas**

20. Over the past two decades deprivation of land has been a regular practice of the Somali conflict where clan affiliated militias tried to enlarge their effective power over the most important lands for agricultural exploitation or certain sites for their infrastructural importance pushing out the adversary clans towards displacement. In practical terms, better armed, larger clans tried to capture the most valuable land and fought against rival clans who settled on the targeted territory in order to get effective control over that land. The clans who were currently occupying the targeted territory had only two choices: either to organise the defence of their settlement and territory or being absorbed by the stronger clan, consequently being subjected to the new rules imposed by the dominant clan. In the Somali armed conflict, forced displacement has been used as a regular method of warfare.

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<sup>5</sup> The most recent (18 March 2008) Report of the UN Secretary-General indicates that some 700,000 people were displaced from Mogadishu and its suburbs.

21. The war between the clans has also affected the HLP rights of individual IDPs. If, for instance, someone external to the clan had settled on a territory, had concluded an oral lease agreement with the clan authorities following their rules (e.g. for growing fruits) and afterwards the clan found itself under attack and defeated by an enemy clan and forced to abandon its settlement and territory (a very common pattern), the concluded lease agreement was not honoured by the new clan controlling the area. The lessee's option was therefore to agree to a new agreement according to the rules of the new clan or to flee.

### **2.3 Tenure insecurity in urban areas**

22. The prolonged governance vacuum in SCS has generated different kinds of HLP violations in urban areas where widespread violence imposed the rules of the local warlords which systematically undermine the security of tenure rights of Somali citizens. In urban areas where the 'rule of arms' has become the exclusive criteria for obtaining a housing title, many different types of HLP abuses are apparent. Warlord-controlled militias routinely forcibly evict private owners from their houses. Sometimes these evictions take the form of war booty granted to local militia members by local warlords. It can be also due to the fact that someone succeeded in corrupting the local warlord who gave his permission to forcibly evict the lawful owner. Needless to say, the largest and most comfortable houses in residential areas in Mogadishu and other urban centres have always been targeted. If inhabitants of such houses do not succeed in obtaining protection from the local warlords controlling that particular area, they have little chance to get protection for their property and, being under threat for their lives, they are compelled to quickly abandon their houses.

### **2.4 Widespread use of forged ownership documentation**

23. The lack of effective protection of security of tenure for the population in urban areas has allowed different forms of interference with their HLP rights. One of the most common forms of dispossessing the lawful owner from his apartment is through the use of forged ownership proof documentation. The following case seems to be quite indicative in this regard:

Abdullah's Story (32 years old, Bantu clan)

"Life in Mogadishu is difficult since violence and fighting of armed groups is a daily reality. In such conditions your protection depends exclusively on the will of the local warlord who controls your area. There is neither a system nor any institution able to protect your life and your property. I am originally from Afgoie district where my clan traditionally settled. The beginning of the civil war in Somalia followed by widespread violence made our life impossible there, especially when our area was occupied by the rival Habargadir and Abgal clans in 1993. With my family, I was forced to change our place of living continuously, after having spent 6 years in different places, mostly around the city of Merka, we decided to settle down in Mogadishu in 2000. Thanks to my savings, I bought a quite big house for my family in Mogadishu from a person who was living in the vicinity of the house. I was obliged to pay "tax for buying the houses as well as tax for protection" to the local warlord, just to be left undisturbed from local armed gangs. However, having paid the taxes imposed by the warlord was not always a guarantee for protection of my house. At the beginning of 2004 an unknown person together with three other persons invited me to get outside of the house, telling me he had to talk with me. He introduced himself as the "new owner" of my house; he informed me that he would give me 3 days to leave the house. He kindly advised me to start picking up my personal belongings since he had the intention to build one more floor on the house. I could not believe it, when I asked to show me the contract confirming that he bought my house, he showed it. The contract was obviously counterfeit; it was concluded with the same persons who sold the house to me in 2000. I asked for the price which was clearly below the market price. I confirmed that I had witnesses that could testify that I had bought my house regularly, but it was useless. When I contacted the witnesses who had witnessed my real-estate transfer, they refused to recognise it explaining that they could not remember. They were obviously threatened. After a couple of days, the buyer went to my home with his "witnesses" who confirmed that the buyer's real-estate transaction was valid. I had no choice, I was perfectly conscious that it was an imposition, with the permission of the warlords. In such circumstances, I thought that it was better to save my life and the lives of my family. We

decided to leave. Nobody can imagine how depressing it was to rent another apartment in Mogadishu, for fear the death in widespread violence in Mogadishu and to be unprotected in the place where you live. Today, I am a refugee in a camp in a neighbouring country. The life in the refugee camp is not easy, but at least I do not face fear for my life and for my family. Under no circumstances, I will consider to return to Somalia."

## **2.5 Lack of protection from forced eviction for IDPs occupying public buildings**

24. The lack of protection from forced eviction represents another serious HLP violation which occurs with increasing frequency. As a consequence of the conflict, and with no other housing available, many IDPs have occupied public buildings, especially in Mogadishu. After the TFG retook control in the capital city, it announced that the current occupants of public buildings would be evicted. Six occupied buildings were identified and IDPs were systematically - contrary to their HLP rights - pushed out by the government without any prior notice and without providing them any alternative solution. The TFG representatives did not consider the obvious difficulties in finding alternative HLP solutions for the IDPs, and they then (after the eviction has been already carried out) asked international agencies to find an adequate solution for the evicted population.<sup>6</sup>

## **2.6 How to resolve restitution claims in a fair and equitable manner**

25. Determining how best to resolve outstanding HLP restitution claims in a fair and equitable manner, consistent with international standards addressing these issues, presents a range of difficult considerations. While it may be premature, given the current Somali socio-political context, to propose specific restitution solutions regarding the most appropriate option for a future HLP restitution (and HLP regulatory and administrative system), it is clear that the general contours of what constitutes international best practice in this regard are available to any institution which wishes to apply them.<sup>7</sup> In essence, decisions will need to be made as to whether to pursue a legal approach to these questions, an approach based on pragmatism and expediency or a creative combination of the two. A law-based or restorative justice approach may reflect the position of the TFG to 'restore all property arbitrarily taken to legitimate owners'. This idea of restoring the *status quo ante* is expressed in Article 71 of the Transitional Federal Charter which states that the TFG shall 'endeavour to repossess and restore to the State all public properties, either movable or immovable, within or outside the country' as well as that it 'shall endeavour to restore private property currently held illegally to the rightful owners'. While such an approach is clearly designed to bring a degree of clarity to the HLP sectors as they relate both to public and private properties which are currently occupied by secondary occupants, the practical implementation of this principle must ensure that the rights of secondary occupants are protected and that measures are in place to provide them with reasonable HLP alternatives.

26. The second, more contextualised and pragmatic view, takes into account the fact that the HLP rights violations have occurred during the Somali conflict took place on a very large-scale and consequently, that restitution to the legitimate owners and former occupants would be a practical impossibility. Some may even argue that to attempt to restore these properties to their former owners and occupants would possibly provoke a new conflict. Such an approach would favour leaving HLP matters as they stand, and not making any effort to restore HLP rights to those who had lost them during the conflict years.

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<sup>6</sup> However, this was not always the case. In Baidoa (the official seat of the government) where the Government needed to rehabilitate a building for its own use, prior to eviction, it offered another site for the IDPs settlement which was accepted by them.

<sup>7</sup> See, for instance, OCHA, UNHCR, OHCHR, FAO and NRC, *Handbook on the Implementation of the UN Principles on Housing and Property Restitution Rights for Refugees and Displaced Persons*, 2007.

27. Arguably, however, neither of these approaches on their own are likely to work, nor will they provide the residential justice required to ensure that Somalia can eventually return to the group of nations governed by the rule of law and not the rule of the gun. As with a range of ongoing restitution efforts in other countries, it may be that a combined legal/expediency approach to restitution can be undertaken that incorporates traditional structures of Somali society to mediate and resolve longstanding HLP grievances in a fair and equitable manner. Given that only 5% of the land in Somalia was ever formally registered, the arguments in favour of relying on customary dispute resolution mechanisms are strong. Any future restitution process must start from the premise that all IDPs (and refugees) are HLP rights holders and that these rights must be taken seriously and restored or improved within the shortest possible time-frame. The development of an efficient restitution system, and related HLP regulatory and administrative systems will surely be a long term objective, which will take place within a future comprehensive post-conflict peace and reconciliation. This particularly complex process will depend heavily on the political will of the Somali authorities, as well as the degree of involvement of the international community to give a comprehensive remedy to this extremely sensitive issue.

## **2.7 Overlapping statutory and other systems dealing with land governance**

28. While customary and religious rules on land allocation and land use remain commonplace in Somalia (as in the rest of Africa), the non-existence of a functional regulatory and administrative system to determine and protect HLP rights since major fighting began in 1991 may hinder the process of restoring and improving the standing of HLP rights in developing a post-conflict humanitarian support programme. The absence of a secular and comprehensive land law, housing law, land policy, housing policy and land administration systems means that the current regulatory system is incapable of registering land, amicably resolving land disputes, and is not able to give an effective redress to certain basic HLP violations, such as dispossession of lawful owners/possessors, forced eviction and massive land grabbing which has taken place in all parts of Somalia (especially in the SCS) over almost two decades. The absence of these functions has led to the creation of alternative systems of registering HLP rights which are not always legitimate. Similarly, the current system of resolving HLP disputes cannot guarantee any effective protection in case of HLP rights violations.

### *Customary law*

29. Traditional customary land arrangements treat land not as a commodity but primarily as a symbol of power and a tool for organising land relations in rural areas. Land in SCS rural communities is seen as a sacred good inherited and granted from ancestors according to well established customary rules. Land in those areas is primarily a collective good, which belongs to the community who cultivates the land to assure the well being of the community. Though land in such contexts is collectively owned, the right to use land is an individual right granted to all members of local community (village). In general all community members are entitled to have access to land that belongs to the village. The right to use land can be inherited (according to customary rules) i.e. transferred from parents to children. The determination and distribution of community property land to individuals is made usually by a group of elders as a superior authority in charge of management of social order (including the property) in the village(s). The group of elders are also entitled, according to customary rules, to resolve property-related disputes which fall within their competencies (material and territorial). The specific set of unwritten rules (Xeer) contains obligations established among the elders to mediate HLP conflicts within clans as well as among clans and sub-clans.

*Shari'a law*

30. Religious rules in general enjoy stronger respect than customary rules within the Somali population. This basic reference to Shari'a is also formally confirmed by secular legislation contained in the Transitional Federal Charter. Article 8 recognises that 'Shari'a is the basic source for national legislation'. However, the secular legislation currently in place in Somaliland and Puntland (which appears to be in clear contrast to certain Shari'a provisions) could confirm that the reference to the Shari'a is seen primarily as a principle and not as a real source of material legislation. In the specific context of the institutional vacuum in the SCS, where the presence of State institutions is significantly reduced, religious leaders enjoy the reputation of impartiality, honesty and fairness and the population trust them. As a source of material rules on HLP rights, Shari'a contains provisions on inheritance, marriage, divorce, family relationship but also it refers to the right of grazing land, water points, duties of village community members to light a fire on request as well as certain norms related to irrigations.<sup>8</sup> Shari'a is based on different provisions derived from the *Quran* which define inheritance procedures.

*Secular law*

31. Despite a long tradition of secular legislation under previous governments, non-customary and non-religious legislation represents the most recent source of law in Somalia. Legislation produced by the Transitional Federal Assembly, however, is extremely weak. The existing rudimentary institutional structures are too weak to guarantee the applicability of legislation, and for these reasons even the limited production of laws are largely ineffective in practice, subject to non-enforcement, and largely inaccessible to the legal practitioners (not being regularly published in Official Gazette). This source of law is also unfamiliar to the population of the SCS, poorly disseminated, and incapable of enforcement.

32. The three existing HLP systems can be elaborated as follows:

	<b>Customary rules-Xeer</b>	<b>Religious law-Shari'a</b>	<b>Secular Law</b>
<b>Material law</b>	<p>Certain customary rules are discriminatory against minority clans and women</p> <p>Localised, territorially, dominant almost exclusively in rural areas.</p> <p>It sanctioned the primarily collective responsibility (clan) over individual one (it does not considered dominant individualistic approach for nomadic population)</p>	<p>Certain provisions (inheritance, divorce, etc.) disadvantage women.</p> <p>It does not cover all situations related to HLP rights.</p> <p>Archaic, impossible to find precedents /analogies to certain modern institutes in case of disputes.</p>	<p>Limited production of laws (in general) and those related to the HLP matters.</p> <p>Exists only formally, totally non enforceable in practice,</p> <p>Lack of dissemination of legislation, non availability for law professionals and public administration members.</p> <p>Being a 'new' source of law it is not familiar and accessible for general population.</p> <p>Confusing status of applicable "old legislation" (in force 1991 (land) during the current "transitional" period</p>

<sup>8</sup> Information provided during an interview with religious leaders-Islamic judges (Sheh's) in Baidoa, 15 June 2008.

<b>Procedural-property disputes</b>	<p>-Procedural system is based on mediation and willingness to reach a compromise, not always a truth value.</p> <p>-Discriminatory against women who are not allowed to take part at proceedings</p> <p>-Minority clans are disadvantaged in the process, no equality of arms with the other clans.</p>	<p>It gives more guarantees (is based on adjudication rather than on mediation).</p> <p>It has restricted accessibility for women.</p> <p>Procedural steps are personalised by judges, unwritten, non formal, oral procedure</p> <p>Lawyers in general do not appear in the process</p>	<p>Exists only "virtually"</p> <p>For objective reasons (lack of security) it has limited territorial application.</p> <p>Current institutional framework too weak to assure an effective applicability</p> <p>Not familiar to the general population</p>
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33. None of the three systems of law and land administration and resolving land disputes are in and of themselves sufficient to achieve what is required in SCS in terms of HLP rights. What is needed are creative ways of finding an efficient *modus vivendi* among those three systems which results in the fullest possible satisfaction of HLP rights and remedies.

## 2.8 Structural HLP rights vulnerabilities of women

34. Women in Somalia are particularly vulnerable to HLP rights abuses. Existing clan rules create greater disadvantage for women than Shari'a. In the Somali context where the armed conflict goes hand-in-hand with strong customary practice (clan rules), the position of women is extremely precarious. Clan rules defining the HLP rights of women are fragmented and diversified. As a general rule women do not benefit directly from the distribution of the land from their fathers; only when a woman gets married will she get a portion of land from the husband which is sufficient to sustain the new household. Under customary practice, the entitlement to use land for women depends exclusively on their relation to the male relatives before and after marriage. Women are prohibited from owning, renting or inheriting land or any property on their names. In the majority of communities married daughters are not entitled to inherit land from their fathers, and when they do inherit, this is a significantly smaller proportion than would have been the case were they men.

35. Within the context of the armed conflict in SCS, forced eviction from houses and land has had a considerable impact on women's vulnerability. Added to this, women's HLP rights can be denied when they are subject to forced eviction after the death of the male head of household. A minimum of respect for women from third persons exists when she is protected by the husband as a family member, but when they become widows they are commonly pushed out from their house by armed gangs for purely economic reasons, and their house grabbed with all economic values inside.

36. A third kind of violation of women's HLP rights confirmed during the mission concerns how women often become homeless or landless during periods of time when husband's are away fighting in the conflict. Family dispersal has been very common in Somalia war, where the head of the household is obliged to perform his clan duty and take part in the armed conflict, while the rest of the family are displaced towards safer areas. Under the unpredictable dynamics of the Somali conflict, family divisions can last for many years. In such conditions, frequently the husband sells the family property or remarries in another place, thus making the rest of family completely homeless/landless. In a country such as Somalia, the loss of land and the consequent displacement can be life threatening. The extremely precarious living conditions facing many of the displaced women in the SCS settlements confirm this clearly.

### **Section 3: Recommendations**

37. The SCS is affected by permanent instability and a series of chronic HLP challenges. As a result, the international community has been forced to prioritise purely humanitarian emergency approaches (provision of food, water, sanitation and shelter) in support of the IDP population. While fully understandable from a humanitarian perspective, the reality remains that what was meant to be a temporary remedy for the displacement crisis, has in fact, become effectively permanent. Added to this, the massive violations of HLP rights which have taken place since 1991, and which include illegal land grabbing, forced displacement and forced eviction, will need eventually to be redressed with creative measures designed to protect the restitution and related HLP rights of IDPs.

38. Beginning to develop the mechanisms and modalities for durable solutions must bear in mind that many IDPs have been residing in camps for many years in conditions which cannot be considered adequate. In the volatile environment in the SCS, temporary shelter solutions have, in effect, become permanent. This in turn causes protracted vulnerability and uncertainty for the IDPs, which has endured for almost one generation. In the great majority of the cases, IDPs have settled on private land (or ostensibly private plots since land had been massively grabbed during the last Somali armed conflict). This situation has only increased the tenure insecurity of IDPs because they are unable to improve their precarious living conditions since the private plot owners conditioned their consent for settlement by only authorizing the construction of basic facilities (toilets and latrines) if any, while explicitly prohibiting any other construction and development work on the plots. In addition, IDPs are under permanent threat of eviction whenever the owner wants to sell the said plot to third parties.

39. The current HLP conditions facing displaced persons in the SCS clearly requires a vigorous and consolidated response by the international community which is oriented towards increasingly sustainable solutions, including return and local integration, and which goes beyond immediate emergency shelter needs. The recommended approach outlined here proposes that the existing gap between satisfying the basic shelter needs of IDPs and a longer-term restitution and restoration process designed to protect the HLP rights of the Somali citizens in the post-conflict era needs to be innovatively bridged. An estimated ten percent of the Somali population remains displaced and is in permanent need of assistance without any feasible and sustainable HLP alternatives. This problem is further aggravated by the fact that two-thirds of all the Somali IDPs are concentrated in this most complex area of the SCS. The international humanitarian community needs to reassess the existing conditions found in IDP settlements, and move towards an organised and sustainable alternative policy which aims to increase the tenure security and the broader enjoyment of HLP rights by IDPs. Such an approach could eventually smooth the way for longer-term objectives of HLP restitution, land reform and improving the overall land administration framework. The recommended approach would aim to increase existing levels of protection of the HLP rights by prioritising durable solutions such as return and local integration, while simultaneously prioritising HLP interventions in the SCS in those areas where security conditions allow. The high concentration of IDPs in the SCS and their extreme vulnerability require this. There is a pressing need to understand, analyse and profile different HLP solutions according to IDP needs and wishes taking into account the volatile operational environment, and at the same time prioritising the specific HLP solutions required for vulnerable IDP groups specific needs (minority clan groups, women/female headed households, etc.). Resolving all of these HLP challenges will not be easy, but it is hoped that the following recommendations will assist in finding creative and effective ways of improving the HLP prospects of Somalia's displaced populations.

### **3.1 General Recommendations**

#### **Recommendation 1: Integrate four basic principles into HLP planning for the SCS**

40. All humanitarian agencies (in particular within the IASC Shelter and Protection Clusters) should integrate the following four basic principles into any when outlining plans for future humanitarian HLP initiatives designed to assist IDPs: Adopt an all inclusive approach; Do not create new conflict; Cause no harm; and Do not create unrealistic expectations:

##### **Recommendation 1.1: Adopt an all inclusive approach**

41. This is the most important practical approach that will be required for the successful implementation of HLP initiatives in the SCS. Operating in this region where the State is virtually absent, any successful involvement requires a deep analysis of the territorial reality in the selection of partners for the implementation of the project. The basic criterion which should be adopted is to look for a partner who can ensure an effective lawful presence in the area selected for the project implementation. These could include the TFG, district authorities, municipal authorities, clan elders and religious authorities. The inclusion of these various actors in project implementation will depend on their involvement in the designed project activities. (e.g. if Government authority presence is formal, they will be requested to provide the political support or consent while with the lawful authorities rooted in the grassroots, more operational details will be defined).

##### **Recommendation 1.2: Do not create new conflict**

42. Any planned HLP initiatives should be widely analysed, properly planned and implemented while ensuring that the proposed HLP solutions do not become the cause of new conflict among or between communities. At every planning stage, a high level of sensitivity and understanding is required in the specific social, cultural and institutional contexts which can vary significantly between different actors in different areas.

##### **Recommendation 1.3: Cause no harm**

43. HLP initiatives should be designed to ensure that they do not worsen prevailing HLP conditions. There are important lessons to be learned from HLP projects implemented in Somaliland and Puntland, in particular in Bossaso where a large presence of southern minorities required a particularly careful and considered approach in this regard.

##### **Recommendation 1.4: Do not create unrealistic expectations**

44. The HLP rights of IDPs in SCS raise a series of complex issues which require understanding, analysis and proposals for a variety of different HLP solutions, with assurances built into the HLP planning process that IDP expectations are kept at a realistic level.

#### **Recommendation 2: Clarify further the status of HLP rights within the various prevailing legal systems in SCS**

45. Clarifying the precise status of HLP law and practice within Somalia will be a vital prerequisite in efforts designed to support the HLP rights of IDPs. Four recommendations are of particular importance in this regard:



**Recommendation 2.1: Determine where the sources of Somali law are compatible with one another**

46. All three sources of law - customary, Shari'a and secular - each contain HLP provisions which may be compatible and complimentary to one another. They are not at all necessarily contradictory with each other. Examining how each of these legal structures might be combined to find simple and effective solutions to often difficult HLP challenges may be a useful way use local systems to solve local problems. A system could be envisaged which required those engaged in HLP disputes to first seek redress through traditional customary legal structures. These rules cannot be ignored; for the majority of rural and illiterate Somali dwellers customary structures represent the most accessible, quick and cheap form of redress in case of property disputes. If use of customary mechanisms does not bring satisfaction to those engaged in an HLP dispute, they can then turn to the Islamic courts where the procedural steps are largely formalised and offer much more guarantees and fairness during the process. If HLP justice is not deemed acceptable after these first two mechanisms, a new third process can be developed under secular law which ensures finality for all HLP disputes. Exploring precisely how such a multi-levelled system may function as a means of providing equitable HLP redress to all could be a useful contribution by the international community.

**Recommendation 2.2: Encourage the introduction of secular legislation as a complementary source to customary law and religious rules**

47. If the institution-building process is supported by the international community, one of the main questions will be to define the future role of the secular legislation on HLP issues. Any newly introduced secular HLP legislation should complement the existing two legal systems and provide a means for incorporating the full spectrum of HLP rights. Secular legislation therefore should provide a final and effective means of redress in cases of discrimination, violations of human rights and provide a means for assuring compatibility of domestic legislation with basic international human rights standards, including HLP rights.

**Recommendation 2.3: Analyse the best practices of coexistence of customary, religious and secular systems adopted by other African countries**

48. Many African countries have preserved customary and religious rules in their formal legislation, and it would be useful to analyse best practice in this regard, and to determine the efficiency of these systems in practice, considering also the peculiarities and the complexities of Somalia.

**3.2 Recommendations on temporary solutions**

**Recommendation 3: Adopt sustainable HLP solutions in parallel to the emergency housing response**

50. It is necessary to satisfy the immediate shelter needs of IDPs, but in the medium-term this should be carried out parallel with increasingly sustainable HLP solutions. Humanitarian agencies in Somalia have considerable experience in providing humanitarian emergency assistance to Somali IDPs, but the IASC and the relevant Clusters should be aware of the possible risks of these measures becoming increasingly permanent. Developing ways of combining shelter programming with longer-term measures for IDP return and local integration are now required.

**Recommendation 4: Re-vitalise the Somalia HLP Task Force within the IASC to improve efficiency in the implementation of the sustainable HLP solutions in the field**

51. It is necessary to re-vitalise and improve the performance of the *Somalia HLP Task Force* in terms of planning, developing, and implementing larger HLP projects and solutions in SCS. The Task Force should formulate priorities, carry out assessments, select the geographical areas for HLP solutions, and coordinate field activities among the agencies involved in the implementation of the HLP sustainable solutions projects. To this end, a more proactive approach with the Somali authorities may be required. This approach can be developed by intensive direct contacts with the Somali authorities and facilitated by the permanent presence of UN-OCHA in Baidoa. Recruiting an international expert with expertise and experience in the housing, land, and property arena, to be based in the field (Baidoa), and who can coordinate activities of the *Somalia HLP Task Force* from inside the country would send a strong message in support of HLP rights.

52. Considering the strategic orientation towards implementing sustainable solutions, the membership of the *Somalia HLP Task Force* should be comprised not only of the agencies involved directly in HLP solutions (Shelter Cluster, Protection Cluster UN-HABITAT, UNHCR, UNOCHA) but also the specialised agencies that can provide an expertise in finding livelihood opportunities (FAO, ILO, etc.) and civil society groups.

**Recommendation 4.1: Be aware of the particular constraints existing in SCS**

53. Despite the fact that IDPs constitute 10% of the population and requires ongoing assistance, no comprehensive HLP solutions for the IDPs has of yet been developed. Resolving the IDP crisis is not on the priority agenda of the central government since the TFG spends most of its resources on restoring order within a limited territory (Mogadishu, Baidoa) and legitimating its presence on the ground.

**Recommendation 4.2: Draft rights-based proposals aimed at ensuring a substantial level of security of tenure for the beneficiaries**

54. The *Somalia HLP Task Force* should have substantial autonomy in proposing sustainable HLP solutions to the Somali institutional partners. The absence of a strong legislative basis for HLP rights in the SCS could represent an obstacle for finding the most appropriate tenure solution for the displaced population, but this fact could, at the same time, ensure a high degree of autonomy and elasticity to the humanitarian agencies to suggest the most appropriate solutions in drawing agreements with the corresponding authorities for the HLP solutions. This autonomy may also imply risks at the expense of the beneficiaries if the proposed solutions are not properly analysed and developed. To avoid this, it is suggested that the proposed HLP sustainable solutions should be grounded on international standards and principles.

**Recommendation 4.3: Demonstrate the capacity to design and directly implement sustainable HLP solutions projects in the SCS**

55. Despite the fact that the strategic objective to enhance the protection of the IDPs (in the whole Somalia) has been mentioned in strategic documents, it is important to understand the strengths and constraints of not implementing until now sustainable solutions HLP projects directly in the SCS. The UNCT and IASC should consider whether security concerns have always been the limiting factor in determining the level of HLP involvement or whether other concerns may also have been a factor in limiting HLP initiatives to date.

**Recommendation 5: Avoid getting involved in directly resolving HLP claims or disputes when proposing sustainable HLP solutions**

56. In applying the proposed durable HLP solutions for IDPs, the *Somalia HLP Task Force* should not itself become the arbiter of land disputes, but should ensure that appropriate mechanisms are developed to resolve HLP disputes, which may affect the return or local integration prospects of IDPs.

**3.3 Recommendations on HLP rights and return policy**

57. Recent assessments have indicated that some 40% of IDPs are inclined to return to their place of origin, with most of those wishing to return because of the lack of economic opportunities in the displacement location. While it is clear that now is not the time to promote large-scale returns, there are a range of activities that can take place now which will improve the prospects for return when conditions are right for organised returns and eventual restitutions programmes.

**Recommendation 6: Create conditions for sustainable return prior to its practical organisation**

58. Prior to organising any returns, substantial efforts should be made by the agencies involved to ensure that return is sustainable by making an assessment of the linkages between housing, livelihoods and the economic situation prevailing upon return. Real sustainability to evaluate livelihood opportunities should be properly planned and developed (e.g. if the feasible option is agricultural or agro-pastoral activity, etc.). It is recommended to involve all UN and other international specialised agencies that can provide the support and technical assistance required in this regard. It will most likely be necessary to assure the first cycle of agricultural /pastoralist activities and put in place the basic infrastructures by the international agencies prior to the physical return of the displaced persons. This would include rehabilitation of water points, soil preparation for cultivation, return food packages over a certain period until the crops are available, and so forth.

**Recommendation 6.1: Base selected areas of return on real and feasible indicators**

59. Overly ambitious and massive return plans should be avoided at present, and complex areas such as Mogadishu should not be considered as possible areas for return under prevailing circumstances. The selection of beneficiaries and the areas where objective conditions exist for safe and voluntary return should be based on indicators including: security concerns; sustainability (livelihoods); IDP interest and their knowledge of HLP status; land status of abandoned property (free, claimed, grabbed); existence of land disputes; existing inter-clan interference in case of return; the existence and frequency of natural disasters and others.

**Recommendation 6.2: Offer adequate support to the returnees upon their return**

60. The UN agencies (UNHCR, FAO, ILO, UNDP and WFP) within the *Somalia HLP Task Force* should offer adequate support to train IDPs to equip them with the necessary skills to make the return self-sustaining in economic terms. Additional support in the form of financial and material assistance for return should also be considered, including projects linked to micro-credit facilities, income-generating activities, access to income opportunities as well as food return packages for an initial period of time. Importantly, any return must be timed properly to coincide with natural agricultural and pastoral cycles to avoid creating automatic hardships in areas of return.

### **Recommendation 6.3: Prioritise women's rights and specific needs upon return/integration:**

61. Women and children represent the majority (75%) of the population in IDP settlements. Clearly, therefore, women's specific needs in relation to HLP issues should be properly understood and prioritised. It is necessary to understand that women, traumatized by 17 years conflict, may have particular difficulties in expressing their specific HLP needs or in claiming their HLP rights. Short visits and periodic profiling surveys do not always comprehensively reflect the particular needs of women relating to housing, land and property rights. When proposing specific HLP projects, international agencies are encouraged to intensify field presence (starting from Baidoa) and conduct campaigns promoting specific HLP programmes through direct contacts supported by local women's NGOs and authorities (e.g. there are very active female members of the Human Rights Commission of TF Parliament). Special attention should be paid to widows, single mothers and women without male relatives. They should be given: (i) Priority in land allocation and (ii) adequate financial support to manage natural resources necessary to build their livelihoods to avoid food insecurity and to assure basic needs for survival for them and their children. Considering the widespread practice of rape and other forms of violence against women in the IDP settlements, strong measures should be taken to prevent and eradicate such practice. It is necessary to apply adequate protection mechanisms such as: allocating settlement plots for single women in close proximity to basic infrastructure; assuring adequate lighting of settlements; and providing fuel-efficient stoves for at least for widows/single women to reduce the need for wood collection and the walking long distances.

### **3.4 Recommendations on HLP rights and local integration**

#### **Recommendation 7: Adopt flexible, rights-based approaches in finding appropriate tenure forms for IDPs local integration**

62. The large majority of SCS municipalities in urban areas are not able to allocate land plots to IDPs for the simple reason that there are no available or unclaimed plots for allocation. Municipalities in charge of allocating land in urban areas have sold virtually all of the municipal land to private buyers. This was the only means of ensuring revenue for the municipal officers, not through the regular budget but distributing the received income on an *ad hoc* basis among the main political representatives in charge. As a result of this, only a limited amount of land within municipalities seems to be available for the possible local integration of IDPs.

63. Access to land for settlement was always spontaneous without any substantial assistance by the authorities. The dynamic of displacement is unpredictable and it is made by IDPs on an *ad hoc* basis, depending mostly on security concerns and on the possibilities of obtaining better assistance in the chosen location. Public land supplies have also been reduced due to the mass grabbing of the land. New settlers, therefore, have been compelled almost exclusively to settle on private land. Generally, IDPs get in contact with the owners based on introductions by relatives who had already settled in the chosen location. In some cases, access to land is addressed through mediation by the local community leaders of the settlement and the owners. The negotiation power of the IDPs to define the conditions of the settlement is extremely weak and is usually based simply on the consent of the owners to settle without any compensation from the IDPs. But in this case, the IDPs are not permitted to develop any substantial infrastructure apart from basic services (toilets, latrines) on their settlements.

64. There is no model form of tenure to be proposed in case of local IDP integration. This will depend on the field circumstances, the availability of land for allocation, and on the commitment of the authorities to find solution for the IDPs and the express wishes of IDPs. Various options might

be considered: full ownership, in event that land is allocated by local authorities to IDPs; right to use which guarantees security of tenure of the IDPs; or long-term leases which define the rights and duties of both parties. It is important to note that any proposed solution does not extinguish the rights of IDPs to claim their original homes, lands and properties within any future restitution process that may be established at the appropriate time. When determining the possible forms of tenure for IDPs, the absence of a consolidated legislative basis (where legislation referring to the HLP rights hardly exists and where it exists it is non enforceable) could, in fact, represent an advantage for humanitarian agencies to propose the most appropriate solutions to guarantee the security of tenure for the beneficiaries. Any proposed solutions must be based on the existing human rights standards in this field.

**Recommendation 7.1: Increase field presence and develop a proactive approach with the local institutions in finding HLP local integration options**

65. To facilitate and consolidate contacts with the local institutions or other lawful authorities it will be necessary to act through the *Somalia HLP Task Force* designated person who should spend as much time as possible in the field (Baidoa) to fulfil that task.

**Recommendation 7.2: Be consistent when proposing the MoU in defining principles and roles**

66. A memorandum of understanding should be proposed and signed with the Somali authorities and the agencies taking part in the work of the *Somalia HLP Task Force* to define the principles and roles in identifying durable solutions. In particular, basic rules and principles (e.g. criteria for selection of land, prioritised categories) should be explained clearly and not be subjected to additional review and re-negotiation with the local authorities, which could only undermine the credibility of the *Somalia HLP Task Force*.

**Recommendation 7.3: Prioritise the allocation of land (free of charge) in negotiating with the authorities granting the ownership title to the IDPs**

67. This option offers a better alternative in terms of security of tenure and enables the international agencies to project and implement housing projects for the beneficiaries. The *Somalia HLP Task Force* could request municipality and district authorities to donate/allocate land parcels in their possession for the settlement of IDPs, and assist them in identifying possible land for these purposes.

**Recommendation 7.4: Adopt efficient protective mechanisms to avoid possible misuse and abuse of the legitimate demands of IDPs for plot allocation**

68. For IDPs who may opt for local integration, it will be necessary to determine whether they own their land or not. This is necessary to provide an effective humanitarian response (prohibition of selling in certain transitional period) for the most needy population and to avoid the misuse of humanitarian programmes for settlement (e.g. preventing a situation, for instance, where IDPs temporarily hosted in Baidoa, originally from Idale region who own their land there could apply for land allocation in Baidoa which subsequently could be sold). It will also be necessary to avoid scenarios in which landless IDPs who opted for the local integration resell their allocated plots and continue to stay in neighbouring IDP settlements.

**Recommendation 7.5: Prioritise the most vulnerable IDP groups in defining the criteria for land allocation in cooperation with the local authorities**

69. Particular attention should be paid to finding adequate protective alternatives for housing and access to livelihoods for the most vulnerable IDPs (minority clan, female headed households and people with special needs). In those cases, it is necessary to put in place transparent selection criteria as well as an effective and strong monitoring process to monitor the real integration of those groups and ensure that all vulnerable groups have full rights to land ownership and the conferral of title and related residential rights in the event of tenancy arrangements. It is important to ensure that the supporting capacity of the community is recognised, and that it is invariably better to resettle, return or integrate the community as a whole rather than identifying the most vulnerable of a community, and isolating them in a new settlement, which can rapidly become a ghetto for the weakest members of society. Creating such ghettos reduces the protection of the resettled and weakens the new settlement. A more holistic approach allows a resettled community to redefine itself and develop. It is clear from practices elsewhere, including in Bossaso, that a community approach is a safer option than one which separates vulnerable groups from the larger community of IDPs.

**Recommendation 7.6: Identify the most appropriate livelihood options to guarantee sustainable and successful integration**

70. Together with the local institutional partners, the UN and other international specialised agencies within *Somalia HLP Task Force* should be able to conduct a needs assessment to find more appropriate livelihood options for IDPs. It is also necessary to evaluate the economic and social absorption capacity of the displaced community within the host community.

**Recommendation 8: Assist the local authorities to develop rental schemes**

71. When integration options for IDPs are based on rental agreements between private owners and IDPs, the *Somalia HLP Task Force* should, together with local authorities, develop a rudimentary rental framework between owners and IDPs which ensures the full protection of the rights of tenant IDPs. In particular, such a rental scheme should guarantee IDPs full access to certain basic services (water, infrastructure etc.), security of tenure and fair and reasonable rent levels.

**Recommendation 9: Find appropriate forms of financial support to enable IDPs to buy land plots below market value**

72. The international community should explore the extent to which land owners who have temporarily hosted the IDPs would be willing to sell their plots for to IDPs below the market price.<sup>9</sup> If interest along these lines is evident, an appropriate form of financial support to IDPs should be offered to interested IDPs. An indirect form of financial support (through e.g. income generating initiatives) seems to be a feasible option and should be explored. The *Somalia HLP Task Force* should develop active contacts with the owners and the authorities to find sustainable solutions for the IDPs. The prerequisite for considering this solution must be clear evidence of title by the land holder concerned. In one instance, it appears that only US\$ 2000 would be required to buy a land plot which was capable of accommodating 300 families.<sup>10</sup>

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<sup>9</sup> A statement confirmed by 40% of interviewed land owners who are currently hosting IDPs in Baidoa.

<sup>10</sup> The figures were confirmed by the interviewed landowners (June 2008).

### **Recommendation 10: Assist the local authorities in SCS in finding durable HLP solutions**

73. The *Somalia HLP Task Force* should assist and guide local municipalities in accomplishing the following tasks: Firstly, the municipalities and districts should conduct a proper inventory of the available property in their possession. This will enable the local institutions to understand the exact amount of available land which could be used for long-term IDP accommodation. Secondly, the prevailing practice in Baidoa of compensating private owners who host IDPs to get free land for IDP housing by the municipalities should be avoided for two reasons: (i) the budgetary constraints of the Somali institutions imply the rational use of the available and extremely limited resources; (ii) such measures do not support the rule of law since the actual possessor who will receive compensation<sup>11</sup> in the majority of the cases is not able to show proof of title. This current possessor of the land plot may also be the land grabber. During the mission, it appeared that the district authorities are legitimate owners of different abandoned State buildings which are neither claimed nor occupied. Those buildings could be rehabilitated as facilities such as schools and hospitals that would be essential infrastructure for IDP integration. Local authorities should be urged to carry out an inventory of those buildings and submit a proposal for their rehabilitation to the *Somalia HLP Task Force*. UN HABITAT could then provide technical expertise on the feasibility of the selected area for resettlement.

### **Recommendation 11: Define with the religious authorities (Sheh's) the possible use of Wakf for IDPs services or accommodation**

74. The field *HLP Somali Task Force* representative should be in frequent contact with the religious and other customary leaders and examine the feasibility and possible use of Wakf land for IDP services or accommodation. During interviews held in Baidoa, religious authorities confirmed that there are no formal obstacles to the use of Wakf for humanitarian purpose in favour of IDPs.<sup>12</sup>

### **Recommendation 12: Consider developing pilot projects on return and local integration**

75. The IASC through the *Somalia HLP Task Force* should consider where pilot projects on return and local integration might be most successfully implemented. The *Somalia HLP Task Force* should play a leading role in offering expertise, the necessary support and technical assistance to the local authorities to successfully carry out those projects. Initial consideration could be given to possible pilot projects in either Baidoa or Idale.

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<sup>11</sup> 'Actual possessor' is the person-possessor of the plot who gave permission to IDPs to settle on his/her plot (usually free of charge) but he/she cannot prove his/her ownership title; it can be a person who illegally grabbed the land in the past.

<sup>12</sup> Wakf is a donation for charity purposes. It can be defined as a *sui generis* restricted trust which cannot be determined, sold or inherited. It is donated by the minutes from the donor and it is administered by a trust committee or nominated person (muteweli). Usually, it is used for religious premises or other charity purpose services such as schools and hospitals. In the discussion with the religious leaders (Sheh's), it was confirmed that the donor's will must be respected, a condition showing that the purpose of use of his donations was explicitly mentioned. The Sheh's explanation was that in the event of a donor not explicitly indicating the purpose of the donation, the trust committee is autonomous in the administration and the charitable use of the donation. The widespread lack of conformity in the use of this quite transparent instrument is explained by the general precarious economic situations where it is very difficult to get donors.

### 3.5 Proposed plan of action

OBJECTIVE	ACTIVITIES	ACTORS	OUTPUTS/TIMEFRAME
<p>To assess HLP strategies adopted and implemented so far by UNCT and single agencies in favour of IDPs.</p> <p>To understand whether proposed HLP objectives and priorities have corresponded to real HLP needs of displaced population in the SCS.</p> <p>To understand the real causes of non implementation of the HLP durable solution in the SCS.</p>	<p>To review all Strategic plans, profiling projects, (parts referring to of HLP needs of the IDPs) adopted in the past 3-4 years by UNCT and single agencies in the SCS.</p>	<p>UN HABITAT</p>	<p>To produce concise conclusions based on positive critical evaluations</p>
<p>To establish <i>Somalia HLP Task Force</i> in Nairobi within the IASC to improve efficiency in applying durable HLP solutions on the field (SCS).</p> <p>To appoint/recruit a <i>Somalia HLP Task Force</i> focal point person to be based in the field (Baidoa).</p>	<p>To recruit an international expert with expertise and experience in housing, land and property rights who will have constant presence in the field (Baidoa).</p> <p>To link with <i>Somalia HLP Task Force</i> specialised agencies able to provide an expertise in profiling livelihood opportunities.</p>	<p>IASC (UN HABITAT; UNHCR, others)</p> <p>(FAO, ILO profiled NGOs, etc.)</p>	<p><i>Somalia HLP Task Force</i> established and operative</p> <p><i>Somalia HLP Task Force</i> Focal point person recruited and operative (time-frame 4 months)</p>
<p>To establish priorities with Somali authorities of Baidoa in finding durable solutions (return and local integration) for IDPs.</p>	<p>Do develop a proactive approach with the authorities of Baidoa through profiled thematic meetings on the field.</p> <p>To discuss and agree on two HLP durable solutions projects for the IDPs with district and municipal authorities of Baidoa:</p> <ol style="list-style-type: none"> <li>1. Project of return (Idale) and</li> <li>2. Project of local integration (Baidoa).</li> </ol>	<p>(Agencies within <i>Somalia HLP Task Force</i> - UN HABITAT; UNHCR, UNICEF, UN-OCHA, NGOs, etc.) through designated <i>HLP Task Force</i> focal point in Baidoa.</p> <p>Contacts could be facilitated also through UNDP field office (Baidoa)</p>	<p>MoU agreed and signed</p>



<p>To assure additional funds for the implementation of first two HLP durable solution projects in the SCS (return and local integration).</p>	<p>Raise awareness of donors on the adoption of new strategy directed to find durable solutions for IDPs in the SCS.</p> <p>Explain the cost effectiveness of new strategy oriented towards complete IDPs self-sustainability.</p> <p>Inform donors that the new strategy may require additional funds.</p>	<p>Agencies within <i>Somalia HLP Task Force</i> UN HABITAT; UNHCR, UN-OCHA, UNDP and NGOs.</p>	<p>Estimated amount for implementation of first two HLP durable solution projects proposed to donors (Fiscal year 2008-2009)</p>
<p>To draft the project of integration of the IDPs with the authorities of Baidoa.</p>	<p>To select geographical areas for HLP integration project.</p> <p>To define in details roles and activities of actors involved in the project implementation.</p> <p>To define real and feasible indicators for project implementation.</p> <p>To identify appropriate livelihood options to guarantee sustainability and successful integration.</p> <p>To identify protective mechanisms to avoid the possible misuse of demands for plot allocation.</p> <p>To set up criteria for prioritising the most vulnerable categories for land allocation.</p> <p>To carry out field visits</p>	<p>(Agencies within <i>Somalia HLP Task Force</i> and FAO, ILO, NGOs, etc.) through designated <i>HLP Task Force</i> focal point in Baidoa.</p>	<p>Project formulated in details (log frame, timeframe, budget) and approved (2009)</p>
<p>To draft the Project of the IDPs return (Idale region) in cooperation with the authorities of Baidoa and local community leaders.</p>	<p>To identify conditions for sustainable return prior to its practical organisation.</p> <p>To define an adequate profiled support (livelihoods) to returnees upon their.</p> <p>To establish real and feasible indicators</p> <p>To organise and carry out field visits</p>	<p>(Agencies within <i>Somalia HLP Task Force</i>) through designated <i>HLP Task Force</i> focal point in Baidoa.</p>	<p>Project formulated in details (log frame, timeframe, budget) and approved (2009)</p>

## **Annex 1 - Proposed methodological tools to assess HLP Issues**

- Additional fact finding missions in Baidoa to understand the level of commitment of beneficiaries and authorities to participate in the two proposed projects (return and integration);
- Desk review to revise all strategic plans, profiling projects, (parts referring to HLP needs of the IDPs only) adopted in the past 3-4 years by UNCT and single international aid agencies in SCS. Assess, analyse and draw conclusions whether all proposed strategies has met HLP needs of displaced populations. (pref. External evaluation of those documents);
- Desk review, expertise and analysis of basic Somali material and procedural HLP laws; and
- For the *Somalia HLP Task Force* in the field (Baidoa) this would include: consultations with the authorities; profiled interviews with customary, religious and local NGO representative on specific HLP issues; monitoring current HLP conditions of displaced community; and field visits, consultations and preliminary interviews with beneficiaries to identify other areas for HLP durable solutions.

## **Annex 2 - Terms of reference for further HLP action and analysis**

### **1) Legal research of basic HLP legal texts in force prior to the collapse of Somali State in 1991**

#### General objectives

- To acquire essential knowledge of basic Somali HLP laws through a legal analysis of the original texts;
- To enlarge the current very limited knowledge of Somali pre-war land registration system and enable the leading UN agencies in this matter (UN-HABITAT) to act timely to put the basis for future restitution process. (The majority of researches on Somalia land issues undertaken so far were based on secondary sources only, without consulting the original texts);
- to provide an outlined legal analysis of the main Somali HLP laws, including:
  - 1973 Civil Code
  - 1973 Law on Urban land use
  - 1975 Land law
  - 1960 Constitution

### **2) Legal analysis of land and property registration, transaction and adjudication system in force 1991**

#### General objectives

- To obtain substantial legal knowledge of property registrations and transactions through analysis of the original texts;
- To obtain useful background information and guidelines on reliable evidences confirming the ownership title. This information will constitute the basis for drafting essential principles and criteria for recognition of lawful owner/possessor evidence for future restitution process;

- To provide summarised legal analysis of laws determining property registration and transaction;
- To analyse and provide a general overview on procedural steps and institutions in charge of property registration, transaction and adjudication system in force in Somalia prior to 1991;
- To provide a detailed list of suggested documents which can confirm the ownership title in *prima facie* as well as those that could represent an alternative or indirect confirmation of ownership rights; and
- To analyse and draw conclusions in relation to the quality of registry and cadastre documents, state and presumable reliability and of cadastral /index maps.

### **3) Research on the possible role of customary and religious leaders and involvement in supporting the suggested two pilot HLP projects of return (Idale) and local integration (Baidoa)**

#### Objectives:

- To assess the possible practical involvement of customary elders and religious persons in facilitating successful accomplishment of these pilot projects supporting IDPs;
- Analyse and envisage possible roles and areas of intervention of customary elders and religious persons (Sheh's) to facilitate (as suggested by the two projects) a successful implementation of the two proposed projects (return and local integration);
- Analyse possible levels of risks of interference and obstacles among customary, religious and Somali institutions as project implementing partners which could interfere with project's planned activities;
- Assess compatibility of the principles of customary and religious practice with projects basic tasks and planned activities;
- Develop a plan of activities and recommended areas of intervention of religious and customary leaders in each stage of project implementation;
- Advise on the types of possible support (material, institutional) these proposed groups would need to be involved better in the project implementation; and
- Design their possible role on certain specific HLP issues, in particular the creation of conditions for sustainable return; protection of HLP right of single women; drafting proposed rights-based land tenure for IDPs accommodation; and future HLP projects which may involve inter-clan activities.

### **Annex 3 - Organisational profile of Displacement Solutions**

Displacement Solutions (DS) works to empower displaced people and refugees to exercise their right to return and have restored to them their original homes, lands and properties. DS works together with and on behalf of people who have been displaced not only by conflict, forced eviction or other human rights abuses, but also natural disaster, climate change or other circumstances beyond their control. DS assists in finding alternative solutions such as compensation or resettlement if this is their wish.

DS does not believe in simply blaming governments responsible for human rights abuses. We take human rights work one-step further to *solve* situations where forcibly displaced people have lost their homes. DS offers practical guidance on how to reduce, eliminate or redress such abuses. We work with Governments, UN and other humanitarian agencies and displaced communities to find creative ways to strengthen and enforce the housing, land and property (HLP) rights of displaced people wishing to voluntarily return to their original homes and lands. This is done through development of institutional and policy frameworks, legal advocacy, training, research and media.

Displacement Solutions is dedicated to ensuring that all displaced persons can be provided with the most viable options to returning home within the shortest possible time. These objectives are pursued through two parallel tracks: Building and maintaining the world's only Housing Land and Property Rights (HLP) expert Registry and Proactive Catalytic HLP Projects.

**The HLP Expert Registry** enables the organisation to draw on leading HLP rights experts and to dispatch HLP rights practitioners to post-conflict and post-disaster settings on short notice. These HLP Rights Teams work closely with other peace and post-disaster operations to provide the expertise required to ensure that housing, land and property rights issues are properly addressed. The HLP Rights Teams drawn from the Registry are carefully tailored to fit the particular problems in affected countries. Having the ability to quickly compose these teams considerably improves the responses of the international community to these crises, and facilitates the search for solutions. The Registry currently contains the names and curricula vitae of 92 of the world's leading HLP practitioners.

**Proactive Catalytic HLP Projects:** These involve innovative policy guidance papers, training, media and national HLP Initiatives, each of which have been very carefully selected to achieve maximum global impact and to be of the widest possible application. They build on a range of positive developments concerning housing, land and property rights in conflict and disaster settings in recent years, and are results-oriented and original in approach and methodology. Through field-level HLP initiatives as well as policy guidance papers, training programmes and documentary films, these ten key projects will continue to build the institutional, normative, and conceptual basis for further action on resolving displacement situations around the world.

DS is registered as a non-profit association in Geneva, Switzerland.

[www.displacementsolutions.org](http://www.displacementsolutions.org).