



# Harmonization of the Legal Systems Resolving Land Disputes in Somaliland and Puntland

## Report and Recommendations



Somaliland Ministry of Interior

**JPLG**

UN Joint Programme on  
Local Governance and Decentralised  
Service Delivery



Puntland State of Somalia, Ministry  
of Interior, Local Government and  
Rural Development



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Report and Recommendations

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This report was prepared by Legal Action Worldwide (LAW) and commissioned by UN-Habitat through the UN Joint Programme on Local Governance and Decentralized Service Delivery.

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- Reforming legislation, policy, and practice

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UN-Habitat has been active in Somalia for over twenty-five years. In recent years, its core operations have focused on a wide range of issues spanning from developing infrastructure to strengthening local governance. UN-Habitat has been working since 2008 on the UN Joint Programme on Local Governance and Decentralized Service Delivery. Its flagship projects under this framework concentrate on the following: municipal finance, solid and biomedical waste management, participatory urban planning and management, and capacity development for local governance, including infrastructure development and rehabilitation and land governance.

**The UN Joint Programme on Local Governance and Decentralized Service Delivery**

The UN Joint Programme on Local Governance and Decentralized Service Delivery (JPLG) was launched in Somalia in 2008. Under this initiative, five UN agencies, funds, and programmes have been supporting the Federal Government of Somalia, the Government of Puntland State of Somalia, and the Government of Somaliland. The key objectives of the programme deal with (i) supporting policy and legislative reforms for functional fiscal and administrative decentralization that clarify and enhance the role of local government, its relationship to central government, and service delivery; (ii) improving the capacity of local government for equitable service delivery; (iii) improving and expanding the delivery of sustainable services to citizens in an equitable, responsive, and socially accountable manner, as well as promoting local economic environments.

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## Glossary

**Aquil:** Groups of elders who resolve disputes in Somaliland

**Diya:** Collective payment, usually with camels or livestock, for crimes against the clan

**FAO:** Food and Agricultural Organization

**IDP:** Internally displaced person

**JPLG:** UN Joint Programme on Local Governance and Decentralized Service Delivery

**LAW:** Legal Action Worldwide

**LDRC:** Land Dispute Resolution Committee (Puntland)

**LDT:** Land Dispute Tribunal (Somaliland)

**Namadon:** Groups of elders who resolve disputes in Puntland

**NGO:** Non-governmental organization

**NRC:** Norwegian Refugee Council

**Peri-urban:** Though the literature does not always use the definition of peri-urban consistently, the term in general describes land with both urban and rural characteristics. Peri-urban land generally exists on the outskirts of urban areas where people have begun building and residing in areas that were traditionally rural.<sup>1</sup>

**Refugees:** Persons who have sought asylum outside their place of origin and have been given legally recognized refugee status by a relevant authority (for example, the government of the host state or the UNHCR)

**UNHCR:** United Nations High Commissioner for Refugees

**UNDP:** United Nations Development Programme

**Xeer:** Somali customary law, dispensed by customary elders

**Xissi:** Legal precedent in xeer

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<sup>1</sup> La Trobe University, 2013, 'Beyond the Edge: Australia's First Peri-Urban Conference', <http://www.latrobe.edu.au/periurban/about/focus>; Food and Agricultural Organization, 'Defining the Peri-urban: Rural-Urban Linkages and Institutional Connections', <http://www.fao.org/docrep/003/x8050t/x8050t02.htm>.

## Forewords

This report has been produced by Legal Action Worldwide (LAW) as part of a project with UN-Habitat, operating under the Joint Programme on Local Governance and Decentralized Service Delivery (JPLG), as well as the Ministries of Interior in Somaliland and Puntland State of Somalia. It describes how land disputes are currently resolved in Somaliland and Puntland through the customary and formal legal systems, particularly the Land Dispute Tribunals (LDTs) in Somaliland and the Land Dispute Resolution Committees (LDRCs) in Puntland, and the challenges and advantages of each system. It then makes recommendations about how these systems can best be harmonized in the context of the LDTs and LDRCs.

This is the first in a series of two reports produced by LAW and UN-Habitat focused on building the capacity of the LDTs in Somaliland and establishing similar mechanisms in Puntland. The second report, *Resolution of Urban Land Disputes in Comparative Jurisdictions: Report and Recommendations for Somaliland and Puntland*, is referenced throughout this document. Both reports focus exclusively on the LDTs and the LDRCs.

The last several decades have seen a change in the legal landscape relating to land in Puntland and Somaliland. Traditionally, both regions have consisted primarily of large swaths of rural and agricultural land, owned in common by clans and sub-clans in accordance with customary law. In recent years, however, modernization and urbanization have given rise to the following changes:

- Urban centres have expanded rapidly, causing confusion over whether the land should be classified as urban or rural, and giving rise to disputes between pastoralists and urban dwellers residing in these peri-urban<sup>2</sup> areas.
- There has been a sharp increase in property values in both places, resulting in an increase in the number of people seeking to buy and sell land for commercial reasons.
- The amount of property owned privately is increasing, and property owned communally is decreasing. One person from a community may sell the communal land to a private buyer without seeking permission from the other owners.
- Grabbing of undeveloped land has become extremely common.

Somaliland and Puntland have hybrid legal systems consisting of formal statutory, customary, and sharia law. Customary law, called *xeer*, refers to the set of rules and obligations developed among traditional elders to mediate and maintain peaceful relations among Somalia's clans and sub-clans.<sup>3</sup> Traditionally, the elders considered only issues affecting the interests of the clan. In modern times, however, elders are also called upon to resolve disputes occurring between individuals and not affecting the clan as a whole.<sup>4</sup>

As urban centres expand and private land ownership becomes more common, many people must make decisions about where to take disputes over private urban land. Historically, two options have been available: the customary elders or the formal courts. Both systems offer specific benefits.

The formal system, for example, provides procedural fairness safeguards: anecdotal evidence suggests that women are more likely than men to turn to the courts rather than the customary system with the hope of receiving a just outcome. Based on an individual notion of rights, the formal system is, in theory, accessible to anyone, and the principle of equality before the law sets predictable provisions to ensure procedural fairness when properly enforced.

While the customary system is also capable of recognizing individual rights and grievances of members of the community in question, it remains primarily accessible to male members of the majority clan. Though women from both minority and majority clans report that the customary system is often inaccessible to or biased against them, the community at large perceives it as more trustworthy and less prone to undue influence than the courts.<sup>5</sup> Decisions made through the customary system also tend to be fast and efficient.

This report discusses the Land Dispute Tribunals in Somaliland and the Land Dispute Resolution Committees in Puntland. The LDTs are intended to be hybrid institutions capable of harnessing benefits from both the formal and the customary system.

This report concludes that LDTs do not reach their full potential in borrowing from the advantages of either the formal or the customary system, but are well placed to undergo specific changes that will greatly assist them in fulfilling their mandate. The LDRCs in Puntland have developed organically within local governments with the support of elders and function as hybrid institutions, but without formalized support, structures, procedures, or any means to ensure their accountability and consistency.

<sup>2</sup> See the glossary on page 6 for a definition.

<sup>3</sup> Le Sage, 2005, *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives*, Centre for Humanitarian Dialogue, p. 32.

<sup>4</sup> This was stated many times during the consultations and in interviews with elders in both Somaliland and Puntland.

<sup>5</sup> Women stated during key informant interviews that, though they felt the customary system discriminated against them, they saw it as more accessible and honest than the formal courts.

This report recommends that LDTs should not be established in Puntland in replacement of or addition to these institutions, but rather that there should be a formalization of what already exists.

The recommendations included in this report aim to fulfil two objectives:

1. More effectively harmonizing the LDT system with the customary system<sup>6</sup> in Somaliland so that the LDT is a truly hybrid institution
2. Increasing the legal and administrative effectiveness of the LDTs in Somaliland and the LDRCs in Puntland

The recommendations are for amendments to be made to the constitutive law and regulation establishing the LDTs, as well as for research and activities that may be carried out by the Governments of Somaliland and Puntland with the support and technical expertise of international partners. We believe that the full implementation of these recommendations will ensure that the LDTs and LDRCs are able to effectively, efficiently, and fairly address the issues of urban land disputes and ongoing land grabbing in both Somaliland and Puntland.



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<sup>6</sup> The customary system refers to customary elders dispensing *xeer*, which is heavily influenced by sharia law. Sharia law is the basis for all legal systems, though there are no distinct sharia courts in urban areas of Somaliland, which are the focus of this report.

## FOREWORD – DIRECTOR GENERAL, MINISTRY OF INTERIOR, SOMALILAND

Somaliland has come out of its post-rehabilitation stage with democratic governance gradually taking root. There is now a democratically elected and functioning state structure. The President and Vice-President, Members of the House of Representatives, and Local Council Councillors were elected democratically in a free and fair election which the international community applauded. In recent years, Somaliland has made significant progress in many fields. Public order and security have been strengthened, and institutional reform has made notable strides.

The national reconstruction process had leveraged on the expansion of cities. In this context, the Ministry of Interior, with the responsibility of overseeing local governments in Somaliland, requested the support of UN-Habitat to establish hybrid administrative tribunals to resolve the growing number of land disputes.

The experience of the Land Dispute Tribunal in Hargeisa has shown, over the course of its existence, how this body has been effective in adjudicating land disputes in urban areas and securing land tenure rights. Subsequently, new tribunals have been established in Boroma and Berbera, and they have considerably helped local governments and the justice sector in reducing the caseload related to land dispute issues. Increased security of tenure will encourage more investment in the country, which will in turn enable the local government to generate more revenue, hence improving service delivery for its citizens.

This report is an important document that will guide the government in steering the necessary reforms surrounding urban land issues in Somaliland and gradually roll out the tribunals nationwide during the coming years.



HIS EXCELLENCY AMB. ABDIFATAH SAEED AHMED  
DIRECTOR GENERAL, MINISTRY OF INTERIOR  
GOVERNMENT OF SOMALILAND

## FOREWORD – DIRECTOR GENERAL, MINISTRY OF INTERIOR, PUNTLAND

“Guddiyey waxna garo, waxna gudo.” This Somali saying calls upon the wisdom, professionalism, and impartiality of members of committees who are called to make fair decisions on matters of public interest. This proverb suits well the delicate task that the Land Dispute Committees have been accomplishing since 2000 across the different districts of Somalia. Not only do they carry out an important conflict transformation function, but they also address issues related to access to justice on land, key resources for livelihoods, and sites of cultural landmarks.

More broadly, justice lies at the heart of the notion of governance in Puntland State of Somalia. Since its creation, local and central government alike have strived to achieve governance reform centred on the idea of equal opportunities for all citizens through enhanced service delivery.

Land tenure security is fundamental in this regard. Secure tenure equals peace, but also opportunities for the government to generate income to reinvest in public services. Puntland is therefore committed to supporting capacity building and processes that will lead to the achievement of an inclusive policy process, as well as to the reform of land-related legislation.

This report chronicles the land dispute resolution mechanisms that currently prevail in Puntland’s customary and formal systems, as well as the challenges and merits associated with each system. It also makes recommendations about how these systems can best be harmonized.

Puntland aspires to the formation of legal and regulatory frameworks for land management to ensure good governance and access to justice, which in turn will ensure lasting peace for the people of Puntland. Last but not least, the Puntland government is grateful to UN-Habitat and LAW for the accomplishment of this study and the valuable contribution they make to ongoing decentralization reform in Puntland.

Sincerely,



MUNA DAHIR DALMAR  
 DIRECTOR GENERAL  
 MINISTRY OF INTERIOR, LOCAL GOVERNMENT AND RURAL DEVELOPMENT  
 GOVERNMENT OF PUNTLAND

# Key Recommendations

## Somaliland

Developing the legal framework:

- Amend Urban Land Management Law No. 17/2001, including actions to change the jurisdiction and composition of the LDTs.
- Amend Land Dispute Tribunal Regulation No. 1/2014, including actions to change the jurisdiction, composition, procedural practices, and enforcement capacity of the LDTs.

Substantive changes to the LDT system:

- Alter the composition of the LDTs to comprise representatives from ministries at the district rather than national level, involving elders and adding a gender quota.
- Simplify the procedures of the LDT.
- Clearly establish the Ministry of Interior as the ministry responsible for the LDTs.
- Enhance record keeping by recording details of the demographics of LDT users, including gender, clan, and whether they are a refugee or an internally displaced person (IDP).
- Develop a code of conduct and ethics and accountability mechanisms.
- Formalize the ad hoc committees established at the village and district levels so that their decisions can be appealed at the LDT.
- Link the LDTs to the courts by filing all LDT decisions with the regional court and establishing a Justice in Land Committee in each district.

Harmonizing the formal and customary systems in relation to the LDTs:

- Have a group of four or five respected elders who sit as judges on the LDT on a rotational basis.
- Allow each disputant to bring an elder to assist in advising the LDT on the case.
- Amend Law No. 17 and the regulation to provide that the LDT will not have jurisdiction over cases involving land that is found to be owned communally in accordance with custom. Whether land is customarily owned should be proven as a matter of fact.
- Amend Law No. 17 and the Penal Code to criminalize the practice of one person unilaterally selling communal customary land without consent.
- Amend the regulation to reflect that the LDTs will be based on mediation.
- Train elders and LDT members together on mediation techniques and the formal law.

- Recognize decisions of customary courts as having the same force as formal court judgements, even without registration with the court. These decisions should also be recorded, though detailed recommendations in this area are outside the scope of this report. Make these decisions appealable to the LDT.
- Record the decisions arrived at by the LDT, including elements decided on using formal law and elements decided on using xeer.

## Puntland

Developing the legal framework:

- Adopt and pass a regulation to govern the LDRCs.
- The regulation should provide for the composition listed in the substantive changes section below.
- The regulation should provide that the LDRCs will not have jurisdiction over cases involving land that is found to be owned communally in accordance with custom.
- Amend the Penal Code to criminalize the practice of one person unilaterally selling communal customary land without consent.

Substantive changes to the LDRC system:

- Formalize the LDRCs to make them funded quasi-judicial bodies under the Ministry of Interior.
- Include representatives from regional ministries and the municipality.
- Introduce a gender quota.
- Enhance record keeping by recording details of the demographics of LDRC users, including gender, clan, and whether they are a refugee or an IDP.
- Develop a code of conduct and ethics and accountability mechanisms.

Harmonizing the formal and customary systems in relation to the LDRCs:

- Provide training for all members on the formal law, human rights, and legal reasoning.
- Allow each of the disputants to bring an elder to assist in advising the LDRC on the case.

Practical steps in formalizing the land committees:

- Undertake a scoping exercise in all districts of Puntland to determine which ones currently have functioning LDRCs.
- Convene all LDRC members and ad hoc decision makers for a national conference on the formalization of the LDRCs.

## Somaliland and Puntland

- Undertake extensive gender empowerment projects around the LDTs/LDRCs, comprising of the following:
  - Community conversations with women, men, teachers, and youth groups about land issues, rights, security of tenure, and their concerns surrounding these issues
  - Training on human rights, with a focus on women
  - Public speaking training for women
  - Alternative dispute resolution training for women
  - Peer sessions in which women, elders, and youth share lessons learned during the project with up to ten people from their social demographic
- Formally recognize communal rights to customarily owned land.
- Organize trips with women, minority clan members, IDPs, and refugees to the formal courts and the LDTs/LDRCs.
- Train LDT/LDRC members in legal skills, good governance, and the amended regulation.
- Establish a system to monitor the work of the LDTs/LDRCs, including a system to report complaints and make suggestions for improvement.
- Facilitate study tours by selected LDT/LDRCs members to learn from best practices in certain areas.
- Design and implement a public information campaign, designed to raise awareness among men and women about land rights and LDTs/LDRCs.
- Establish and mentor in each district a Justice in Land Committee comprised of stakeholders concerned with the administration of justice in the land sector, including representatives of the formal court, LDTs, the customary system, academia, the police, the attorney general's office, and non-governmental organizations (NGOs), and in which the public is invited to participate.
- Work with other justice projects in Puntland and Somaliland to facilitate mobile courts attached to the Supreme Courts.
- Undertake a three to six month evaluation of the functionality of the LDTs and their success in meeting their stated objectives at the end of the project period.

## Areas To Be Addressed before Amendments and Implementation

- Further research into the barriers women, minority groups, and IDPs encounter in trying to access the LDTs, and facilitate additional focus discussions with men, women, minority groups, and IDPs about how to implement accessible justice services

- Capacity building with all stakeholders on women's rights
- Further consultations with elders
- Ideally, comprehensive analysis of the existing land law, to be completed by a gender-balanced team of national and international lawyers

## Methodology

Information for this report was gathered in three stages. Firstly, a desk review of available materials was conducted.<sup>7</sup> Secondly, initial scoping missions were undertaken to Somaliland and Puntland to discuss the LDTs with relevant stakeholders, including representatives from the Ministries of Interior, UN-Habitat, and LDTs in Hargeisa and Garowe. Thirdly, in-depth information was collected through six consultations in Puntland and Somaliland:

- A day-long initial consultation on the LDTs in Somaliland attended by 45 people<sup>8</sup>
- A two-day lawyers' round table on the legal challenges with the LDT system, including gaps in the laws and regulation, attended by 25 lawyers, judges, and public notaries in Hargeisa
- A day-long initial consultation in Garowe, attended by 36 people<sup>9</sup>
- A day-long lawyers' round table on the technical legal aspects of the LDTs, with 15 lawyers, judges, and LDRC members in Garowe
- A three-day workshop with LDT members in Hargeisa
- A three-day workshop with LDRC members and other ad hoc decision makers on land in Garowe
- Interviews (one or two hours each) with five women who have experienced land disputes in Somaliland, as well as a meeting on land disputes with three female civil society leaders
- Interviews (one or two hours each) with seven elders who are involved in resolving land disputes in Somaliland
- A focus group discussion with five women in Somaliland about gender and land generally, including two who had been involved in disputes over land
- A focus group with five elders involved in resolving land disputes in Puntland, including the Chief namadon of Garowe<sup>10</sup>
- A focus group with four women who work in women's rights issues in Puntland, two of whom have also been party to disputes over land.

<sup>7</sup> Including previous reports by UN-Habitat, UNDP, FAO, the Norwegian Refugee Council, and other key research organizations.

<sup>8</sup> Including members of the LDTs in Hargeisa, Boroma, and Berbera; the Director Generals of the Ministries of the Interior, Environment, Agriculture, and Public Works; mayors; members of the judiciary; and lawyers with experience in taking land disputes to the LDTs in Hargeisa.

<sup>9</sup> Including mayors from Bandor Bayla, Gardo, and Jariban; the Chairperson and other members of the LDRC in Garowe; representatives from dispute resolution bodies in Eyl, Gardo, and Bossaso; representatives from the Ministries of the Interior, Agriculture, and Environment; representatives from local government; lawyers; elders; and religious leaders.

<sup>10</sup> Security concerns restricted movement and time in Puntland, and it was not possible to conduct interviews in addition to the focus group discussions.



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## 01 | OVERVIEW: SCOPE AND LIMITATIONS OF REPORT

### 1.1 Scope of This Report

The LDTs in Somaliland were established by the Ministry of Interior with UN-Habitat support in 2010. The Puntland Ministry of Interior now wishes to establish similar LDTs in Puntland with UN-Habitat's support. The current status of the LDTs is as follows:

Table 1: LDTs and LDRCs

Somaliland	Puntland
LDTs in Somaliland now exist in Hargeisa, Boroma, and Berbera. <sup>11</sup> It is reported that in Hargeisa the LDTs have been successful in taking over from the courts the exclusive jurisdiction for urban land disputes relating to ownership. It is expected that this result will follow in Berbera and Boroma, where the LDTs were established only in the last year.	A variety of dispute resolution mechanisms, including LDRCs, are used to resolve disputes over urban land at the local government level. There are plans underway within the Ministry of Interior for the establishment of formal LDTs, which at present are intended to closely mirror the Somaliland model.

The LDTs are administrative tribunals with quasi-judicial powers, consisting of appointees from government agencies with responsibilities over land.<sup>12</sup> Their jurisdiction is over urban land only. The LDRCs are ad hoc administrative bodies that hear disputes over undeveloped land, both rural and urban. In practice, however, most of the disputes that come before the committees are related to urban land.<sup>13</sup> This appears to confirm that the customary system alone is not effectively addressing disputes relating to urban land, and that urbanization is a growing trend.

#### The purpose of this report is threefold:

1. To document the current practices of resolving urban land disputes across Somaliland and Puntland and identify the strengths and weaknesses of each
2. To make recommendations aimed at
  - a. More effectively harmonizing the LDT system with the customary system in Somaliland so that the LDT is a truly hybrid institution

b. Building the LDTs in Puntland using the foundation of the LDRCs so that the mechanism is a truly hybrid institution

3. To make recommendations aimed at increasing the legal and administrative effectiveness of the LDTs generally.

Ideally, all three objectives should provide guidance for the reform of the regulation currently governing the function of these tribunals.

'Customary legal systems' in this respect will focus on customary law (xeer) administered by the customary groups of elders – the aquil in Somaliland and namadon in Puntland. However, in some instances, land disputes will also be resolved using sharia law. This occurs in different ways in Somaliland and Puntland, described in more detail in Section 2.1.

### 1.2 Limitations of This Report

This report described the challenges faced by LDTs in Somaliland and LDRCs in Puntland and makes recommendations as to how to redress those. It was commissioned for the purpose of increasing the capacity of these institutions and enchaining their hybridity, i.e. the extent to which they draw from both the formal legal system and customary practice. It does not attempt to comprehensively describe or make recommendations about gaps and challenges relating to land disputes, land conflict, or land governance in Puntland and Somaliland.

Similarly, the LDTs were established in Somaliland and the LDRCs in Puntland to address the very specific issue of widespread land grabbing, and do not attempt to address or resolve disputes arising from the many other challenges related to land use and ownership in Puntland and Somaliland. While the establishment of a hierarchy of land tribunals to hear all issues relating to land may be a legitimate end goal for these regions, this is not yet feasible due to significant capacity restraints and lack of solid need assessments.

<sup>11</sup> The Hargeisa LDT has occasionally travelled to districts outside Hargeisa city, thereby functioning as a mobile tribunal, though it generally no longer does so because such disputes are outside of its territorial jurisdiction.

<sup>12</sup> In accordance with Article 28 (1) of the Urban Land Management Law No. 17/01, the LDTs will be made up of: one person from the Ministry of Public Works who will act as Chairperson; one person from the Ministry of Interior Affairs who will act as Deputy Chairperson; one person from the Local Authority who will be a Member; one person from the Local Council who will be a member; one person from the Ministry of Agriculture who will be a member; one person from the Ministry of Endorsement and Religious Affairs who will be a member; and one person from the Ministry of Rural Development who will be a member.

<sup>13</sup> Meetings with LDRCs.

Finally, research for this report was conducted primarily in Hargeisa and with limited focus groups and discussions with affected populations such as elders and women. There is very little research into many of the areas touched upon by this report, and there were no resources with which to conduct that research during the report-writing process. Areas that are either outside the scope of this report or require further research are listed below.

### **Rural and agricultural disputes**

These are outside the jurisdiction of the LDTs and in practice not heard by the LDRCs, and are therefore not considered in this report.

### **The customary system**

This report is written from a legal perspective, with the objective of building the capacity of a legal institution. Though it spends equal time discussing the strengths and weaknesses of the formal and customary systems in Section 4, this should not be read as an indication that both systems are currently an equally viable way for the resolution of all land disputes. In Puntland and Somaliland, the customary system has long been the most effective and trusted means of resolving all forms of disputes, including over land. Any recommendation relating to developing an existing legal system must be cognizant of this reality.

### **Disputes between pastoralists and urban dwellers**

Urbanization has had a significant effect on pastoralists, and many members of the pastoral communities in Somaliland and Puntland have had to adapt or diversify. The changing relationship between pastoralists and urban dwellers in peri-urban and urban areas has led to an increase in disputes relating to both land ownership and land use. Limited resources prevent this report from including an in-depth account of the pastoral understanding of their interaction with urban centres, or of the nature and number of these disputes. More research in this area is necessary.

### **Accessibility of the LDTs to groups such as women, minority clans, and IDPs**

This is an area that is described briefly in the report but requires significantly more research. Unfortunately, records kept by the LDT

about disputes lodged do not record whether the disputants are minority groups, women, or IDPs. These details must be recorded as a matter of urgency, and this is recommended in this report. Anecdotal evidence from workshops and focus groups indicate that women and minority groups would prefer to use the LDT instead of the courts or the customary system, but still consider it to be biased against them. The barriers to obtaining justice for these groups in the context of urban land disputes must be comprehensively interrogated. This is also recommended in this report.

### **Land governance**

This report is focused on land dispute resolution in the context of the LDTs and LDRCs. Both bodies were established to provide a legal response to land grabbing. Neither they nor this report attempt to comprehensively address general land governance issues.

**Terminology:** This report refers throughout to 'minority groups'. This refers both to minority groups and Somalia's ethnic minorities, including those of Bantu ethnicity and groups such as the Midgan, Tupal, and Yibir.<sup>14</sup>

## **1.3 Gender Mainstreaming**

The LDTs in Somaliland and LDRCs in Puntland are situated at the intersection of land governance, local government, and the legal sector, all of which are male-dominated spheres in Puntland and Somaliland. While women were invited and encouraged to attend consultations, their voices have been extremely under-represented at these events.<sup>15</sup>

Further, women who did attend the consultations would frequently restate (echoing their male counterparts) that men and women were treated equally in the administration of land and resolution of land disputes and that there was no need for gender-sensitive mechanisms or procedures.<sup>16</sup>

<sup>14</sup> Gregory Norton, 2008, Land, Property and Housing in Somalia, NRC, UNHCR, and UN-Habitat, p 50.

<sup>15</sup> Participants at the initial consultation in Hargeisa comprised of 44 men and 2 women, excluding the international consultant and the head of the UN-Habitat sub-office. The lawyers' round table consisted of over 20 men and 1 woman. Participants at the initial consultation in Garowe included 36 participants, all of whom were male, excluding the international consultant and the Director General of the Ministry of Interior, who is female. The lawyers' round table consisted of 13 men and 2 women.

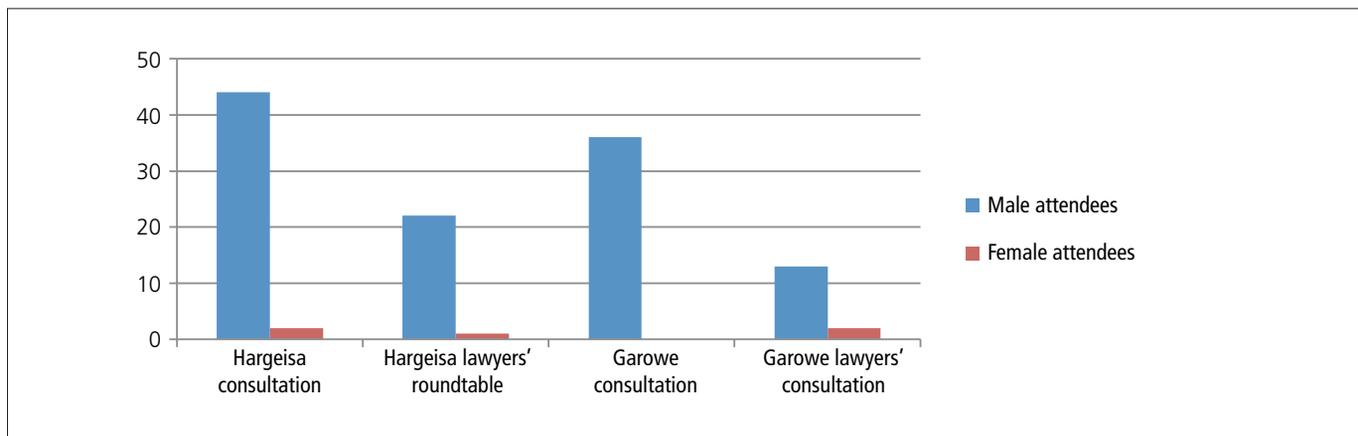
<sup>16</sup> Participants in Somaliland consultations tended to agree that the customary system may be disadvantageous to women, but all stated that the courts and the LDTs employed standard procedures that protected the rights of all. Participants in the Puntland consultations disagreed generally that women were disadvantaged in either the formal or the customary system.

However, individual interviews with women who had brought disputes to the LDTs, courts, and customary system (or knew other women who had) indicate that there are very significant challenges faced by women trying to access each of these institutions. While the LDT members themselves insist that women prefer using the LDT to other forums, six out of the seven female LDT users consulted in Hargeisa reported that they did not feel it awarded women access to legal redress that is equal to that received by their male counterparts. The seventh woman reported that she felt more respected and listened to by the LDT members than she would have by a court or the customary system. In any case, addressing the gender imbalances within the LDT system is of the utmost importance. Without effective gender mainstreaming, the objective of reforming and improving the LDT would be missed altogether.

A table disaggregating the women interviewed by age, clan, and marital status is included in Annex XIX.

Understanding how the LDTs and the wider land governance system should be reformed to take the special rights and needs of women into account is an enormous but essential task. This report includes recommendations on how women's experiences and unique challenges may be better collected, analysed, and understood (see the final recommendations section).

Figure 1: Participation of women in the LDT and LDRC consultation workshops



## 1.4 Types of Land Tenure and Disputes

### Types of Land Tenure

Land tenure is simply defined as the manner in which rights to land are held, recognized, and respected.<sup>17</sup> Somaliland and Puntland recognize both customary and statutory tenure, the latter of which may have several different subcategories. Different actors have defined customary land tenure as follows:

*"The set of rights in land that **derive from customs or practices** handed down from generation to generation."*<sup>18</sup>

*"Rights to use or dispose of use-rights over land which rest neither on the existence of brute force nor the evidence of rights guaranteed by government statutes but on the fact that **those rights are recognized as legitimate by the community...**"*<sup>19</sup>

<sup>17</sup> P. Dale and J. D. McLaughlin, 1999, Land Administration.

<sup>18</sup> Dominic Tuobesaane Paaga, 'Customary Land Tenure and Its Implications for Land Disputes in Ghana: Cases from Wa, Wechau, and Lambussie', International Journal of Humanities and Social Science, Vol. 3, No. 18, October 2013.

<sup>19</sup> Theodora M. Mends, 2006, Customary Land Tenure and Urbanisation with a Case Study on the Peri-Urban Area of Accra, Ghana.

Generally, customary land is communally held, though there are circumstances in which an individual may own land. It is relevant to note that many legal and land practitioners in Somaliland and Puntland are not familiar with the term ‘customary land’, and that the divide between customary land and privately owned land is not always clearly defined.

Currently, the LDTs in Somaliland have jurisdiction over disputes concerning the “ownership, legality, gift sale or administration” of urban land.<sup>20</sup> The limitations of this jurisdiction are not clear, as urban land is defined as any land included in the master plan – theoretically describing land earmarked for urban purposes – and the master plan does not exist. In Puntland, the LDRCs have jurisdiction over all undeveloped land.

It should be noted that many of the current land disputes arise because land is becoming both urbanized and privatized, and land is effectively being ‘grabbed’ from pastoralists and communal landowners by private buyers. Such land may fall within in an urban area and therefore be within the jurisdiction of the LDT. This report recommends that in such situations, elders should be called in to assist the LDT in deciding the case (see final recommendations section).

Whether land is considered urban is within the jurisdictional mandate of the courts rather than the LDT. Any disputes relating to land which is not urban (that is, grazing or agricultural land) are also within the jurisdictional mandate of the courts.

In practice, much agricultural and grazing land is owned communally and in accordance with custom, and the elders are seen as the forum that has the authority to resolve disputes relating to such land.

### The Master Plan

The master plan is intended to be a document that maps out the use of all urban land in Somaliland. Under Law No. 17, “urban land” is defined as any land included in the master plan.<sup>21</sup> As the master plan does not yet exist, this circular definition has been the cause of significant confusion. Some, but not all, municipalities also have their own urban planning documents.

Whether this jurisdictional limitation remains is therefore an important question when considering how best to harmonize the formal and customary land dispute resolution systems within the LDTs. The LDTs were originally designed to respond to the spike in the number of urban land disputes.<sup>22</sup> They were not intended to be a tribunal capable of resolving all land disputes in all regions of Somaliland, urban and rural. Some jurisdictions, such as Tanzania, do have courts/ tribunals, or hierarchies of courts/ tribunals, that hear all land disputes, regardless of the type of land. This is discussed more in Resolution of Urban Land Disputes in Comparative Jurisdictions: Report and Recommendations for Somaliland and Puntland . It may be advisable that Somaliland and Puntland institute a similar hierarchy of tribunals in the future.

This report recommends that the jurisdiction of the LDTs in Somaliland is temporarily limited to urban and peri-urban land disputes. It should be noted that the Global Land Tool Network has in some instances advocated against the establishment of different processes for urban and rural land. However, at present, the LDTs do not have the capacity to expand their jurisdiction over rural land.

Further, decision-making processes over rural land have traditionally primarily involved the elders, who must be consulted before any change in this area is made. The limitations to the Somaliland LDT’s jurisdiction over urban and peri-urban land should be reviewed when the most urgent, short-term recommendations in this report have been implemented. Expanding the jurisdiction of the LDTs beyond urban and peri-urban land will also require the amendment of the applicable laws.

The report recommends that the urban land limitation is not applied in Puntland.

<sup>20</sup> See Article 28(1) of Law No. 17/2001 and Articles 3 and 19(10) of the LDT Regulation No. 1/2014. Article 4 of the regulation also provides for certain disputes over urban land which are excluded from the jurisdiction of the LDTs.

<sup>21</sup> That definition is implied by the provisions of the LDT Regulation (Article 3 of Regulation No. 1/2014), which postulate that LDTs have jurisdiction over disputes related to all land within the master plan.

<sup>22</sup> See the preamble to Law No. 17, which states that the objective of the LDTs is to “eliminate land grabbing and to devise simplified means for solving urban land disputes”.

## 02 | LAND DISPUTE TRIBUNALS IN CONTEXT

### 2.1 Differences between Puntland and Somaliland

This report does not attempt to provide a comparative analysis of the urban land management and dispute resolution mechanisms in Somaliland and Puntland. However, for the purposes of the report, the most pertinent differences are as follows:

Table 2: Differences between Puntland and Somaliland for land tenure and resolution mechanisms

Area	Somaliland	Puntland
<b>Sharia and religious elders</b>	Special offices staffed by religious experts offer services in matters relating to the interpretation of sharia law. This includes marriage, family matters, and inheritance, and may include land disputes insofar as they are related to marriage or inheritance. The services provided are an interpretation of sharia law rather than dispute resolution and are not binding.	In general, there is more reliance on religious experts. Religious elders resolve many different types of disputes, including land disputes. Their decisions are not legally binding, but are recognized as having significant moral authority, including by the courts.
<b>Customary elders</b>	Most people go to the customary system first for urban land disputes, though this number is decreasing. There is a higher number of people from the Somali diaspora in Somaliland, and this demographic often do not go through the customary system for the resolution of disputes. The courts consider the decisions of elders as evidence but not legally binding (and do not legally recognize them).	Most people go to the customary system for urban land disputes, and very few people go to the court. The constitution recognizes the decisions of customary elders as decisions of a court of first instance, though it appears that this provision is not widely known about among the elders and members of the legal profession. However, the decisions of elders are treated with a high degree of respect.
<b>Land titling system</b>	The local government issues title deeds. In practice, there are committees under each municipality that do this. Title deeds are issued on different stationery branded with the name of each municipality, which collect different information for documentation purposes. The process is clear in each municipality, but is not streamlined.	The local government issues title deeds, although there appears to be significant confusion about this process amongst landowners. A significant number of people consulted in the course of researching this report believed that title deeds were issued by the Ministry of Interior, including members of the ministry.
<b>Public notaries</b>	Public notaries are understood to have an expanded role in which they are required to inquire into whether the document they are notarizing is valid, rather than only verifying that the signature belongs to the person named in the document. In practice, they do not do this. There is a registry of public notaries, which the Ministry of Justice does not oversee in practice, and many operate without being registered.	The role of public notaries is seen to be limited to verifying signatures. A registry of public notaries is overseen by the Ministry of Justice and tightly controlled. There are only a handful of public notaries in Puntland.
<b>Land dispute mechanisms</b>	The LDTs have been formally constituted in Hargeisa since 2010, and in Boroma and Berbera since 2015. In addition to the LDTs, each district council has a series of subcommittees, including a land committee. Members of the elected district council appoint the members of these subcommittees. In places without LDTs, these subcommittees often hear land disputes. Some people bring land disputes to the regional administration authorities, to which they complain about decisions made by administrative bodies lower down. In practice, most land disputes are heard by the customary system.	The district administrations appoint dispute resolution committees at the village and district level. The village-level committees consist of local members of government and village elders. The district-level committees consist of members of the district administrations and some elders. These committees resolve all types of administrative disputes. Nine municipalities have established specialized land dispute resolution committees, appointed by the Mayor. In practice, most land disputes are heard by the customary system. UNDP is also supporting formalized alternative dispute resolution in Puntland.

## Major Differences between the LDTs and LDRCs

The major difference between the LDTs in Somaliland and the LDRCs in Puntland is that the LDTs are established by law, formally recognized as a quasi-judicial institution, and supported by UN-Habitat, whereas the LDRCs are inconsistent, largely ad hoc bodies that have developed independently at the local government level in districts across Puntland. The LDRCs heavily involve elders and religious leaders and follow a very simplified procedure. The LDTs do not involve elders or religious leaders. The average length of time taken to resolve a dispute in the LDTs is over one year; in Puntland, it is closer to three months. LDTs are also more expensive. LDTs receive external support and charge access fees, but it is unclear how this money is allocated. Despite these weaknesses, the Hargeisa LDT is now recognized as the correct forum through which to resolve land disputes in Hargeisa,<sup>23</sup> which is a significant achievement and indicates that there is general acceptance within the legal sector and the wider community of the appropriateness and competence of the LDT in this area. The LDRCs, by comparison, are informal bodies that do not appear to have widespread recognition within Puntland.

Many urban land disputes in both Puntland and Somaliland continue to be resolved through customary law (xeer), administered by committees of traditional elders (aqil in Somaliland and namadon in Puntland). Xeer has demonstrated resilience and enjoyed community trust and support throughout decades of conflict, and focuses on resolving disputes using a conciliatory, consensus-based approach. In Somaliland, however, for disputes over urban land, people are increasingly going to the LDT and the courts.<sup>24</sup> In Puntland, the situation is different: LDTs do not exist, and courts tend to be used only as a last resort.<sup>25</sup>

The system used by the courts is more formal and rules-based than that used by the traditional elders, and, in principle, has more protections built in for vulnerable groups. In practice, however, these protections are fairly ineffective. Firstly, courts are expensive to access and therefore beyond the means of many vulnerable groups. For example, court fees for land disputes in Somaliland range from about USD 300 to 1,500. The average annual income of a Somalilander is USD 375.<sup>26</sup> Secondly, many judges and decision makers lack training on human rights and procedural fairness protections, and court decisions continue to discriminate against women, minority groups, and IDPs. Finally, decisions are extremely difficult to enforce.<sup>27</sup>

The courts take an extremely long time to resolve disputes – months and even years, according to participants in the consultations undertaken for this project. Finally, numerous reports have indicated that the courts in Somaliland and Puntland do not enjoy the trust of the community.

It is in this context that the LDTs were established in Somaliland and will be established in Puntland. Three schools of thoughts have emerged regarding the establishment of separate tribunals for land issues: one in favour,<sup>28</sup> one against,<sup>29</sup> and one in favour of temporarily establishing such institutions in post-conflict environments and merging them back into the ordinary court systems once the spike in disputes and conflict has ended.<sup>30</sup> The school in favour of such institutions holds that separate tribunals will ensure a faster, more specialized solution for land cases, as well as eliminating forum shopping.<sup>31</sup>

According to the opposing school of thought, establishing separate tribunals doubles the cost of administration by replicating the structure of the courts; causes coordination issues; may make the tribunal more isolated, expensive, and difficult to access; and separates land issues from other legal issues that are commonly interlinked.<sup>32</sup>

<sup>23</sup> This was stated by both regional court judges and LDT members during the lawyers' round table in Hargeisa on 30 May and 1 June 2015. At the time of writing this report, courts had not yet begun to dismiss cases in Berbera or Boroma because they had not received sensitization on the role of the LDTs and because the Boroma tribunal had not yet begun its work.

<sup>24</sup> Information received through the initial consultation and lawyers round table in Hargeisa on 30 May and 1 June 2015.

<sup>25</sup> Information received through the initial consultation and lawyers round table in Hargeisa on 19–20 July.

<sup>26</sup> World Bank, 'World Bank GDP and Poverty Estimates for Somaliland', 2014, <http://www.worldbank.org/en/news/press-release/2014/01/29/new-world-bank-gdp-and-poverty-estimates-for-somaliland>.

<sup>27</sup> These challenges were continuously identified in key informant interviews with women from minority and majority clans.

<sup>28</sup> See, for example, M. Sakuda, 2016, 'We Urgently Need Special Land Courts', Standard Digital, <http://www.standardmedia.co.ke/article/2000186985/we-urgently-need-special-land-courts>; for post-conflict environments, see UN-Habitat, 2007, *A Post-Conflict Land Administration and Peacebuilding Handbook*, p. 32; for a summary of the pros and cons of specialized courts generally, see A. Altbeker, 'Court Specialisation in Theory', <https://www.issafrica.org/pubs/Monographs/No76/Chap3.pdf>.

<sup>29</sup> For arguments against court/tribunal specialization, see M. Zimmer, 2009, 'Overview of Specialized Courts', International Association for Court Administration, <http://www.iaca.ws/files/LWB-SpecializedCourts.pdf>.

<sup>30</sup> See, for example, J. Unruh and R. Williams, 2013, 'Lessons Learned in Land Tenure and Natural Resource Management in Post-Conflict Societies' in *Land and Post-Conflict Peacebuilding* (Earthscan, London).

<sup>31</sup> See footnote 28.

<sup>32</sup> D. Palmer, S. Fricska, and B. Wehrmann, 2009, 'Towards Improved Land Governance', Food and Agricultural Organization, p. 50; see also footnote 28.

This report finds that, on the balance of these considerations, the advantages of a separate system outweigh the cost implications and the consequences of separating land issues from other issues, which can be addressed through effective and efficient referral procedures. However, it does suggest that the LDTs be more effectively linked to the formal courts to avoid them becoming parallel, uncoordinated justice institutions.

## 2.2 Land Dispute Tribunals

To overcome some of the challenges posed by both the formal and customary legal systems, LDTs were established by the Ministry of Interior in Somaliland in 2010 and are in the process of being established in Puntland. The LDT in Hargeisa, Somaliland, has been in operation for five years, and the LDTs in Berbera and Boroma were established in 2015. The caseload for the Hargeisa LDT is as follows:

Table 3: Caseload for the LDT Hargeisa

Years	Total cases received	Completed	Pending
2013	104	59	55
2014	96	34	62
2015	69	3 <sup>33</sup>	66

The LDT is intended to be a hybrid institution that harmonizes formal and customary legal procedures to provide a trusted, efficient, and rights-respecting dispute resolution forum. However, the LDTs currently suffer from numerous challenges and at present do not fully harness the advantages of both systems.

### 2.1.1 Objectives of the Land Dispute Tribunals

The preamble to Law No. 17 states that the objective of the LDTs is to “eliminate land grabbing and to devise simplified means for solving urban land disputes”. The requirement that the LDT provide a “simplified” means to resolve land disputes indicates that it should be more efficient and less formal than the courts. Originally, the LDT was intended to achieve this by functioning as a hybrid institution, borrowing from both the courts and the customary justice system.<sup>34</sup> The law also envisages that an LDT be based in each municipality, therefore being accessible to all Somalilanders.

The objectives of the LDT can therefore be broken down as follows:

<b>Objective 1: Efficiency</b>	To provide for an efficient means of accessing legal redress and assistance over disputes relating to urban land.
<b>Objective 2: Accessibility</b>	To be accessible to all Somalilanders in terms of affordability and physical accessibility, by being based in each municipality.
<b>Objective 3: Hybridity</b>	To create a hybrid body which utilizes the advantages of both the formal legal system and the customary courts.

**Objective 1 – Efficiency:** The purpose of establishing an administrative rather than a judicial decision-making body is to create simplified, efficient procedures which allow users to resolve disputes without having to follow the strict procedural guidelines instituted by a court. Most administrative tribunals will either not require the disputants to have a lawyer or will explicitly prevent them from doing so. In many jurisdictions, the decision makers in administrative tribunals do not have to be legally qualified.

The LDT Regulation imposes the Civil Procedure Code used by the courts and requires significant legal education and experience on the part of its members.<sup>35</sup> The LDTs use the same procedures as the courts, resulting in cases taking a similar length of time.

Although it is not a requirement that disputants are represented by a lawyer, the regulation is so complicated that in practice both parties almost always do so.

**Objective 2 – Accessibility:** The LDTs were intended to be more accessible than the courts, and in general they are. Filing a case with the Hargeisa LDT costs a fee of USD 160–665, with additional costs for transportation to the LDT. The courts require a fee of 3 percent of the value of the land.<sup>36</sup> In central Hargeisa, this would generally mean court fees of USD 300–1,500 in urban land cases. The LDTs were also intended to be more physically accessible than the formal courts by being based, in accordance with Law No. 17, in each municipality. At present, however, LDTs have only been established in Hargeisa, Boroma, and Berbera. All three of these cities also have a court presence.

<sup>33</sup> It is unclear why only three cases were resolved in 2015 in comparison to previous years.

<sup>34</sup> This can be presumed from the original draft of the LDT Regulation, which includes multiple provisions aimed at creating a hybrid institution, including incorporating elders on the tribunal and prioritizing the mutual satisfaction of the parties.

<sup>35</sup> See Annex XIII for the section of the regulation relating to the qualifications of LDT members.

<sup>36</sup> Tariff set by the Ministries of Finance and Interior in consultation with the courts and approved by the Parliament.

### Land Prices in Hargeisa

In central Hargeisa, land prices for a plot of land which is 18 metres by 24 metres range from USD 10,000 to 50,000.

Outside of Hargeisa, it may be possible to purchase a block of land of this size for USD 2,000.

**Objective 3 – Hybridity:** The LDTs are intended to draw from the advantages of the formal and customary systems. At present, the practice and procedure of the LDT is not dissimilar to a formal court. One of the only links to the customary system is that the LDT usually refers cases to the traditional elders first. An original copy of the regulation for the LDTs attempted to more significantly incorporate customary justice practices by including an elder as a non-voting member of the tribunal and stressing that the members should resolve disputes using a conciliatory approach reminiscent of the customary system. The regulation that was eventually passed, however, dispenses of these requirements.

Hybrid legal systems take from both formal and customary legal practices and procedures. In Somalia, both customary and formal law are legally required to be in conformity with sharia, which underpins all laws and legal mechanisms.

## 2.3 Land Dispute Resolution Committees in Puntland

In Puntland, LDRCs have been established in nine districts, beginning in 2000. In researching this report, representatives from four of these committees were consulted. Though not a comprehensive study, these consultations made clear that the committees operate and are constituted slightly differently in each district, though all committees count traditional elders within their membership.

The Puntland Ministry of Interior plans to establish LDTs in Puntland, and a regulation to govern the practice of the LDTs was drafted in 2014. This regulation was not drafted with the committees in mind, but is based more closely on the regulation implemented in Hargeisa (as a baseline).<sup>37</sup> The regulation does not describe how the LDTs will be merged or harmonized with the existing committees. Unlike the Hargeisa regulation, and despite current practice, it does not envision a role for the traditional elders on the newly constituted tribunals.

<sup>37</sup> Interviews with the drafter of the regulation on 27 and 30 June 2015. This draft was shared with UN-Habitat by the consultant hired by Ministry of Interior.

## 03 | LEGAL FRAMEWORK RELEVANT TO LAND DISPUTES

Neither Somaliland nor Puntland has a comprehensive legal or policy framework relating to land. Rather, there are various laws dealing with different types of land, allocating responsibility for those types of land to different government ministries. In theory, the legal framework in both regions comprises laws from the English and Italian colonial regimes and laws passed before and after the fall of the Siad Barre government. In reality, the large number of laws passed before 1991 are not recognized or implemented. No land laws from the colonial regime continue to be implemented in either region. During consultations and interviews undertaken in researching this report, some older lawyers referred to the existence of these laws, but no one was able to identify what these laws contained.

This report recommends the following:

- Undertaking a legal audit of all land-related law in Puntland and Somaliland, to be completed by national lawyers

- Subjecting this audit to a comparative analysis undertaken by comparative land law experts
- Ensuring that there is gender balance between the national and international lawyers conducting the audit and analysis

### Somaliland

There are five main laws in Somaliland which are relevant to land governance and which are implemented in practice: the constitution, the Urban Land Management Act (Law No. 17), the Agricultural Land Ownership Law, the Civil Code, and the Civil Procedure Code. The LDTs are established by Law No. 17. The content and main challenges with these laws are outlined in the table below and detailed in Annexes I, II, III, IV, and V. The content of and challenges with the regulation, which this report recommends redrafting, are outlined below.

Table 4: Legal land frameworks in Somaliland

Law	Content	Gaps and challenges
<b>Constitution (2001)</b>	Protects rights to private property, equality, and access to justice, and contains some provisions protecting the rights of women.	The constitution is a good base for the LDTs and land rights in general, but many people are unaware of its contents. It does not, however, recognize the decisions of elders as having any legal force, which does not reflect the reality that most disputes are resolved through the customary system.
<b>Agricultural Land Ownership Law: Law No. 08/1999</b>	Regulates agricultural land, defined as any land which is suitable for cultivation. Recognizes, but does not define, pastoral/grazing land. Divides responsibility for these types of land between the Ministry of Agriculture and the Ministry of the Environment. Resolution of agricultural/grazing land disputes is the responsibility of the courts	<ul style="list-style-type: none"> <li>• Grazing land is not defined, and therefore the Minister of Environment may allocate land arbitrarily.</li> <li>• Rights of pastoralists over grazing land are not secured, making them vulnerable to land grabbing.</li> <li>• There is no clear demarcation among agricultural, grazing, and urban land, leading to confusion and overlap between ministries.</li> </ul>
<b>Urban Land Management Law: Law No. 17/2001</b>	Regulates urban land, defined as land included in the master plan. Attempts to define the following: the state institutions responsible for urban land governance; the allocation of land; the planning and development of land; aspects of land tenure, including granting land for specific purposes and registration of title; appropriation of land for public use and compensation; and the establishment of the LDTs.	<ul style="list-style-type: none"> <li>• Poorly drafted in terms of clarity and coherency</li> <li>• Provides for complicated systems of land governance and confusing procedures for purchasing and registering land</li> <li>• Provides for a complicated process for verifying the master plan, while making almost no provisions for drafting it</li> <li>• Requires landowners to build a permanent structure within one year of purchase to retain title over the land, which has detrimental effects on security of tenure for poor and displaced people</li> </ul>

Law	Content	Gaps and challenges
<b>Urban Land Dispute Resolution Regulation: Regulation No. 01/2014</b>	Contains provisions on the following: jurisdiction, internal organizational structure, filing and opening cases, procedural guidelines, rules regarding the submission of evidence and hearing of witnesses, execution of decisions, appeal, and the relationship between the LDTs and other governmental organizations.	<ul style="list-style-type: none"> <li>• Overly complicated pre-hearing and case procedures, based on the Civil Procedure Code used by the courts</li> <li>• Lack of clarity regarding referral pathways between LDTs and other justice institutions</li> <li>• Lack of guidance on choosing between applicable procedural laws</li> <li>• Lack of specific protections for women, minority groups, and IDPs</li> <li>• No provisions on ethics or accountability</li> <li>• No clear ministry responsible for LDTs</li> </ul>
<b>Civil Code and Civil Procedure Code</b>	In practice, the Civil Procedure Code regulates the pre-hearing procedures, including the manner in which cases should be submitted to the LDT, case procedures, determination of evidence, execution of decisions, and appeal pathways. The Civil Code regulates ownership of property, immovable property, sale and transfer of immovable property, and registration and publication of documents relating to rights over immovable property.	<ul style="list-style-type: none"> <li>• Both codes require that title deeds are filed with the court. However, there is no registry in the court for title deeds.</li> <li>• The requirement that title deeds be filed with the court contradicts Law No. 17, which provides that proof-of-ownership documents not registered with the court will be considered valid.</li> </ul>

### 3.1 Relevant Content and Gaps and Weaknesses in the Urban Land Dispute Resolution Regulation: Regulation No. 01/2014

The Urban Land Dispute Resolution Regulation, Regulation No. 01/2014 (termed the LDT Regulation), consists of six chapters with 63 articles, and contains provisions on jurisdiction, internal organizational structure, filing and opening cases, procedural guidelines, rules regarding the submission of evidence and hearing of witnesses, execution of decisions, appeal, and the relationship between the LDTs and other governmental organizations.

The regulation that was initially drafted is not the regulation that was passed in 2014. There are several important differences between the final regulation and the initial draft. Essentially, the initial draft makes more of an attempt to make the tribunal a hybrid forum, while the final regulation separates the formal process from the customary one, includes provisions for referral between the two systems, and increases the formality of the LDT's procedural requirements.

A detailed description of the contents of and challenges with the regulation is included in Annex IV and summarized below.

#### 3.1.1 Contents of the Regulation

According to the regulation, LTDs should be comprised of the following members:

- The Chairperson, to be appointed from the Ministry of Public Works
- The Deputy Chairperson, to be appointed from the Ministry of Interior
- Five case committee members, to be appointed by the Chairperson from the Ministries of Agriculture, Endorsement and Religious Affairs, and Rural Development, the local council (local legislature), and the local authority (local executive)
- A Secretary, who should also function as the Registrar and Finance and Administration Officer, and any other administrative staff necessary for the fulfilment of its obligations

The chairperson should appoint three, five, or all seven members to hear any given case, depending on the nature of the dispute. The regulation stipulates that the final decisions of the LDTs must be referred to the regional courts for execution on the basis of the Civil Procedure Code. Final decisions of the LDTs are referred to the regional courts for enforcement.

### 3.1.2 Main Gaps and Challenges

The main gaps and challenges are as follows:

- Complicated procedures, which negatively affect the accessibility, efficiency, and affordability of the LDT
- Lack of clarity regarding referral pathways: For example, if the LDT receives a case that contains both a legal issue relating to urban land and another type of legal issue, it is unclear in what circumstances it should refer the case to the courts.
- Prolonged and inaccessible appeals process: Decisions can only be appealed to the Supreme Court, which is impractical for disputants from outside the district.
- Lack of guidance on choosing among applicable procedural laws: There is no statement of procedural fairness principles to assist LDT members in determining which procedural rules to apply.
- Lack of specific protections for women, minority groups, and IDPs: It is best practice for constitutive documents to contain specific protections of groups that have the least access to the formal justice system and the fewest legal resources. Women and members of minority clans confirmed that in practice they do not feel that the LDT respects their rights in the same manner that it respects the rights of male members of majority clans.<sup>38</sup> There is a need for explicit statements on the rights to equality, protection, and empowerment enjoyed by these groups, as well as affirmative action measures such as reduced access fees.
- Accountability provisions

It should be noted that this report considers that, while making LDT decisions appealable to the regional court would be the best-case scenario, this is unlikely to be implemented, as it would involve an amendment to the Organization of the Judiciary Law. In the absence of such a solution, this report instead recommends the establishment of mobile courts attached to the Supreme Court, which would increase its accessibility throughout Somaliland.

## 3.2 General Challenges Related to Enforcement of the Law

### 3.2.1 No Clear Responsible Ministry

The administration of land in Somaliland suffers from confusion and overlap regarding which ministry has control over different aspects of land governance. This includes, but is not limited to, which government ministry is responsible for the LDTs.<sup>39</sup> In general, the absence of a Ministry of Land both contributes to and results from the gaps and weaknesses in the legal framework.

### 3.2.2 Public Notaries

There is a misconception in Somaliland about the role of public notaries. In all consultations held about the LDTs, the issue of public notaries was raised as a major issue, with two specific complaints:

1. There is a registry of public notaries within the Ministry of Justice, but
  - (a) no stringent criterion about who can become a public notary
  - (b) no method of holding them accountable
2. Before notarizing a document proving ownership over land, public notaries do not make efforts to verify that the land has been transferred to the buyer (for example, by requesting to see a transfer document), which leads to a situation in which many notarized land title deeds may exist for the same parcel of land.

This is a misunderstanding about the role of public notaries as it is commonly understood, which is limited to verifying that the signature on a document is from the person whose name is listed on that document. This requires only that they check identification documentation, not that they make further inquiries to verify that the documentation being signed is legitimate. In practice, multiple ownership documents for the same parcel of land are often issued, all of which may be notarized.

<sup>38</sup> Interviews conducted in Hargeisa on 10 September 2013.

<sup>39</sup> Law No. 17 provides that the Ministry of Interior may issue the LDT Regulation; that if there is a dispute among the LDT members, the Ministry of Interior may investigate; that a representative from the Ministry of Public Works will be the chair of the LDT; and that the LDT should be based within the premises of the municipality. These are the only provisions of Law No. 17 (the LDT Regulation) that provide any hint at which may be considered the responsible ministry.

## Puntland

Land law in Puntland is predominantly made up of the constitution and the Land Law 2000. Some provisions from the Land Law 1975 and the Urban Land Law 1981 are not included in the 2000 law, but are not overridden by it and may still be in place.

A law with similar provisions to the Urban Land Management Law in Somaliland was drafted in 2005, but has not been passed. In a round table held with leading judges and lawyers in Puntland, some participants were aware that there were older laws relating to land which may still technically be in place, but no one knew what such laws contained. Research undertaken

by FAO<sup>40</sup> indicates that a law governing agricultural land was passed at the same time as the law governing urban land in 2000. The lawyers and judges consulted on this issue were unaware of the contents of this law.

The table below summarizes the content and gaps and challenges in the main laws cited by lawyers in Puntland. These laws include those that are no longer officially in force and those which have not been passed but were considered important, either because they have influenced the legal landscape or because they may indicate the future direction of land law developments. These laws are described in detail in Annexes VI–XI.

Table 5: Legal land frameworks in Puntland

Law	Content	Gaps and Challenges
<b>Constitution (2012)</b>	Protects rights to private property, equality before the law, and the 'inviolability of domicile', provides some protection of the rights of women, and provides that government restrictions/ intrusions on private land shall be regulated by law.	The constitution is a good base for the land dispute committees and land rights in general, but there is limited awareness about its contents. It recognizes the decisions of elders as having the same force of law as the court of first instance. Neither lawyers nor elders consulted were aware of this provision.
<b>Land Law 1975 (has been overridden by subsequent legislation, but helped shape the legal landscape)</b>	Transfers ownership of all land to the state. Attempts to abolish customary ownership in rural areas. Makes registration of land compulsory, and makes the only way to claim rights to cultivated agricultural land through the registration of leasehold titles granted for 50 years.	<ul style="list-style-type: none"> <li>Originally used by the Barre government to reward loyal clans with leasehold, and is widely seen to have contributed to land conflicts</li> <li>Attempt to abolish customary land is unrealistic and unresponsive to the needs of pastoralists</li> <li>Requirement that land be registered not realistic due to unaffordability, confusion with the correct process, and lack of a registrar</li> </ul>
<b>Urban Land Law 1980 (amended in 1981)</b>	Makes management and registration of land the responsibility of each municipality. Distinguishes between "permanent" and "temporary" land title, where permanent title is given to people who build permanent structures, and temporary title is given to those who build soft structures. Establishes a municipal land department, which should consist of a Land Administration and Technical Committee. The technical committee is jointly responsible for allocating public land with the Department of Urban Planning. The technical committee should advise the permanent committee of the district council on land, planning, and design matters. <sup>41</sup>	<ul style="list-style-type: none"> <li>Poorly drafted, with confusing, ambiguous language</li> <li>Significant gaps on provisions relating to the responsibilities of the municipality; however, these are superseded by the 2000 law</li> <li>Provisions on planning and design are vague and difficult to enforce, and little guidance is given on how the municipality technical committees should work together with the permanent committees of the district councils to oversee the planning of land in practice.</li> </ul>

<sup>40</sup> C. Cenerini and N. Hirsi, June 2013, 'An Analysis of Legal Issues Relating to Land in Somaliland', FAO.

<sup>41</sup> Urban Heritage Centre, 2013, Assessment of Mogadishu Municipality Urban Land Administration, p. 14.

Law	Content	Gaps and Challenges
<b>Urban Land Law 2000</b>	Restates the position in the Land Law 1975 that all land is state owned. Gives responsibility for the administration of land and the issuance of ownership documents to the central Ministry of Public Works and Transportation. References a “general town plan”, but does not provide a procedure through which this plan is to be developed. Either this law or the 1981 law (or both – lawyers in Puntland are unclear on which) provides that owners of undeveloped land must either pay tax or build on the land within six months, or the state will reclaim it.	<ul style="list-style-type: none"> <li>• This law creates confusion about which government institution has the responsibility for the administration of land and the issuance of land title documents.</li> <li>• According to lawyers from Garowe, this law has not been effectively promulgated, and legal experts in some regions may not even know of its existence.</li> <li>• It appears that the 1981 and 2000 laws do not provide for the establishment of LDTs. However, this is not strictly necessary, as they are administrative bodies.</li> </ul>
<b>Unpassed law: Land Law 2005</b>	Regulates urban land, defined as land included in the master plan. Gives authority for creating the master plan to the municipalities. Attempts to define the state institutions responsible for urban land management; the allocation of land; the planning and development of land; aspects of land tenure, including granting land for specific purposes and registration of title; and appropriation of land for public use and compensation – similar in content to Somaliland’s Law No. 17.	<ul style="list-style-type: none"> <li>• Poorly drafted in terms of clarity and coherency</li> <li>• Does not describe the process through which the master plan should be developed</li> <li>• Restates the distinction between permanent and temporary land title, which is detrimental to poor and displaced people, and does not provide any information about the rules relating to temporary land</li> <li>• Prohibits the sale of undeveloped land: if the owner does not build on the land, the municipality may recover it, which disadvantages the poor</li> </ul>
<b>Civil Code and Civil Procedure Code</b>	The Civil Procedure Code regulates the procedure of the courts. The Civil Code regulates ownership of property, immovable property, sale and transfer of immovable property, and registration and publication of documents relating to rights over immovable property.	The Civil Procedure Code has the effect of prolonging court cases, as it sets out complex procedures. See the nine steps depicted in Section 4.2.1. This can be compared to two or three informal hearings, which is the current process in the LDRCs.
<b>Presidential decrees</b>	<ul style="list-style-type: none"> <li>• Mandate that land dispute committees be established in every district</li> <li>• Mandate that there is a regional land dispute committee that can hear appeals from the district committees</li> </ul>	In practice, land dispute committees exist in approximately nine districts, and there is no functional regional committee.

### 3.3 General Challenges Related to Enforcement of the Law

There is confusion over which ministry is responsible for urban land in Puntland. The Urban Land Law 2000 gives all responsibility for urban land to the Ministry of Public Works. The draft 2005 law gives it to the municipality.

Though this law is not in force, in practice the municipality has responsibility for privately owned land. The Ministry of Public Works has responsibility for public land, of which there is very little. The Ministry of Interior also claims to have responsibility for land issues, particularly in relation to land conflict. In reality, the government has very little control over land matters, and the control it does have is held by the municipalities and relates to urban land titling.



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## 04 | CURRENT SYSTEMS OF LAND DISPUTE RESOLUTION

The tables below summarize the systems of land dispute resolution in Somaliland and Puntland.

Table 6: Systems of Land Dispute Resolution in Somaliland

	Land Dispute Tribunals	Courts	Customary System
Law applied	Formal law; members have not yet been trained on the law.	Formal law	Xeer
Procedure applied	LDT Regulation and the Civil Procedure Code	Civil Procedure Code	Informal procedure based on custom
Jurisdiction (relating to land only)	Urban land disputes over ownership, legality, sale, gift, and administration of land	Disputes over inheritance; agricultural and rural land disputes	All land disputes, including urban land
Appealed to	Supreme Court	Next court in hierarchy	If decision is lodged in court, it has the same effect as a court decision; <sup>42</sup> otherwise, it is not recognized by the courts.
Time taken	It is common for cases to take two to three years.	It is common for cases to take three to seven years or more.	Cases usually resolved within three hearings, less than one month.
Cost	USD 160–665	Three percent of the market value of the disputed land	Usually free

### Other forums to which people may go to resolve disputes:

- Committees established to hear disputes by the district administration at the district and village levels
- Regional administration authority of different regions
- Police
- Informal offices mandated to handle issues relating to Islamic sharia, including marriages and inheritance

Table 7: Systems of Land Dispute Resolution in Puntland

	Land Dispute Resolution Committees	Courts	Customary System	Islamic System – Religious Elders
Law applied	Xeer, constitution	Formal law	Xeer	Sharia
Procedure applied	Informal procedure decided by each committee	Civil Procedure Code	Informal procedure based on custom	Informal procedure based on sharia law, according to the interpretation of the elder
Jurisdiction (relating to land only)	Any land dispute that relates to ownership of undeveloped land	Disputes involving developed land	All land disputes	All land disputes

<sup>42</sup> Civil Procedure Code

	Land Dispute Resolution Committees	Courts	Customary System	Islamic System – Religious Elders
Appealed to	Supreme Court in theory under the Organization of the Judiciary Law; however, in practice courts do not recognize their decisions	Next court in hierarchy	No system of appeal, but decision may be used as evidence in court. Civil procedure allows for the judgment to be enforced by the court, but this does not happen in practice.	No system of appeal, but their judgement may be used as evidence in court.
Time taken	Up to three months	Anecdotal reports of up to five or six years	Less than three weeks	One to four weeks
Cost	USD 300 for each party	Percentage of value of land, up to USD 1,000		It depends on the case: for land disputes, sometimes USD 1,000 for each party

#### Other forums to which people may go to resolve disputes:

- Village-level dispute resolution committees, which resolve all types of administrative disputes; appointed by the district, consisting of local members of government and village elders, and vested with executive power by the district administration
- Similar committees at the district level
- Formalized alternative dispute resolution with elders, supported by UNDP

## 4.1 Customary System

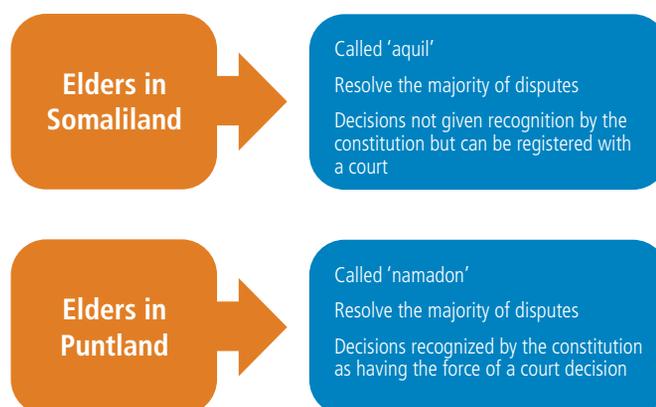
This section considers Somaliland and Puntland together. Many of the rules of *xeer* are common to all Somali communities, including the management of property resources. Different rules may exist for different livelihoods systems, such as agriculture and pastoralism. However, there are enough commonalities that for the purposes of this report it may be considered as one system.<sup>43</sup>

This report is written from a legal perspective and refers to *xeer* and dispute resolution undertaken by the *aqil* in Somaliland and *namadon* in Puntland as systems of law. It is important to acknowledge that customary law does not function according to a western conception of law. Under the customary system, norms are created over time and rely on the continued acceptance of the community to remain relevant. They are recognized, upheld, and enforced in numerous ways, ranging from informal means of reinforcing rules, such as storytelling and social pressure, to more formal processes of hearing disputes and penalizing those who transgress the boundaries of what is allowed.

The customary system is an entire social and cultural framework that shapes and regulates the behaviour of all members of the community in all areas of life. It is also the system through which the vast majority of disputes are

resolved, including those relating to land. Any attempted change to the legal system, formal or otherwise, must take custom and the all-encompassing role of the elders into account in order to have any relevance to contemporary Somali society.

*Xeer* is the element of the customary system most closely resembling a system of laws. *Xeer* can be divided into two broad categories: *xeer guud*, which regulates day-to-day social interactions, civil affairs, and dispute resolution processes; and *xeer gaar*, which describe rules relating to the economy and relationships relating to economic production. It is not a codified body of law and is passed down orally from one generation to the next.<sup>44</sup>



<sup>43</sup> A. A. Osman Shuke, 'Order out of Chaos: Somali Customary Law in Puntland and Somaliland', *Accord*, 2010, Vol. 21, pp. 58–59; A. Le Sage, 2005, *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives*, Centre for Humanitarian Dialogue; UN-Habitat, 2006, *Somaliland, Puntland State of Somalia: The Land Legal Framework – Situation Analysis*.

<sup>44</sup> G. Norton, 2008, *Land, Property, and Housing in Somalia*, NRC, UNHCR, and UN-Habitat, p. 157.

The customary system is resilient, trusted by communities, and capable of resolving a high volume of disputes through a consensus-based, conciliatory approach. Rules are developed by elders over time, and contain both basic principles and rules intended to facilitate the relationship between clans and sub-clans.<sup>45</sup>

The customary system is extremely effective at negotiating disputes to avoid conflict, but provides limited protections to women and vulnerable populations such as refugees, IDPs, and minority groups.<sup>46</sup>

#### 4.1.1 Description of Customary Mechanisms

Under the customary system, elders from both sub-clans in a dispute will come together in equal numbers to resolve the matter. There must be a distinction drawn between individual disputes and communal matters. Historically, Somali society has been organized in a manner that prioritizes the interests of the community over those of the individual, and there has been limited need for the involvement of the elders in personal, non-clan-related disputes.<sup>47</sup> However, as more emphasis is placed on individual interests, it has become more common for people to take their personal matters to the elders for resolution. The different ways in which the elders hear each type of dispute are described in the table below.

Table 8: Customary dispute resolution for individual and communal matters

Individual Matter	Communal Matter
<p>If a dispute occurs that concerns two individuals only and is not seen to affect the interests of the community as a whole, such as a disagreement over money:</p> <ul style="list-style-type: none"> <li>• One party to the dispute may inform an elder from his sub-clan.</li> <li>• That elder may then contact an elder from the sub-clan of the other disputant, or from their own group of elders if the disputants are from the same sub-clan, who will approach the other party to the dispute to determine his or her version of events.</li> <li>• Sometimes, the elders will seek written declarations from both disputants indicating that they accept their authority in resolving the case, and have these declarations notarized.</li> <li>• The elders will then come together with the male disputants to discuss the issue. Today, in urban areas, the elders may also invite female disputants to attend the meeting. In rural areas, a woman must be represented by a male relative.</li> <li>• These are informal proceedings that involve negotiation between the parties, but during which xeer is not officially applied.</li> <li>• Some reports indicate that minutes are taken and kept in these cases.<sup>48</sup></li> </ul>	<p>Matters seen to affect the interests of the community as a whole include criminal matters such as rape and murder, as these are seen to affect the fabric of the society. If such a matter is reported:</p> <ul style="list-style-type: none"> <li>• The elder who receives the report will call together a group of two or three elders and inform the sub-clan of the other person involved, who will form a group of elders of an equal number.</li> <li>• The elders will ask the people directly involved in the matter for their version of events, but they will not be invited to speak at the proceedings. The elders speak on behalf of all disputants, male and female.</li> <li>• The proceedings will take place in the open, under a tree.</li> <li>• Women are generally excluded from attending, though they have begun to attend in small numbers in urban centres.<sup>49</sup></li> <li>• These hearings are more formal and explicitly apply xeer, whereas hearings in individual cases will be more focused on mediation than on the application of law.</li> <li>• Some reports indicate that minutes are taken and kept in these cases.</li> </ul>

In practice, urban land disputes may be resolved through either of these systems. Urban land disputes may be seen to affect the interests of the community where it is likely they will give rise to conflict or where the interests of multiple people are affected.

#### 4.1.2 Description of Sharia Dispute Resolution Mechanisms

The different ways in which land disputes are brought to religious experts in Somaliland and Puntland are discussed in Section 2.1. The main advantage of these mechanisms is that they are trusted and perceived as correctly applying sharia law to often complex legal problems.

In Puntland, some people go to specialized sharia dispute resolution mechanisms for the resolution of land disputes. It appears that people utilize these offices because significant weight is attached to the declaration of a religious elder that a piece of land belongs to a certain person. However, these offices are extremely financially inaccessible to most people, with some participants in the legal round table claiming that the person bringing the case may be charged up to USD 700 for the services.

Sharia is not a unified body of law internationally and is subject to interpretation. Neither Somaliland nor Puntland have codified bodies of sharia law, though some legislation does attempt to set out the rights and

<sup>45</sup> Food and Agricultural Organization, An Analysis of Legal Issues Related to Land.

<sup>46</sup> International Development Law Organization, 2010, Evaluating the Effectiveness of Legal Empowerment Approaches to Customary Law Reform in Somaliland and Puntland.

<sup>47</sup> Note, however, that crimes against the person, such as rape or murder, are considered clan matters.

<sup>48</sup> This was stated by all elders consulted in Puntland and most in Somaliland, but could not be independently verified.

<sup>49</sup> Ibid.; consultations and legal round tables in Puntland and Somaliland; observance of a customary hearing in Hargeisa, August 2015.

responsibilities granted under sharia.<sup>50</sup> The land laws described in this report do not codify sharia law. Religious experts involved in resolving or advising on disputes therefore rely on their own expertise and interpretations, which may vary according to where they have studied and their own opinions and experiences.

In both Puntland and Somaliland, women may approach the religious leaders themselves and may be present when the leaders resolve or advise on cases, but would be unlikely to do so. Generally, women would be represented in these processes by a male relative. If they do attend, their husband, brother, or father will generally speak for them.

#### 4.1.3 Description of Xeer

A UN-Habitat study undertaken in 2005 – substantiated by the comprehensive Norwegian Refugee Council, UNHCR, and UN-Habitat assessment of housing, land, and property issues in 2008 – found that the rules laid down by xeer regarding land relate predominantly to grazing land, with relatively detailed laws relating to the relationship between nomadic pastoralists and host communities.<sup>51</sup> The rules regarding urban land are less clearly defined. However, unlike in many other jurisdictions, where both customary and

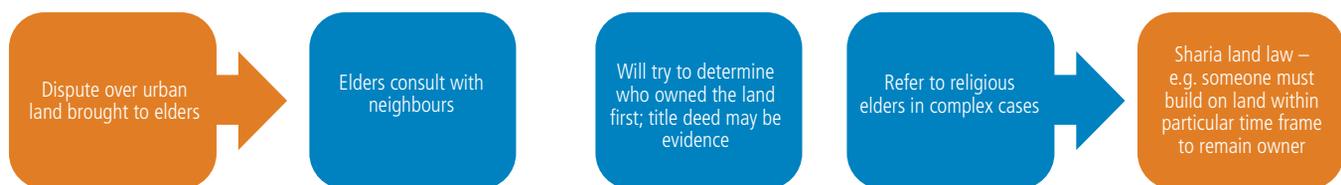
private land belonging to individuals is recognized, traditional elders in Somaliland and Puntland do adjudicate on disputes relating to urban and privately owned land.

Under xeer, disputes are resolved on the basis of precedent (xissi) and take into account the entire history of disputes and relationships between the sub-clans bringing the dispute. When disputants come to the elders, the first point of reference is whether a similar dispute between the same sub-clans has been resolved through the customary system before. If it has, the reasoning employed in that matter will be repeated. The second point of reference is the relationship between the two sub-clans generally, past favours and grievances, and the existent ongoing disputes relating to other issues.

Most urban land cases hinge on the elders determining who the rightful owner of the land is. Elders have established practices for making these determinations, illustrated by the diagrams below. These diagrams are based on interviews with elders in Hargeisa and Garowe, as well as research undertaken by Gregory Norton in the land, property, and housing study referenced above<sup>52</sup> in the southern and central regions of Somalia. They are most likely not an exhaustive account of elders' practices within either region.



*Evidence considered by elders when resolving urban land disputes: Somaliland*



*Evidence considered by elders when resolving urban land disputes: southern regions*

<sup>50</sup> It is important to note, however, that Somali legislation is valid only insofar as it complies with sharia; some Somali laws have been written or vetted by sharia law experts, and some do attempt to codify rights under sharia.

<sup>51</sup> G. Norton, 2008, Land, Property, and Housing in Somalia, NRC, UN-Habitat, and UNHCR.

<sup>52</sup> Ibid.

#### 4.1.4 Description of Customary Procedure

In formal cases where the elders determine that the issue in dispute affects the community as a whole, relevant procedures and principles of *xeer* in both Puntland and Somaliland include the following:

- All arguments are stated orally, and rhetoric plays an important role.
- Disputed facts can only be considered valuable evidence if there are three witnesses that have officially attested to them.
- The elders must reach a unanimous decision. If they cannot reach an agreement, they should consult an elder from a neighbouring family to decide the case.
- Verdicts are stated orally. If one of the parties does not agree with the verdict, they have the right to appeal. A different group of elders will come together to rehear the case, if both parties assent. This may continue for up to as many as twelve appeals.<sup>53</sup>

The procedure can be summarized as follows:



*Today, this often happens through calls to their phones.*

The elders generally try to ensure that the 'losing' party also incurs some benefit to prevent conflict and ensure finality in the case.

#### 4.1.5 Advantages

The advantages listed below pertain predominantly to males of majority clans. The women and minority clan members consulted agreed that the customary system was affordable and efficient, but that this mattered less when there was no guarantee the decision would be fair.<sup>54</sup>

Various studies have been undertaken to better understand why Somalis continue to trust customary systems over the formal courts. *Xeer* has been used for centuries across Somalia and has remained consistent and capable of producing results throughout decades of conflict and changes in government. In both the British Somaliland Protectorate and Italian Somaliland, the colonizing powers appointed chiefs for each sub-clan to assist them in the running of their administrations.<sup>55</sup>

The appointment of a single person to fulfil this role, which included a government stipend, weakened the communal decision-making processes of the clan *diya*-paying group and created competition among clan elders to be appointed to this position.<sup>56</sup> Despite this, however, the process of resolving disputes by convening a group of elders remained, and the system retained the trust of the community.

The disruption to the system caused by colonization was not as severe in the former British Protectorate of Somaliland as it was in the south of Somalia. In these southern regions, however, though the colonizing powers did more to weaken the clan system and the use of *xeer*, they also used the formal law to arbitrarily arrest and punish people – so that most felt there was no real alternative to turning to the customary system in order to access justice.<sup>57</sup>

<sup>53</sup> A. Wauters, 2013, Research into a Harmonised Legal System for Somalia and Analysis of its Different Judicial Systems, [http://lib.ugent.be/fulltxt/RUG01/002/060/667/RUG01-002060667\\_2013\\_0001\\_AC.pdf](http://lib.ugent.be/fulltxt/RUG01/002/060/667/RUG01-002060667_2013_0001_AC.pdf).

<sup>54</sup> Interviews with women and minority clan members conducted in Hargeisa on 10 September 2015.

<sup>55</sup> Professor Michael D. McGinnis, 2002, 'The Divergent Paths of Somalia and Somaliland: The Effects of Centralization on Indigenous Institutions of Self-Governance and Post-Collapse Reconciliation and State-Building', paper presented at the Institutional Analysis and Development Conference.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

### Advantages That Can Be Transferred to the Land Dispute Tribunals/Committees

- **Informal proceedings:** The informal nature of proceedings ensures that cases are efficient and uncomplicated, and do not require the appointment of legal counsel. It is practical in the Somali context to follow the customary practices of contacting possible witnesses and reviewing any and all evidence, rather than applying strict rules of procedure.
- **Focus on mediation and mutual satisfaction:** Given the potential within the current system for multiple parties to hold legitimate interests in the same land, the LDTs may benefit from placing an increased emphasis on mutually satisfactory solutions.
- **Inclusion of traditional elders:** Elders are seen in both Puntland and Somaliland as the rightful arbitrators of land disputes. At present, the LDTs in Somaliland refer the disputes to elders in the first instance but do not involve elders within the LDT. In Puntland, the LDRCs include at least one elder and one religious leader, and usually more, in each committee.

This report recommends that the regulation specifies that decisions made in customary courts involving urban land are appealable to the LDTs; that one permanent traditional elder be appointed to the LDT; and that the disputants should also be able to bring their own elders (chosen by the disputants) to advise the tribunal on a case-by-case basis. Disputants should bring one elder each in cases where each party privately owns the land through the formal system, and two elders where one party contests that the land is communally owned. If the land is found to be communally owned, the LDT will not have jurisdiction over that dispute. The practice of an individual purporting to unilaterally sell communal land should be made illegal, and if this is what the case is about, the LDT should refer the dispute to the courts. This report also recommends that a registrar of elders who have sat in the tribunal before is kept within the LDT so that they can be called as expert witnesses on *xeer* and other matters when necessary.

### Elders on the Land Dispute Tribunal

Of the 16 women and 12 elders interviewed or consulted for this report, 15 women and all the elders said that they believed there should be a permanent elder on the LDT. This suggestion also had widespread support at the round tables of lawyers and among LDT and LDRC members and other stakeholders in Puntland. In Somaliland, it was notable that lawyers and LDT members did not believe that elders should have a role on the LDT. Regional and international land experts with whom this recommendation was discussed considered it advisable to have a group of four or five elders to sit on the LDT on a rotational basis, who may be vetoed by LDT users if they are considered not to be independent on a particular case. This report also recommends that the elder on the tribunal is assisted by additional elders nominated by each disputant: one each if it is uncontested that the land is privately owned, and two each if any party claims it is communally owned.

### 4.1.6 Challenges

Difficulties in adapting: *Xeer* has experienced challenges in adapting to the increasing urbanization of communities in Somaliland and Puntland, where multiple clans and sub-clans live together in the same area.<sup>58</sup> Further, *xeer* is traditionally only used to resolve disputes seen to affect the interests of the community as a whole; disputes over privately owned urban land generally do not do so.

While the customary system may still be best placed to resolve disputes over agricultural and grazing land, much of which is held customarily, its ability to resolve disputes over privately owned urban land is compromised by its bilateral nature and the lack of specialized knowledge by elders of the formal law, as well as the details of who may have bought what plot of land.

According to certain studies, respect for clan authority has declined among new social groups in Somali society, including young people and returned members of the diaspora.<sup>32</sup>

<sup>58</sup> Andre Le Sage and Shuraako, 2005, *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives*, Centre for Humanitarian Dialogue, p. 36.

Lack of human rights-based and procedural fairness protections: The customary system provides limited protections to vulnerable populations such as women, refugees, IDPs, and members of minority sub-clans. As it is clan-based, stronger clans have more bargaining power, leaving IDPs and minority clans in a vulnerable position. Women have no representation in either the supply or demand side of the customary justice system. Further, *xeer* does not recognize the rights of women to inherit property. It is notable, however, that some of the elders interviewed in researching this report had made decisions in land cases to protect and promote the rights of women and were interested in developing their own capacity to ensure the rights of women were recognized and upheld. More research and deeper analysis deconstructing the use, control, and ownership of land is also required to determine how, where, and to what degree the customary system disadvantages women and vulnerable groups and how this may be comprehensively addressed.

*“Ku qabso ku qadimayside”* and *“Ku habso”*: Another challenge with the customary system is that the practice of ensuring all parties obtain some benefit encourages some people to instigate the dispute resolution process so that they are awarded a portion of land, even if they ‘lose’ the case and regardless of whether or not they have a legitimate interest in it. This phenomenon is known locally in Somaliland as *“ku qabso ku qadimayside”* and in Puntland as *“ku habso”*.

## 4.2 Formal Court System

It should be noted from the outset that the application of the formal law through formal mechanisms has the potential to encourage land grabbing by private buyers from pastoralists and communal landowners by prioritizing legal documentation and contractual agreements. This report recommends the increased involvement of the elders in cases where one party alleges the land is communally owned, as recommended in Annex V.

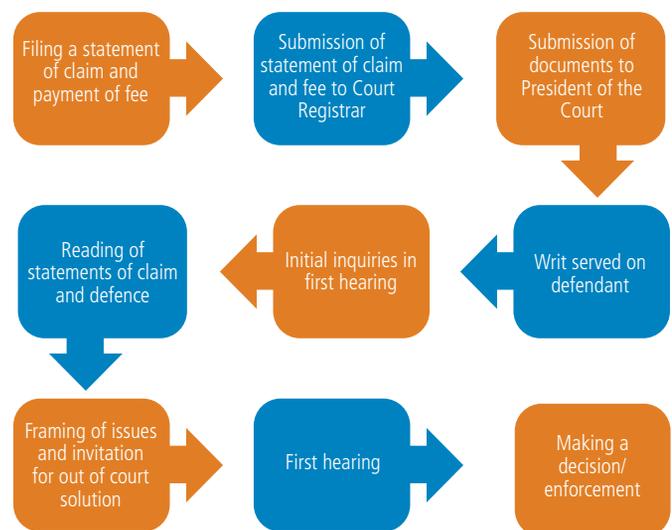
## Somaliland

The territory of Somaliland is composed of six officially recognized regions<sup>59</sup> with several districts in each.<sup>60</sup> Each region has its own district courts, regional court, and court of appeal. The Supreme Court is situated in Hargeisa, and it has power of jurisdiction over the whole territory of Somaliland. Before the passage of Law No. 17, land disputes were heard at first instance in the regional court. The district courts do not have jurisdiction over land disputes. However, some cases involving disputes over land may enter the district courts if they are part of an inheritance case, over which they have jurisdiction.

The lack of jurisdiction by the district courts over land cases means that, if their district is not near the regional centre, people may have to travel a very long way to access the court. According to Law No. 17, regional courts no longer have jurisdiction over disputes involving urban land, which fall under the exclusive jurisdiction of the LDTs.

### 4.2.1 Description of Procedure

The procedure for resolving civil disputes, including land disputes, is set by the Civil Procedure Code. A list of steps involved in the process of taking a civil case is included in Annex XIV. These steps directly correspond with the steps undertaken by the LDTs, described in Annex XV. The chart below summarizes this procedure.



<sup>59</sup> Other regions have been created for political reasons, but are not officially recognized by the central Government of Somaliland.

<sup>60</sup> There is confusion regarding how districts are defined.

#### 4.2.2 Advantages

The court's procedural fairness safeguard guarantees make it more popular with groups that are marginalized by the customary system but are able to access the formal courts – namely, women and individuals from minority clans who are able to afford the court and lawyer fees.<sup>61</sup> It is unclear whether this is also true for IDPs, as it was not possible to find examples of IDPs who have taken their disputes to the LDT.

##### Advantages That Can Be Transferred to the Land Dispute Tribunals

- **Clear and efficient means of enforcement:** Decisions in land disputes heard at the district court are enforced by the district court. Decisions referred by the district court to the elders are then submitted to the regional court for enforcement. This report recommends that, where possible, to avoid confusion and promote procedural efficacy, decisions should be enforced by the LDT themselves.
- **Safeguards for users:** The LDT applies the same procedural laws as the formal court. However, as the formal courts have been unsuccessful in ensuring access to justice for the most vulnerable, as discussed below, it is recommended that the LDT include provisions that explicitly and proactively protect the right to access and fair hearing for women, minority groups, and IDPs.

#### 4.2.3 Challenges

Challenges with the formal courts have been discussed previously: the process is lengthy, expensive, and inaccessible to people living outside urban centres. The courts continue to discriminate against vulnerable populations, are distrusted by the community, and have gaps and weaknesses in the formal legal framework, especially in cases of disputes over contradictory documentation. It can be seen from the process map above that there are nine steps between filing a case and making a decision. In the Garowe LDRC, by way of contrast, there are four steps: the plaintiff makes the complaint; the plaintiff and defendant are called to appear before the committee; each party states their case; and the committee comes to a decision.

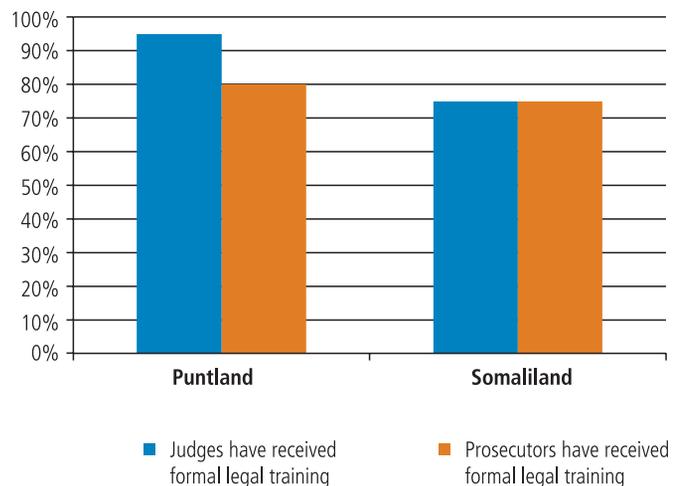
### Puntland

Prior to 1998 in Puntland, the court system was organized as it is in Somaliland and the rest of Somalia: district courts as the court of first instance, followed by regional courts, courts of appeal, and the Supreme Court in Garowe. In 1998, an amendment was made to the Organization of the Judiciary Act that combined the district courts and regional courts into one, named the 'Court of First Instance'. This amendment was made in response to the dearth of legal professionals in Puntland and the lack of support and funding for the courts.

According to the amended law, each district should have a court of first instance. In reality, these existed in only 23 out of the 42 districts of Puntland in 2010, and information was received that only 19 were functional at the time of writing this report. There are three functional Appeal Courts in Bossaso, Garowe, and Galkayo, and one Supreme Court in Garowe.<sup>62</sup>

In theory, the courts in Puntland follow the Civil Procedure Code, as in Somaliland, and confer the same benefits and suffer from the same disadvantages. However, it is noticeable that the formal legal system in Puntland is significantly less developed than it is in Somaliland and that lawyers are less familiar with the contents of the code. Prior to 2010, when the Hargeisa LDT was established, there was only one trained lawyer based permanently in Puntland.

Figure 2: Technical capacity of the judiciary in Somaliland and Puntland



<sup>61</sup> This was stated by minority women interviewed for this report and in focus groups on this issue.

<sup>62</sup> Puntland Development Research Centre and Interpeace, 2010, Mapping the Foundations of Peace: Challenges to Security and Rule of Law, Democratisation Process and Devolution of Power to Local Authorities, Pillars of Peace, Somalia Programme; Interview with the Dean of the Law School of Puntland State University on 29 July 2015.

This situation is changing. Puntland State University Law School is now well respected and has been responsible for the legal education of many lawyers, legal aid providers, police, judges, and members of the Ministry of Justice. UNDP representatives and legal aid providers confirm that in Puntland around 95 percent of judges and 80 percent of prosecutors have received formal legal education.<sup>63</sup> However, it is still clear when consulting with legal experts within Puntland that this is a new field and that a specialized group of land lawyers has not yet formed. Many legal practitioners were not fully aware of the contents of the applicable land laws, and all agreed that many decision makers rely heavily on the rules of sharia. For the purposes of this report, the benefits and challenges of the formal legal system should be considered similar to those in Somaliland, but with the added challenge that specialized knowledge and education in land law has not yet been developed.

### 4.3 Land Dispute Tribunals and Committees

#### Somaliland

Article 28 of Law No. 17 establishes the Land Dispute Tribunals: quasi-judicial administrative bodies composed of seven members with knowledge and experience in land issues nominated by various ministries and appointed by the Minister of Interior. These tribunals were established and have been supported by the UN's Joint Programme on Local Governance and Decentralized Service Delivery. The first LDT was established in Hargeisa in 2010, and two more were established in Boroma and Berbera in 2015. The law and regulation governing the LDTs, their objectives, and their composition are explained in detail in Sections 2.2 and 3.1 and Annexes III and IV of this report.

#### 4.3.1 Jurisdictional Issues

The jurisdiction of the LDTs is poorly defined. Some of the jurisdictional limitations are clear: for example, the law and the regulation exclude the LDT from hearing certain urban land disputes, including those relating to land allocated for public purpose, those involving a criminal offence such as trespass over which a case is pending in court, those relating to land allocated for government buildings, and those relating to land which cannot be owned under the legislation or other relevant laws.

There are also numerous and substantive questions about the jurisdiction of the LDTs which remain unanswered. These are outlined below.

**Geographical jurisdiction** – districts: The law envisions that the LDTs will be established in each district. However, there is confusion over what constitutes a district for the purposes of the law and the regulation. Some districts in Somaliland have properly constituted local councils. It seems that this is necessary for the purposes of the law, given that one member of the LDT should be appointed from the local council. However, some areas have only executive appointees from the regional authority. It is unclear whether these areas should also have their own LDTs.

**Geographical jurisdiction** – master plan and land under administration of the municipality: Law No. 17 limits the mandate of the LDTs to disputes over land in the master plan, which does not exist, and under the jurisdiction of the municipality, which is not effectively defined by the law.

**Subject matter jurisdiction** – ownership, legality, sale, gift, and administration of land: The LDT Regulation adopted in September 2014 states that the LDTs have jurisdiction to adjudicate disputes over the ownership, legality, sale, gift, and administration of land. It is unclear whether disputes relating to land use would fall within the jurisdiction of the LDT. The use of the term "administration of land" is also vague, as land administration generally refers to the management of the land by the government.

**Subject matter jurisdiction** – developed vs undeveloped land: One of the reasons for the establishment of the LDTs was an increase in the grabbing of undeveloped land. Most disputes that come before the tribunal therefore relate to land that has not been built on. A case brought to the Hargeisa LDT on 11 August 2015 concerned a dispute over land on which some small structures had been built. The respondent who built the structures argued that the fact that the land was developed meant that the LDT did not have jurisdiction over the dispute. The LDT must now decide whether it has jurisdiction to hear the dispute.

<sup>63</sup> UNDP, United Nations Development Programme in South Central Somalia, Puntland and Somaliland, <http://www.so.undp.org/content/dam/somalia/docs/FactsSheet/Bringing%20justice%20to%20the%20most%20vulnerable%20.pdf> (accessed 26 June 2015)

### 4.3.2 Description of Procedure

The LDTs hear cases using the procedure set out in the LDT Regulation, which in most respects refers to the Civil Procedure Code. The regulations are not yet followed closely in Boroma or Berbera, where the LDT members are awaiting training. The procedure followed by the LDTs is described in Annex XV. The points at which the procedure departs from that followed by the courts is explained in the table below.

Table 9: Procedures - Filing a case: courts and LDTs

Procedure	Courts	Land Dispute Tribunal
Filing a statement of claim	<p>A statement of claim must include the details of the plaintiff and their agent/lawyer, as well as the following:</p> <ul style="list-style-type: none"> <li>• "Title of action"</li> <li>• Indication of evidence to be submitted</li> <li>• Issues of dispute</li> <li>• Cause of action and brief summary of facts</li> </ul> <p>These are confusing descriptors for non-lawyers.</p>	<p>As well as the details to be included according to the Civil Procedure Code, the statement of claim must include the following:</p> <ul style="list-style-type: none"> <li>• Details and size of the land in dispute</li> <li>• How ownership was acquired</li> <li>• 'Etc.', as a non-specific 'catch-all' category</li> </ul> <p>This second lot of details is contained in a separate provision, which is confusing and which disputants may miss without the assistance of a lawyer.</p>
Payment of fees	<p>A tariff specifying payable court fees is released by the Ministry of Justice each year and applies to the whole of Somaliland. The current tariff makes the payable court fee in land cases 3 percent of the value of the land.</p>	<p>Each local government produces their own rules specifying the payable fee for accessing the LDTs. There appears to be little guidance on how these fees should be set. This is described in more detail in Section 2.1.1.</p>
Initial inquiries	<p>The court will inquire whether the parties or their representatives or lawyers and any other persons who have an interest are present, and if they are not, may take certain steps to order their presence or adjourn the case.</p>	<p>The LDT reports that there is confusion over this requirement, because there may be parties who have some interest in the land who have not been named in the dispute, and it is unclear whether the LDT should also ensure that they attend the hearing.</p>
Reading of statements of claim and defence	<p>The secretary of the court reads the statement of claim and defence. If one party wishes to amend the statement of claim, the court should adjourn the case.</p>	<p>The regulation says the same thing, though in practice the secretary allows the parties to amend their claim orally without adjourning the case.</p>
Enforcement	<p>The court enforces its own decision.</p>	<p>The LDT refers the case to the regional court for enforcement.</p>
Appeal	<p>Court decisions can be appealed to the court of appeal and then to the Supreme Court.</p>	<p>LDT decisions are appealable only to the Supreme Court.</p>

Law No. 17 and the regulation are not clear on how the LDT should respond to disputes submitted for them to hear which the customary system has already resolved. In practice, these decisions are accepted as evidence. However, if the decisions made by the customary system have been taken to the regional court for enforcement, they have the same force as a regional court decision.

### 4.3.3 Advantages

The legal community and people with urban land disputes accept the LDT in Hargeisa as the formal mechanism for resolving land disputes within the municipality. This in itself is a significant achievement; in addition, the LDT appears to have succeeded in building positive relationships with both the courts and the traditional elders.

### 4.3.4 Challenges

The major challenges with the LDTs in Somaliland are as follows:

- **Jurisdictional confusion:** Issues with jurisdiction are outlined in detail in Section 4.3.1.

- **Inclusion of ministries that do not have a mandate over urban land:** The LDT consists of five members of the central government and only two members of the local government, and includes representatives from the Ministries of Agriculture, Endorsement and Religious Affairs, and Rural Development. The LDT does not have jurisdiction over agricultural or rural land or inheritance cases, which may require a religious expert.
- **Centralized power base:** The LDTs sit within the local government. However, five of the seven members are appointed from central government ministries, and there is no requirement that they be resident in the district in which the tribunal sits.
- **Gender balance:** Of the 21 members of the 3 LDTs in Somaliland, only 1, from Boroma, is a woman. Research indicates that a 'critical mass' of 30 percent in decision-making bodies is necessary to ensure that the unique experiences of women are recognized and respected.<sup>64</sup>
- **Lack of legal capacity:** According to the regulation, LDT members should have a legal background. In practice, they do not and have not received any legal training. It is also unclear which law they should apply when resolving disputes.
- **Cumbersome legal procedures:** The regulation bases its procedures on the Civil Procedure Code, which is overly complicated.
- **Length of cases:** Research and interviews indicate that cases are taking from six months to three years to be resolved.
- **Legitimacy:** Elders are seen as the legitimate mediators for land issues and are not represented in the LDT system. The LDT refers cases to elders, but does not include them in the tribunal. The involvement of elders is important, considering that the majority of people continue to go to the customary system for the resolution of their disputes.<sup>65</sup>
- **Lack of explicit constitutional protections for women, minority groups, and IDPs:** Women from both minority and majority clans interviewed for this report confirmed that, in their opinion, they are not treated equally before the tribunal compared to

males from majority clans. It is unclear how many IDPs (if any) have used the LDT. There are no proactive measures within the regulation to protect and empower women, minorities, or IDPs, such as discounted access fees. LDT members are not trained in these areas.

- **Accessibility of the tribunals:** Accessing the LDT requires the payment of a fee. In Hargeisa, these fees range from USD 180 to 750. This is less expensive than the courts, but as previously stated, the average annual earning of a Somalilander is USD 375.<sup>66</sup> As the cities of Hargeisa, Boroma, and Berbera spread, it is becoming increasingly difficult for those on the outskirts to travel to the LDTs in the centres.
- **Appeal and referral pathways:** The referral pathways to other institutions are not clear. Neither the Urban Land Management Law nor the regulation provides grounds for appeal over LDT decisions, and there are no rules for judicial review of administrative decisions. In practice, the Supreme Court hears appeals from LDT decisions, in accordance with the Civil Procedure Code.
- **Accountability and independence:** There is no Code of Conduct or disciplinary rules to safeguard the independency and impartiality of LDTs. Civil society and NGOs have no role in overseeing or reporting on the LDTs.
- **Lack of administrative power centre/focal point:** The LDT comprises of members of five different ministries, and though the Ministry of Public Works appoints the chair, there is no centralized decision-making power over the tribunal.

The Urban Land Management Law and the LDT Regulation suffer from gaps and weaknesses in drafting, which mean that they have been ineffective at addressing these issues.

## Puntland

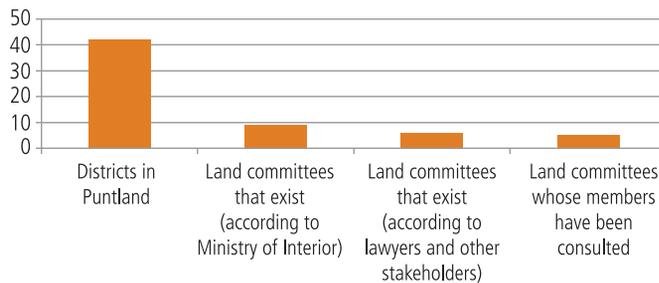
The Ministry of Interior is in the process of establishing LDTs in Puntland. A regulation has been drafted. The draft regulation does not respond to the reality that there are already LDRCs functioning in Puntland. The exact number of LDRCs currently established in Puntland is unclear.

<sup>64</sup> This number was the UN Economic and Social Council international target for 2005 and was endorsed in the United Nations Beijing Declaration and Platform for Action.

<sup>65</sup> UNDP; this was confirmed at all consultative meetings.

<sup>66</sup> World Bank, 2014, 'World Bank GDP and Poverty Estimates for Somaliland', <http://www.worldbank.org/en/news/press-release/2014/01/29/new-world-bank-gdp-and-poverty-estimates-for-somaliland>

Figure 3: Presence of Land Dispute Resolution Committees in Puntland



#### 4.3.5 Garowe Land Dispute Resolution Committee

It was agreed by participants in consultations and several interviews that the LDRC in Garowe is the most developed and functional committee of its kind in Puntland. The chairperson of the Garowe committee stated that members of similar committees in other regions had occasionally visited Garowe to learn from their experiences as they made decisions on how to establish their own dispute resolution mechanisms. A detailed description of the committee is included in Annex XII and summarized below:

- **Composition:** The Garowe committee sits within, but is independent of, the local government. It is made up of five members:
  - A chairperson, who also functions as the secretary, appointed by the local government
  - A deputy chairperson, appointed from the Ministry of Interior
  - A member appointed from the Ministry of Security
  - One religious expert and one elder from the area
- **Regularity:** Theoretically, the committee sits on a permanent basis, but members are not full time and in practice come together on an ad hoc basis whenever a person brings a dispute to the attention of any one of them.
- **Support:** Committee members receive the proceeds of the USD 300 fee charged to each disputant in a case. The fees charged for accessing the committee are pooled to pay the committee members and the costs associated with renting office space and travelling to the locations of the disputes.
- **Jurisdiction:** The committee hears disputes only on undeveloped land in the district in which the committee sits. This may include both urban and rural/agricultural land.
- **Procedure:** There is no formal procedure through which a person should bring a dispute: they may notify any committee member through any means, including verbally. Both disputants must pay USD 300 to the committee for the resolution of the dispute. The committee will then follow a simplified procedure reminiscent of the procedure followed in customary courts. Disputants accessing the committee may be represented by lawyers if they feel this is needed, but in practice disputants almost always represent themselves. Committee members try to resolve disputes by consensus, but take a vote if necessary. The secretary includes the reasons for the decision in a document.
- **Appeal and referral process:** If the decision is contentious, the committee will refer the decision to religious leaders for verification that it is in accordance with sharia. The appeals court does not consider itself to have jurisdiction to hear appeals from the committees.
- **Laws applied:** The committee considers itself bound by xeer, sharia law, and the Puntland constitution.
- **Caseload:** The committee chairperson and three other members of the committee agreed that their caseload is about eight to ten cases per month.

The members of the committee do not receive a government salary for their committee work. The members of the local government already receive a salary, but the elders and religious leaders do not. Committee members do receive the proceeds of the USD 300 fee charged to each disputant. These fees are deposited into a pool, which pays the committee members and is used for costs associated with renting office space and travelling to the location of the disputes. In the current context, the LDRCs are therefore self-sustaining. However, this report recommends that the user fees be reduced and charged to one or both parties as an order of costs when the case has been resolved. If these recommendations are implemented, additional funding will most likely be necessary.

#### 4.3.6 Land Dispute Resolution Committees in Other Districts

In Gardo, Bossaso, Eyl, and Banda Bayla, committees exist within the local government that specialize in resolving land disputes. While these committees have varying organizational structures, all are restricted to resolving disputes over undeveloped land.

The composition in other districts is as follows:

Gardo	Bossaso	Eyl	Banda Bayla
<ul style="list-style-type: none"> <li>4 members</li> <li>2 from the local government, 1 religious expert, and 1 elder</li> </ul>	<ul style="list-style-type: none"> <li>7 members</li> <li>Ad hoc basis</li> <li>Chaired by deputy mayor</li> <li>Includes elders and local government<sup>67</sup></li> </ul>	<ul style="list-style-type: none"> <li>Chaired by local government</li> <li>Includes elders</li> </ul>	<ul style="list-style-type: none"> <li>Includes local government members, religious experts, and elders</li> <li>Ad hoc basis</li> </ul>

#### 4.3.7 Other Dispute Resolution Mechanisms

In Puntland, as discussed in Section 4.1.2, many people go to religious leaders for the resolution of land disputes. Additionally, some districts have established dispute resolution committees charged with the resolution of all forms of administrative disputes; these comprise members of the district government at both the district and village levels. A presidential decree attempted to establish regional land dispute committees, but these do not exist in practice. Some participants at the consultation spoke about disputes being resolved directly by members of the local government, either under the mayor's office or in sub-offices relating to land.

#### 4.3.8 Advantages

Locally owned and led: The main advantage of the LDRC system is that it has developed organically at the grass-roots level and is driven by user need and the initiative of local governments and elders.

**Simplified procedure and efficiency of cases:** The LDRCs are capable of resolving disputes quickly, without cumbersome procedural requirements.

**Legitimacy:** According to the members of the Garowe Committee, the inclusion of elders gives them a legitimacy they would not enjoy if the committee was constituted of only government personnel.

**Hybridity:** The LDRCs are truly hybrid institutions. Elders on the Puntland committees are active decision makers, and there are a significant number of them, especially in the committees outside Garowe. The committees

also follow a simplified procedure, more closely aligned to customary proceedings, and focus on mediation rather than arbitration. There is also an interconnectedness among the committees, the customary system, and the religious elders.

**Decentralized solution:** The committees sit within the municipality, and the government representatives on most of these committees are from the municipal government. They are appointed by the mayor.

#### Advantages That Can Be Transferred to Formalized Land Dispute Committees

- Simplified procedural rules:** The draft regulation should be amended to follow more closely the procedural rules currently followed by the committees.
- Harmonization with customary system/sharia law:** The committee should continue to include elders in the manner described in the first part of the recommendation section.

<sup>67</sup> Exact composition unclear

#### 4.3.9 Disadvantages

**Fairness and accountability:** The committees do not have built-in human rights or procedural fairness safeguards. There is no code of conduct, and it is unclear to whom they are accountable. Civil society has no role in overseeing or reporting on the conduct of the LDRCs.

**Lack of enforcement:** It is very difficult for the committees to ensure that their decisions are enforced. The decision is supposed to be submitted to the court of first instance for enforcement, but in practice either this is not done or the court of first instance itself is unable to implement.

**No uniformity:** It is unclear how many committees exist in reality. There are no uniform rules for the committees, and they were not established under any overarching law or policy.

**Jurisdictional challenges:** At present, the committees consider themselves to have jurisdiction only over disputes involving undeveloped land. Unlike the Somaliland LDTs, however, they consider urban, agricultural, and grazing

land to be within their mandate. In consultations on this issue, both local government representatives and legal professionals considered that the new LDTs should continue to hear disputes only over undeveloped land, as this enabled them to manage their caseload more effectively and prevented jurisdictional confusion.

**Unclear appeal and referral process:** Currently, some decisions of the committees are being submitted to the court of first instance for enforcement, but none are being appealed to any court.

**Lack of support, training, and resources:** It is now necessary that government and technical experts provide these committees with capacity building and support.



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## 05 | RECOMMENDATIONS

These recommendations are divided into three categories:

1. Recommended amendments to be made to the law and regulation to be commenced with immediate effect. Additional consultations with relevant stakeholders will be necessary to define in exact detail what the amendments should include, and to ensure buy-in for the changes they will make.
2. Recommendations for follow-on project activities on the LDTs and how to carry them out, including the following:
  - a. Those to be commenced with immediate effect
  - b. Those to be undertaken within the next two years
3. Recommendations for activities to be undertaken outside the LDTs and how to carry them out.
4. Areas to be addressed before amendments and implementation and how this should be approached. This research is vital to the success of future phases of the project.

Table 10: Recommended Amendments To Be Made to the Law and Regulation

### SOMALILAND

Law No. 17	Definition section	Key terminology, including urban land, customary land, private land, land tenure, transfer of land, use of land, land administration, customary elders, and religious elders.
	Temporary land permits	Provide that land titles and building permits are issued at the same time, and remove the distinction between temporary and permanent building permits. Provide for a series of penalties to be applied when a buyer does not build a permanent or temporary structure on the land within the specified time, or does not pay tax.
	Composition	Reduce the number of LDT members from seven to five, including an elected member of the local council, representatives from the regional Ministries of Public Works, Interior, and Justice, and one respected traditional elder from a group of four or five elders appointed on a rotating basis. Minority clans and IDPs may also appoint an additional elder to the bench if their sub-clan is not represented. State that each disputant also has the ability to appoint one elder to advise the LDT in its decision in cases where each party privately owns the land through the formal system, and where one party contests that the land is communally owned. Introduce a minimum gender quota.
	Jurisdiction	Provide that the jurisdiction of the LDTs is over urban and peri-urban land within the district. Urban land as land in built-up, populated areas is to be proven as a matter of fact. Peri-urban land should be defined as land that has both rural and urban characteristics, to be proven as a matter of fact. Provide that the LDTs have jurisdiction over the sale, ownership, transfer, or use of land. Specify that it may only rehear decisions made by the customary system as an appeal. Finally, the LDT should not have jurisdiction over cases relating to customarily owned communal land. Land that is customarily owned communal land must be proven as a matter of fact.
	Types of land	Formally recognize communal rights to customarily owned land.
	Offences	The practice of purporting to unilaterally sell customarily owned communal land should be criminalized. <sup>68</sup>
	Enforcement	Add a provision stating that LDTs have the power to enforce their own decisions.
	Account-ability	Provide that the Ministry of Interior will be responsible for the LDTs. Include sections establishing an ad hoc Ethics Committee to hear cases of alleged misconduct by the LDTs.

<sup>68</sup> This should also take the form of an amendment to the Penal Code.

Regulation No. 1/2014	Procedures	Simplify current procedures and align them more closely to those used in the customary system. The style of the regulation may be modelled on Vanuatu's Customary Land Dispute Tribunal Act (Annex XVI), i.e. by loosely describing the procedure already employed in customary proceedings. This would require a complete redrafting of Articles 25–38 of the regulation.
	Time limit	Specify that the LDT must resolve the case within 90 days.
	Composition	Mirror the composition provisions to be inserted into Law No. 17.
	Jurisdiction	Amend the provisions on jurisdiction to add that it has jurisdiction over the 'use' of land. Remove the provision stating that it has jurisdiction over the 'administration' of land.
	Applicable law	Specify that xeer applies in disputes involving customary land, while the formal law is to apply in disputes involving private individual land. Even where customary law is not automatically applied, it may be proven to apply as a question of fact. Introduce a caveat specifying that customary law will only be applied when not contrary to the constitution, statutory law, public policy, or natural justice.
	Conflict of laws	Specify that, in the case of a conflict of substantive laws, sharia will apply first, followed by statute law and then xeer, but that no law will be applied if it is contrary to the Somaliland constitution. Procedural law will be governed by Law No. 17 and the regulation.
	Appeals	Provide that the LDT should consider decisions made by the customary system as decisions of a subordinate court, which should be heard as an appeal. Retain the provision mandating that LDT decisions be appealed to the Supreme Court, unless an amendment to the Organization of the Judiciary Law is made, in which case decisions may be appealed to the district court.
	Referral pathways	Specify that when a matter before the LDTs concerns a criminal matter, it must be referred to the court. In civil matters, if the dispute primarily relates to an issue within the jurisdiction of the LDT, it should be resolved by the LDT. However, if it primarily involves an issue outside the jurisdiction of the LDT, then the entire case should be heard by the court.
	Protections for women, minority groups, and IDPs	<p>Insert substantive provisions for the protection and empowerment of women, minority groups, internally displaced people, and refugees. This should include both clearly enumerating rights and implementing substantive measures to increase access:</p> <ul style="list-style-type: none"> <li>• Specify that women will be considered to enjoy the same rights to land as men, and provide particular guidance in the areas of joint ownership and marriage.</li> <li>• Provide that women will be awarded equal speaking time to men in the tribunal.</li> <li>• Provide that if a minority clan member or IDP does not have a member of their clan represented on the LDT, they may appoint a person to join the bench as a voting member.</li> <li>• Provide for a reduced fee for female, IDP, and minority clan disputants.</li> </ul>
	Registrar of elders	Provide for the establishment of a registrar of elders that records the details of all elders who have served on the tribunal.
Ethics and accountability	Include a Code of Conduct as an annex to the regulation. Establish an Ethics Committee, chaired by the Ministry of Interior and comprising representatives of relevant NGOs, to monitor and report on the LDTs and to receive complaints from users who allege that the LDT has breached the relevant laws, the regulation, or their Code of Conduct.	
Access fees	Provide that the Ministry of Interior is responsible for issuing a schedule which sets the fee payable for accessing the LDTs, and that this fee should not exceed 1 percent (of the value of the land) or USD 200, whichever comes first. Positive discrimination measures should be instituted to reduce access fees for women, IDPs, and minority groups.	

## PUNTLAND

### Draft Regulation

It is presumed that many of the revisions to be made to the Somaliland regulation should also be made to the Puntland draft regulation before adoption; however, this should occur after the state conference described in Section 3.1.



@UN-Habitat - Garowe - Streets at dusk

Table 11: Recommendations for Follow-on Project Activities

#### PUNTLAND

To be carried out with immediate effect	Mapping LDRCs	Undertake a scoping exercise in all districts of Puntland to determine which currently have functioning LDRCs and which have similar administrative decision makers sitting within the local governments or elsewhere resolving land disputes.
	State conference	Convene all LDRC members and ad hoc decision makers for a national conference on the formalization of the LDRCs. Conclude with the adoption of an action plan for the formalization of the LDRCs.
To be carried out in the next two years	Formalized LDRC in Garowe	<p>Formalize the LDRCs consistent with the agreed action plan. It is recommended that the formalized LDRCs do the following:</p> <ul style="list-style-type: none"> <li>• Retain the current members of the LDRCs as much as is possible</li> <li>• Continue to include elders</li> <li>• Include at least one religious leader</li> <li>• Initially have jurisdiction over only undeveloped land</li> <li>• Have jurisdiction only over disputes involving urban land</li> <li>• Can hear appeals from the customary elders and from village- and district-level administrative committees that have made decisions relating to land</li> <li>• Follow a regulation and Code of Conduct</li> <li>• Are formally launched by and accountable to the Ministry of Interior</li> </ul> <p>It is recommended that the current draft regulation for the LDTs is amended to reflect the above.</p>

**SOMALILAND AND PUNTLAND**

<b>To be carried out with immediate effect</b>	Code of Conduct for LDRCs	Facilitate meetings with LDRC members to introduce issues of ethics and accountability, and then facilitate LDRC members to draft an oath and a Code of Conduct, which the Minister of Interior will ratify. Include that Code of Conduct as an annex to the regulation.
	Trainings	Run trainings and conversations with the LDRC, expanded on in Annex XVII.
	Record keeping	Enhance record keeping by recording details of the demographics of LDT users, including gender, clan, and whether they are a refugee or IDP.
	Study tours	Facilitate study tours by selected LDRC members to Botswana and Kenya to learn from best practices in certain areas.
	Awareness raising	Design and implement a public information campaign that will raise awareness among men and women about the following: <ul style="list-style-type: none"> <li>• The constitutional guarantee of equal rights and obligations</li> <li>• How to use and access LDRCs, and the government's efforts to make them more accessible</li> </ul> <p>Appropriate channels may include radio, community theatre, mosques, schools, etc. This effort may require convening women-only meetings in partnership with local NGOs.</p>
<b>To be carried out in the next two years</b>	Production of a manual for LDRC members	Draft a user-friendly manual that provides guidance on LDRC policies and procedures, including the following: <ul style="list-style-type: none"> <li>• Step-by-step guide to LDRC procedures</li> <li>• Procedural and substantive rights of LDRC users and how to protect them</li> <li>• A how-to guide on when to refer cases and to whom</li> <li>• A list of types of evidence and the weight that should be given to each</li> </ul>
	Training	Conduct trainings on both the redrafted regulation and the training manual.
	Monitoring and evaluation	Undertake a three to six month evaluation of the functionality of the LDRCs and their success in meeting their stated objectives at the end of the project period.

*Table 12: Activities To Be Undertaken Outside the Land Dispute Tribunals***SOMALILAND AND PUNTLAND**

Formalization of customary courts and administrative committees	Amend the Organization of the Judiciary Law so that the decisions of customary courts in Somaliland and Puntland and the decisions of LDRCs in Puntland have the effect of a first instance court. Conduct trainings and raise awareness about these amendments.
Justice and land committees	Establish and mentor in each district a Justice in Land Committee comprised of stakeholders concerned with the administration of justice in the land sector, including representatives of the formal court, LDTs/LDRCs, the customary system, academia, the police, the attorney general's office, NGOs, etc. The public is also invited to participate. This committee will meet on a monthly basis and be jointly chaired by the Ministry of Justice and the Ministry of Interior. NGOs should be supported and encouraged to participate.
Mobile courts	Work with other justice projects to facilitate mobile courts attached to the Supreme Court.

Table 13: Areas To Be Addressed before Amendments and Implementation

**SOMALILAND AND PUNTLAND**

<b>Inclusive and accessible justice services</b>	Focus group discussions with men	Focus groups to better understand the attitudes males in Somaliland and Puntland have about women's land rights in general, including inheritance and succession rights, rights to buy and sell land, access to land dispute resolution mechanisms, and involvement as decision makers in those mechanisms.
	Consultations with NGOs and community-based organizations	Consultations with NGOs and community-based organizations to develop meaningful forums through which women, minority clans, and displaced people can participate in the LDTs/LDRCs.
	Capacity building on women's rights	This should target all stakeholders and be based on the Kenya Justice Project model, described in Annex XVIII. It should include the following: <ul style="list-style-type: none"> <li>• Community conversations with women, men, teachers, and youth groups</li> <li>• Training on human rights, with a focus on women</li> <li>• Public speaking training for women</li> <li>• Alternative dispute resolution training for women</li> <li>• Peer sessions in which women, elders, and youth convene their own training sessions with up to ten peers to share lessons learned during the project</li> <li>• Organized trips with women, minority clan members, IDPs, and refugees to the formal courts and the LDTs/LDRCs</li> </ul>
<b>Involvement of elders</b>	Consultations <sup>69</sup>	Consultations with: <ul style="list-style-type: none"> <li>• Elders from different clan groups, including minority clans and IDPs</li> <li>• Councils and cabinets of municipal governments and relevant ministries <sup>70</sup></li> </ul>
	Joint workshops	Joint workshops with LDTs/LDRCs, the judiciary, elders, lawyers, and judges.
<b>Comprehensive analysis of land law</b>	Translation	Translation of all legislation included in Sections 3.1 and 3.2 of this report into English, plus family law and any Civil Code provisions related to land.
	Interviews and focus group discussions	<ul style="list-style-type: none"> <li>• Conducting interviews with representatives from relevant ministries and international and national NGOs engaging in work on land rights.<sup>71</sup></li> <li>• Focus group discussions with all land users of all demographics.</li> </ul>
	Consultation with experts	<ul style="list-style-type: none"> <li>• Consultation with international organizations and UN technical agencies dealing with land- and law-related issues, such as FAO, UNODC, and IDLO.</li> <li>• Assessment of laws by a comparative land law expert.</li> </ul>

<sup>69</sup> These consultations are urgently needed in relation to the inclusion of elders in the LDTs. The consultations undertaken on this issue may also be used to discuss recording customary court decisions and eventually implementing a hierarchy of tribunals charged with the resolution of all land disputes.

<sup>70</sup> The Ministries of Interior, Justice, Public Works, Environment, Agriculture, Rural Development, Religious Affairs and Endowments, and Labour and Social Affairs in Somaliland, and the Ministries of Interior, Justice, Public Works, Security, and Women in Puntland.

<sup>71</sup> Including, but not limited to, UN-Habitat, Food and Agricultural Organization, UN High Commissioner for Refugees, Norwegian Refugee Council, Danish Refugee Council, International Rescue Committee, Rift Valley Institute, Haqsoor, the University of Hargeisa Legal Aid Clinic, Somaliland Lawyers Association, the Somaliland Women Lawyers Association, the Somaliland Human Rights Commission, farmers' and pastoralist associations, and financial institutions.

## ANNEXES

### ANNEX I: Relevant Content and Gaps and Weaknesses in the Somaliland Constitution

Under the Somaliland constitution, “land is a public property commonly owned by the nation, and the state is responsible for it”.<sup>72</sup> Other provisions relevant to land and land dispute resolution are the following:

- Article 8, guaranteeing the basic and fundamental principle of equality and non-discrimination
- Article 31, which guarantees the individual’s right to own property and provides that “private property acquired lawfully shall not be expropriated except for reason of public interest and provided that proper compensation is paid”
- Article 36, which obliges the government to undertake all possible and necessary measures to ensure that women are free from all practices which are contrary to sharia and which are injurious for their rights and dignity
- Article 28, which protects the right of access to justice

#### Main gaps and weaknesses

The constitution is silent about the role of customary law and does not recognize legal decisions made by the elders. The constitution protects women’s rights “save for matters which are specifically ordained in Islamic Sharia”, which may preclude their right to equal inheritance of land. Some jurisdictions such as Kenya recognize sharia law while also emphasizing that “gender discrimination in law, customs and practices related to land and property in land” must be eliminated.<sup>73</sup>

### ANNEX II: Relevant Content and Gaps and Weaknesses in Agricultural Land Ownership Law (Law No. 08/1999)

Agricultural Land Ownership Law regulates administration and ownership of agricultural land in Somaliland. This defines agricultural land as any land that is suitable for cultivation.<sup>74</sup> It recognizes two types of agricultural land: rain-fed land and that set aside for irrigation. It also recognizes pastoral/ grazing land, but does not effectively define this term.<sup>75</sup> The act provides that responsibility for agricultural land, including the issuance of certification, lies with the Ministry of Agriculture, and for grazing land lies with the Minister of Environment.<sup>76</sup> Resolution of disputes over agricultural land is the responsibility of the courts.<sup>77</sup>

#### Main gaps and weaknesses

In the absence of a clear definition of grazing land, the power of the Ministry of Environment to allocate grazing land to pastoralists can be and, according to information received, is frequently used arbitrarily. Ownership and user rights of pastoralists over grazing land are not secured within the legal system, making them particularly vulnerable to land grabbing from both farmers and people who claim that the land is urban and privately owned. Because there is no clear demarcation among agricultural, grazing, and urban land, the domains of the different ministries and state agencies overlap and are a significant cause of confusion and conflict.

<sup>72</sup> Article 12(1)

<sup>73</sup> Constitution of Kenya, Article 60

<sup>74</sup> Article 1(1)

<sup>75</sup> Article 17

<sup>76</sup> Article 3

<sup>77</sup> Article 19

## ANNEX III Relevant Content and Gaps and Weaknesses in Urban Land Management Law (Law No. 17/2001)

The Urban Land Management Law 2001 (Law No. 17) regulates the administration and ownership of urban land. In theory, 'urban land' would comprise all land included in the master plan, the development of which is the joint responsibility of several ministries and the local governments, facilitated by the Ministry of Public Works. Among other matters, the law attempts to define the following: the state institutions responsible for urban land management; the allocation of land; the planning and development of land; aspects of land tenure, including granting land for specific purposes and registration of title; appropriation of land for public use and compensation; and the establishment of the LDTs. Article 28(6) provides that a regulation will be passed by the Ministry of Interior governing the performance and functionality of the LDTs. Accordingly, on September 2014 the ministry issued and adopted the Urban Land Dispute Resolution Regulation, Regulation No. 01/2014.

### Main gaps and weaknesses

An assessment of the gaps and weaknesses in Law No. 17 has been completed by UN-Habitat in the report Somaliland, Puntland State of Somalia: The Land Legal Framework – Situation Analysis. The observations made regarding the gaps in Law No. 17 are comprehensive, but the report was written in 2006 and therefore before the amendments made to the law in 2008 that provide for the establishment of the LDTs. These amendments do not pose challenges in themselves, but do so when read in conjunction with the LDT Regulation. Those challenges are discussed in the section on the regulation below.

- **General:** Generally, despite the amendments made in 2008, Law No. 17 is poorly drafted in terms of clarity and coherency. Most of its provisions are vague and difficult to understand, even for trained legal professionals. Its provisions were not drafted in a chronological manner to enable the reader to easily follow or understand what they intend to deal with. Further, the law provides for overly complicated systems of land management and administration, and confusing procedures for purchasing and registering land.
- **Specific challenges relating to the master plan and responsibility for land:** Law No. 17 divides administrative responsibility over urban

land between the local and central governments. The central government is vested with the mandate, among others, to develop a master plan outlining how all urban land is to be used and allocated. The Land Planning Department of the Ministry of Public Works should prepare the initial draft of the master plan.<sup>78</sup> There is very little guidance in Law No. 17 as to how this should be done in practice. Such guidance is provided in the Urban Regulatory Framework, developed in 2013–2014. A series of trainings and consultations were undertaken on the framework in 2014, facilitated by UN-Habitat. It is currently in the process of being adopted by cabinet ministries. At present, Law No. 17 provides for an extremely complicated verification procedure, while making almost no provisions for the substantive elements of drafting the master plan, and the result of this has been that a master plan does not exist, making the management and administration of land and the resolution of disputes over urban land extremely difficult. One suggestion may be that the municipalities each create draft master plans in consultation with their communities, rather than making this the responsibility of the central government. Rather, the role of the central government can be limited to compiling and finally authorizing the combined master plan.

- **Temporary land permits:** A final observation to be made regarding Law No. 17 is the requirement that landowners must build a permanent structure made of bricks, stone, or concrete on their land within one year of purchasing it to retain title to the land. Numerous studies – including the above-mentioned UN-Habitat report, an FAO assessment of land laws, and a study on housing, land, and property in Somalia by the Norwegian Refugee Council, UNHCR, and UN-Habitat – have raised the concern that this requirement has detrimental effects on security of land tenure for poor and displaced people, who may have the means only to build a buul or temporary shelter on the land.<sup>79</sup> It should be noted that, in all consultations and interviews undertaken as part of this project, participants overwhelmingly thought that this provision was necessary to prevent land grabbing and in fact was not implemented stringently enough.

<sup>78</sup> Article 3. This draft must then be submitted to the National Urban Planning Committee, which consists of the Ministers of Health, Agriculture, Water and Mines, Interior Affairs, Environment and Rural Development, and Communication and Postal Service, and is chaired by the Minister of Public Works. The plan must then be submitted to the Office of the President, and a Presidential decree will put the approved master plan into force (Article 4). This master plan must be distributed to all municipalities, where their Executive Committees should collaborate with the Ministry of Public Works to allocate land and issue title deeds on the basis of the approved master plan (Article 2).

<sup>79</sup> Above n 10

## ANNEX IV: Relevant Content and Gaps and Weaknesses in Regulation 1/2015

### Contents of the regulation

According to the regulation, LTDs should be comprised of the following members:

- The Chairperson, who is responsible for general administration and operations of the LTD, to be appointed from the Ministry of Public Works
- The Deputy Chairperson, whose responsibility is to assist the Chairperson, to be appointed from the Ministry of Interior
- Five case committee members, to be appointed by the Chairperson from the Ministries of Agriculture, Endorsement and Religious Affairs, and Rural Development, the local council (local legislature), and the local authority (local executive)

LTDs should also consist of a Secretary, who should also function as the Registrar and Finance and Administration Officer, and any other administrative staff necessary for the fulfilment of its obligations.

The Chairperson should appoint a number of members to hear any given case. He or she may appoint three, five, or all seven members, depending on the nature of the dispute. The regulation sets out rules regulating conditions for appointment, losing membership, and disciplining members of the LTDs, as well as the relationship between the LTDs and other government institutions such as local councils and local governments.

Articles 25 to 30 of the regulation make provisions relating to pre-hearing procedures, and Articles 32 to 38 of the regulation deal with case hearing and appeal procedures. These sections refer to the Civil Procedure Code and sharia law, mandating that all proceedings before and during the case follow the same rules as those applicable to the courts, provided they are in conformity with sharia law. They include some extra provisions, including those providing for site visits. The regulation stipulates that the applicable law to be applied by the LTD is sharia law and the relevant provisions of the Civil Code.

Finally, the regulation stipulates that the final decisions of the LTDs must be referred to the regional courts for execution on the basis of the Civil Procedure Code. If one party wishes to appeal the decision, they must submit the appeal to the Supreme Court within 30 days. Final decisions of the

LTDs are referred to the regional courts to execute based on the relevant provisions of the existing Civil Procedure Code.

### Main gaps and weaknesses

The main gaps and challenges are as follows:

- **Complicated procedures:** The stipulation that the Civil Code be followed for pre-case and case proceedings imposes complicated and time-consuming procedural requirements on the tribunal, which negatively affects its accessibility, efficiency, and affordability. This is discussed in detail in this report.
- **Lack of clarity regarding referral pathways:** The referral pathways between the customary system and the LTDs are not clear. For example, if the LTD receives a case that contains both legal issues relating to urban land and another type of legal issue, it is unclear in what circumstances it should refer the case to the courts. The requirement that the decisions be submitted to the regional court for execution serves to further prolong the court process.
- **Prolonged and inaccessible appeals process:** The Civil Procedure Code stipulates that administrative decisions should be appealed directly to the Supreme Court. This increases the caseload of the Supreme Court, which prolongs procedures. It also negatively affects the accessibility of the legal process, as there is only one Supreme Court (situated in Hargeisa), and it is impractical for disputants from outside the district to access.
- **Lack of guidance on choosing among applicable procedural laws:** The regulation stipulates that the relevant applicable laws are the Civil Code, Civil Procedure Code, and Islamic sharia, but does not provide guidance on which law should take precedence in the situation of a conflict among them. The Somaliland constitution makes it clear that substantive sharia law overrides the formal law. However, this is less clear in relation to rules of procedure. There is no statement of procedural fairness principles to assist LTD members in determining which procedural rules to apply.
- **Lack of specific protections for women, minority groups, and IDPs:** The regulation refers to the Civil Procedure Code, which

guarantees the right to be heard, and the LDTs are subject to the constitution, which contains a comprehensive charter of rights. However, it is best practice for constitutive documents to contain specific protections of groups that have the least access to the formal justice system and the fewest legal resources. Women and members of minority clans confirmed that in practice they do not feel that the LDT respects their rights in the same manner that it respects the rights of male members of majority clans.<sup>80</sup> There is a need for explicit statements of the rights to equality, protection, and empowerment enjoyed by these groups, as well as affirmative action measures such as reduced access fees.

- **Accountability provisions:** The regulation provides criteria which members must meet and provides for the independence of the tribunal, but does not contain clear provisions relating to accountability. Its section on disqualification of members refers only to temporary disqualifications to be carried out when a member is, for example, related to one of the disputants by blood.

## ANNEX V: Relevant Content and Gaps and Weaknesses in the Civil Code and Civil Procedure Code

As indicated above, the existing Civil Code and Civil Procedure Code currently applied by the formal courts are applicable to the resolution of disputes relating to urban land filed in the Land Dispute Tribunals.

The provisions of the Civil Procedure Code applicable to LTD cases under the regulation are those regulating the pre-hearing procedures, including the manner in which cases should be submitted to the tribunal, case procedures, determination of evidence, execution of decisions, and appeal pathways. The relevant provisions of the Civil Code include those which regulate ownership of property and immovable property, sale and transfer of immovable property, and registration and publication of documents relating to rights over immovable property.

The Civil Code requires, for example, that any document relating to ownership of immovable property, such as a title deed or building permit, must be registered with the court. Under these provisions, a person who has obtained a document proving their ownership of land should have this document notarized and then submit it to the court for registration.

### Main gaps and weaknesses

The requirement of filing documents indicating ownership of land with the court is intended to reduce the likelihood that multiple ownership documents

will be issued for the same land. However, the courts have no more capacity than the local government (which currently collects these documents) to verify the claims or map the location of the land. Under the law, the courts are not even obliged to determine the validity of such documents, so long as they are notarized.

Before notarizing a document proving ownership over land, public notaries are supposed to verify that the land has been transferred to the buyer, for example by requesting to see a transfer document. In practice, they do not do this, and multiple ownership documents for the same piece of land may all be notarized.

As such, the requirement that title deeds be registered with the court serves to add an extra step to the already very complicated process of registering an interest in the land, without providing the benefit of protecting against multiple claims to ownership. It also contradicts Law No. 17, which provides that both court documents and other proof of ownership not registered with the court will be considered valid.

<sup>80</sup> Interviews conducted in Hargeisa on 10 September 2013.

## ANNEX VI: Relevant Content and Gaps and Weaknesses in the Puntland Constitution

- Article 29 protects the right of residence in any part of the territory of Puntland.
- Article 30 protects the right of ownership of private property, and Article 90 prevents the confiscation of private property without compensation.
- Article 34 provides that “every person shall have the right to the inviolability of his/her domicile”, and that government restrictions on or intrusions onto land shall be regulated by law.
- Article 39 upholds the right to institute legal proceedings under conditions of full equality before lawfully constituted courts.

### Main gaps and weaknesses

This constitution protects women’s socio-economic rights that are “not forbidden in the Islamic Sharia”, which may preclude women’s rights to equal inheritance.

## ANNEX VII: Relevant Content and Gaps and Weaknesses in Land Law 1975

The Land Law 1975 was in force in all of Somalia and has not been officially repealed, but is no longer practiced in Somaliland or Puntland. However, it has been included in this section because Puntland lawyers referenced it as a law that has had a lasting effect on the legal landscape relating to land in the region (for example, by vesting all land in the state), and contributes to ongoing confusion about the processes of land management and registration.

The Land Law was passed by the Siad Barre government in 1975 and attempted to abolish customary ownership in rural areas and transfer ownership of all land to the state. Under the law, the only way to claim rights to cultivated agricultural land was through registration of leasehold titles, granted for 50 years.<sup>81</sup> The law also attempted to make registration of land compulsory for proving ownership of it.

Though these provisions have not technically been overridden, they are not recognized in practice. However, the general principle that the state owns all

land is still in place, and is restated by the Land Law of 2000. This general principle appears to lend legal support to rules such as the one in place in Puntland which states that the municipality may reclaim undeveloped land that has not been built on within a period of six months, as the buyer is not considered the owner of the land, but the lessee.

### Main gaps and weaknesses

The Land Law was originally passed as one of several moves by the Barre regime to assert greater control over property, and was used by his government to reward loyal clans with valuable leasehold titles, often for land that other clans had enjoyed customary title over for generations.<sup>82</sup> While the law may not be enforced at present, the fact that it has not explicitly been repealed and is referenced by currently practicing lawyers as part of the legal framework may be problematic regarding security of tenure for groups who own land customarily and the vast majority of private landowners who have not registered their titles, both of whose legal rights to their land are removed under the act.

<sup>81</sup> Above n 12, 93.

<sup>82</sup> James Burman, Anna Bowden and Abdikarim Gole, 2014, Land Tenure in Somalia: A Potential Foundation for Security and Prosperity, Shuraako.

## ANNEX VIII: Relevant Content and Gaps and Weaknesses in Urban Land Law 1980 (Amended in 1981)

This law originally applied only to Mogadishu, but was amended in 1981 to also cover Puntland. Article 1 of this law states that urban land will be under the jurisdiction and control of each municipality, and Article 23 provides that the municipality will be responsible for issuing title deeds “in accordance with the law” or pursuant to the decision of a court. Like Law No. 17 in Somaliland, the legislation distinguishes between “permanent” and “temporary” land title, where permanent title is given to people who build permanent structures made of hard materials on the land, and temporary title is given to those who build soft structures.<sup>83</sup> The act also attempts to provide for the planning and designing of urban land. Most notably, it establishes a municipality technical committee to advise the permanent committee of the district council on matters relating to land planning and design.<sup>84</sup>

### Main gaps and weaknesses

This law has significant gaps in its provisions about the responsibilities of the municipality and the issuance of title deeds. However, these provisions are superseded by the 2000 law, and it is therefore unnecessary to discuss their weaknesses in detail.

The other weaknesses in the drafting are related to the provisions on planning and design. These provisions are vague and difficult to enforce, and little guidance is given as to how the municipality technical committees should work together with the permanent committees of the district councils to oversee the planning of land in practice.

## ANNEX IX: Relevant Content and Gaps and Weaknesses in Urban Land Law (2000)

This law covers the same subject matter as the Urban Land Law, but is specific to the Puntland context and has some additions and variations. It restates the position in the Land Law 1975 that all land is state owned. Further, in a variation of the preceding Urban Land Law (1981), it gives responsibility for the administration of land and the issuance of ownership documents to the central Ministry of Public Works and Transportation.<sup>85</sup> It references a “general town plan”, but does not provide a procedure through which this plan is to be developed.<sup>86</sup>

There is one other provision of these laws that was well recognized by lawyers and judges and the legal expert round table, though participants were unclear whether it formed part of the 1981 or 2000 law. This provision is the requirement that buyers of undeveloped land either pay tax on that land, as specified by the legislation, or build on it within six months. If neither of these criteria is fulfilled, the buyer will lose their title over the land. This provision was considered to be of primary importance in guarding against land grabbing by round table attendees, though they said it was not enforced in practice.

### Main gaps and weaknesses

This law has created significant confusion about which government institution has responsibility for the administration of land and the issuance of land title documents. In meetings held with the Ministry of Interior, a consultation with government representatives from the central and local governments on the LDTs, and a round table with legal professionals, there was significant confusion and disagreement about who had the legal capacity to issue and keep a record of ownership documents, though most people appeared to agree that it was the local governments who did this in practice.

Generally, legal practitioners consulted for information about the content of the 1981 and 2000 laws were unable to give detailed answers about their provisions or whether they experienced challenges in applying or relying on them in practice. Several of the participants at a round table with legal experts explained that the Urban Land Law 2000 had not been effectively promulgated, saying that legal experts in some regions may not even know of its existence. It is therefore difficult to comprehensively identify or analyse the gaps these laws may have when put into practice.

<sup>83</sup> Article 5

<sup>84</sup> Article 25

<sup>85</sup> Article 1

<sup>86</sup> Article 3

## ANNEX X Relevant Content and Gaps and Weaknesses in Land Law 2005 (Not Passed)

A Land Law was drafted in 2005 with many of the same provisions as Somaliland's Law No. 17, as well as additional sections on the institutional framework relating to land, land allocation, and building authorization.<sup>87</sup>

### Main gaps and weaknesses

UN-Habitat's 2006 report on the legal land framework effectively addresses the gaps and weaknesses of this law. These are similar to the weaknesses in Law No. 17 and can be summarized as follows:

- The law refers to a "master plan". Unlike Law No. 17, the legislation confers responsibility for developing the master plan on the local governments. However, like Law No. 17, it does not describe the process through which this master plan should be developed.
- The law restates the distinction between permanent and temporary land title, which depends on the type of structure built on the land. This discriminates against those who cannot afford to build hard structures, as well as IDPs who may not envisage staying in the area on a long-term basis and are therefore reluctant make such an investment. Further, the law does not provide any information about the rules relating to temporary land.
- The law prohibits the sale of undeveloped land. If the owner does not build on the land, the municipality may refund the purchasing price and recover the land. Again, this disadvantages the poor.

## ANNEX XI: Relevant Content and Gaps and Weaknesses in the Civil Code and Civil Procedure Code

These codes are the same in Puntland as they are in Somaliland. However, in Puntland, the Civil Procedure Code is not used to regulate the procedure of the Land Dispute Resolution Committees, which allows cases to be resolved more quickly. It does regulate the proceedings of the court, and has the effect of prolonging court cases, as it sets out complex procedures.

With regard to the Civil Code, there are fewer challenges than there are in Somaliland. Firstly, it does not contradict any other law. Secondly, Puntland has less of a problem with public notaries, as discussed in the body of this report.

## ANNEX XII: Description of the Garowe Land Dispute Resolution Committee

Composition: The Garowe committee sits within, but is independent of, the local government. It is made up of five members:

- A Chairperson, who also functions as the Secretary, appointed by the local government
- A Deputy Chairperson, appointed from the Ministry of Interior
- A member appointed from the Ministry of Security
- Two "community experts": one religious expert and one elder from the area

Theoretically, the committee sits on a permanent basis, but members are not full time and in practice come together on an ad hoc basis whenever a person brings a dispute to the attention of any one of them.

The members of the committee do not receive a government salary for their role on the committee. The members of the local government already receive a salary for their positions, but the elders and religious leaders do not. Committee members do receive the proceeds of the USD 300 fee charged to each disputant in a particular case. The fees are deposited into a pool, which, in addition to paying the committee members, is used for costs associated with renting office space and travelling to the location of the disputes.

<sup>87</sup> UN-Habitat, 2006, Somaliland, Puntland State of Somalia: The Land Legal Framework – Situation Analysis, [http://www.globalprotectioncluster.org/\\_assets/files/field\\_protection\\_clusters/Somalia/files/HLP%20AoR/Land\\_Legal\\_Framework\\_2006\\_EN.pdf](http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Somalia/files/HLP%20AoR/Land_Legal_Framework_2006_EN.pdf)

**Jurisdiction:** The LDT hears disputes only on undeveloped land. This may include both urban and rural/agricultural land. Its jurisdiction is not limited to disputes related to land ownership. Territorially, jurisdiction is limited to the district in which the committee sits.

**Procedure:** There is no formal procedure through which a person should bring a dispute; they may notify any committee member through any means, including verbally. Once the dispute has been lodged, the committee will serve the defendant with a notice to appear. This may be written or verbal. Both disputants must pay USD 300 to the committee for the resolution of the dispute. The committee will then follow a simplified procedure reminiscent of the procedure followed in customary courts: they will contact any person who may be able to give evidence and will ask to see any documentary evidence, with a focus on title deeds and other ownership documents. The committee will also travel to the area under dispute, along with witnesses from the community who can confirm that the land being visited is the same land that forms the subject matter of the dispute. Disputants accessing the committee may be represented by lawyers if they feel this is needed, but in practice disputants almost always represent themselves.

After the initial hearing and the site visit, committee members congregate in their office to discuss the case and come to a preliminary decision. Committee members agreed that this process generally takes several days at a maximum, though others surveyed estimated that it took up to six months. The committee then contacts both parties to ask for any further information

about the dispute that may be necessary for reaching a final decision. Once all the information is collected, a decision is reached, usually by consensus, but if necessary by vote. The reasons for the decision are written into a document by the secretary. If the case is clear-cut, this decision will be considered final. If it is contentious, the committee will refer the decision to religious leaders for verification that it is in accordance with sharia.

**Appeal and referral process:** Theoretically, decisions made by the committee are administrative decisions by people sitting within the local government, and can therefore be appealed to the appeals court. In practice, the appeals court does not consider itself to have jurisdiction to hear appeals from the committees. The court of first instance will enforce decisions but will not hear appeals. The committee may, at any time, refer a dispute they are deciding on to the customary system. This may also happen with the agreement of both parties. If the customary court reaches a decision, this should be submitted to the court of first instance for enforcement. If they do not, the matter will be returned to the committee.

**Laws applied:** The committee considers itself bound by xeer, sharia law, and the Puntland constitution. Committee members have not had legal training in land law, legal reasoning, or any other matter.

**Caseload:** The committee chairperson and three other members of the committee agreed that their caseload is about eight to ten cases per month.

## ANNEX XIII: Criteria for Membership of the Land Dispute Tribunal

Article 11(1). Members should be:

- a) A Somaliland citizen
- b) Not less than 30 years of age
- c) Person of good conduct, character, not convicted for a criminal offence by a court for the last five years.

Article 11(1). In addition to the requirements provided above, members should meet the following conditions:

- a) The Chairperson nominated by the Ministry of Public Works should be a qualified lawyer, possessing a law degree from a recognized

university and minimum of two years of working experience as a judge or prosecutor or university lecturer of law.

- b) The Deputy Chairperson nominated by the Ministry of Interior Affairs should be a qualified lawyer like the member appointed by the Ministry of Public Works.
- c) The Member nominated by the Local Authority should be an officer with in-depth experience in land administration or a person with a minimum of five years' experience working for the land administration department of the district where the tribunal is established, and must have at least secondary education.

- d) The Member nominated by the Local Council should have at least a secondary education and experience in land administration.
- e) The Member nominated by the Ministry of Agriculture should be a legal expert possessing a law degree and at least three years of working experience.
- f) The Member nominated by the Ministry of Endorsement and Religious Affairs should be an expert in Islamic Sharia and Jurisprudence, with a university degree in sharia and at least two years of working experience.
- g) The Member from the Ministry of Rural Development should have fair knowledge and experience on land matters and a university degree relating to law, and shall have at least two years of work experience in legal matters.

## ANNEX XIV: Process of Bringing and Hearing a Case under the Civil Procedure Code

- 1. Filing a statement of claim:** The content of the statement of claim must comply with procedurally prescribed formalities.<sup>88</sup>
- 2. Payment of fee:** The plaintiff must pay a court fee and enclose the receipt with the statement of claim. The court fee is not specified in the Civil Procedure Code. The registrar will decide on the applicable fee based on the amount of money or property involved in the dispute. There are no formal guidelines to assist the registrar with this. Previously, a practice had developed that exempted people who could not afford the fees from paying. However, this has fallen into disuse, and it is now not possible to access the courts unless the fee can be paid.
- 3. Submission of statement of claim and fee to the registrar of the court:** The registrar of the court will check that the claim is properly constituted and that the fee is paid, and then submit it to the president of the court.
- 4. Submission of documents to president of court:** The president of the court will assign the case to a judge. Either the president or the assigned judge (the provisions of the code are unclear on this) ensures that the statement complies with the prescribed formalities.
- 5. Writ served on defendant:** The court will then serve a writ on the defendant, in accordance with the procedure provided in Articles 69, 94, and 105 and as per the prescribed time limit stipulated in Article 121 of the Civil Procedure Code.
- 6. Initial inquires in first hearing:** The judge assigned to the case should make inquiries as to the validity of the writ and statement of claim and inquire as to the presence of the parties to the dispute.<sup>89</sup>
- 7. Reading of statements of claims and defence:** Both parties are given an opportunity to speak to and, if necessary, amend their claim. If the court accepts that an amendment is necessary, it will set a new date for the hearing of the case.
- 8. Framing of issues and invitation for out-of-court solution:** After the court reads statements and hears concerns or additions made by the parties, it is expected to frame the issue/s of dispute. The court will then encourage the parties to settle the dispute either by themselves or through the customary system. This procedure is allowed under the Civil Procedure Code<sup>90</sup> and in practice is almost always followed.
- 9. First hearing:** If the parties decline or fail to settle the case by themselves or through the customary system, the court will proceed to the first hearing of the case.
- 10. Making a decision/enforcement:** The court may make a decision on the basis of this first hearing if it considers that it has enough evidence to do so. The court may also enforce a decision of the customary elders if both parties are satisfied with the decision, or a decision made between the parties by themselves.

<sup>88</sup> Article 119

<sup>89</sup> Article 204

<sup>90</sup> Article 117

## ANNEX XV: Procedure Followed by the Land Dispute Tribunals

**1. Filing a statement of claim:** Articles 25 and 28, which apply the rules of the Civil Procedure Code, provide that the statement of claim must include:

- Name and place of court in which the claim is brought
- Full names and addresses of the plaintiff and defendant
- The name of any agent, representative, or lawyer and an indication of their relationship to the disputant
- Title of action
- Indication of evidence, and in particular the documentary evidence which will be submitted by the plaintiff
- Indication about the issue/s of the dispute
- The cause of action and brief summary of facts showing the cause of action

These requirements are confusing for the average layperson; as such, in practice disputants always hire a lawyer to assist them. Certain lawyers are known to be experienced in bringing cases before the LDT and know how to draft statements of claims that fulfil all of the above criteria.

**2. Payment of fee:** Article 26 of the LDT Regulation obliges the plaintiff to pay the LDT fee and to enclose with the statement of claim their receipt showing that the prescribed fee is paid. The fee to be paid is prescribed by formal rules issued by each local government, and is paid into the budget of the local government. The price to be paid therefore varies among municipalities. According to Hargeisa local government rules on the subject, the rate of the payable fee depends on the size of the disputed land. As provided in those rules, the payable fee is between 1.2 and 5 million Somaliland shillings (USD 160 to 665), depending on the size of the land.

The LDT members often request a payment of fees above that specified in the rules, for the purposes of transportation to the site of the dispute.

These fees are paid directly to the members. Some of those approached about this issue reported that the fees taken by the members are frequently more than that required for transportation.

**3. Submission of statement of claim and fee to secretary:** As with the procedure set out by the Civil Procedure Code, Article 25 requires that the statement be submitted to the secretary of the LDT, who ensures that the statement complies with the prescribed formalities and that the fee is paid. Article 28 has requirements about information to be included in the statement of claim that are additional to those mentioned in Article 25:

- Details and size of the land in dispute
- How ownership was acquired
- 'Etc.', as a non-specific 'catch-all' category

Therefore, Article 28(2) of the regulation provides certain conditions which are not stated in Article 25, and which are more vague than the questions asked by Article 25, but which could justify the secretary of the LDT reverting the statement back to the plaintiff.

**4. Submission of documents to the chairperson of the LDT:** The same rules apply as those in the Civil Procedure Code: the secretary will submit the documents to the chair of the LDT, who will (after again checking the legality of the statement) open a case file and order that it be registered; or, alternatively, will find that the case cannot be filed on the basis that the documents have not been legally submitted or that the court does not have jurisdiction. A decision that the case cannot be filed may be appealed to the Supreme Court within 13 days.<sup>91</sup>

The fact that the chairperson may refuse to file the case on the basis that the statement of claim has not been correctly completed in practice allows him or her a wide margin of discretion, as the requirements of a statement of claim are so complicated that it can be easily argued they were not properly fulfilled. To avoid this possibility and ensure that all obligations are met, most people who bring cases to the LDT appoint a lawyer.

<sup>91</sup> Article 29

- 5. Writ served on defendant:** The LDT serves a writ containing the statement of claim, along with a summons stating the date of the hearing to the defendant, within the prescribed time limit and as specified by Articles 30 and 121 of the regulation.
- 6. Initial inquiries:** In the first hearing, the LDT is required to consider whether the writ was served duly and in accordance with the law, and if it is not, will order that a new writ be served.<sup>92</sup> The LDT will then inquire whether the parties or their representative or lawyers and any other person who has an interest are present. The regulation provides that if all interested parties are not present, the LDT may take certain steps to order their presence or adjourn the case.<sup>93</sup> In practice, the LDT reports that there is confusion over this requirement, because there may be parties who have an interest in the land who have not been named in the dispute, and it is unclear whether the LDT should also ensure that they attend the hearing. It appears that the facts of the case determine whether the LDT attempts to call all relevant parties. This provision is susceptible to selective interpretation.
- 7. Reading of statements of claims and defence:** The secretary of the LDT reads the statement of claim and that of the defence for the parties, and then invites the parties to add to or make changes in these statements if necessary. According to the regulation, the LDT should ask both parties if they wish to amend the statement of claim, and if they do should adjourn the case.<sup>94</sup> In practice, the secretary asks for clarifications throughout the reading of the statement if he feels this is necessary, and both parties are then invited to add anything or to clarify their case.<sup>95</sup>
- 8. Site visit:** After reading the claims or amended claims and hearing parties' concerns or additional comments thereto, the LDT should visit the disputed land.<sup>96</sup>
- 9. Framing of issues:** On the basis of the initial claims, the additional comments of the parties, and the site visit, the LDT should frame the issues under dispute.
- 10. Making a decision in uncomplicated cases:** If the case is not complicated and can be determined on the basis of the evidence available, the LDT will make a decision as per Article 37 of the regulation.
- 11. Invitation to resolve case outside of court:** If it cannot give a decision as per Article 37, the LDT invites the parties to agree on an out-of-court solution.
- 12. Referral of case to customary system:** If the LDT cannot come to a decision after the first hearing, it may ask the parties if they are willing to resolve the case by themselves, or alternatively may refer the case to traditional elders. The regulation provides for this to happen in two ways:
- The parties each appoint three elders, and the six elders come together to resolve the dispute. The names of the elders are submitted to the LDT.
  - The parties each appoint three elders and request the LDT to appoint one member of the LDT to sit with them, and the seven resolve the dispute together.
- In both circumstances, the LDT instructs the group of elders – or the elders and the one LDT member – to concentrate on the contentious issues identified by the LDT. If the parties resolve the case in this way, the decision will be brought to the LDT for approval. According to the regulation, the LDT should ensure that this decision has been made within the law. According to the LDT members, in practice, if the parties agree, the LDT will always approve the decision.
- 13. Referral of case to the regional court following mediation:** Once the LDT approves the decision, it will refer it to the regional court for enforcement. The regional court does not play a role in determining the legality of the decision.
- 14. Hearing of case:** If an agreement cannot be reached in this way, or if the courts refuse to participate in an out-of-court settlement, the LDT will hear the case. The regulation introduces slightly different and more flexible rules of evidence to those contained in the Civil Procedure Code, providing that the LDT may, on its own motion or upon request of the parties, order any local government, other government institution, or any other source to submit evidence relating to the dispute.

<sup>92</sup> Article 204

<sup>93</sup> Article 33

<sup>94</sup> Article 33

<sup>95</sup> This was witnessed at a hearing on 11 August 2015.

<sup>96</sup> See Article 34 of the regulation.

- 15. Site visit:** After the first hearing, all sitting members of the LDT should visit the site of the land dispute.<sup>97</sup>
- 16. Making a decision:** Under Article 37, the LDT may decide the case on the basis of this first hearing and site visit.
- 17. Second hearing:** If the case is not resolved by the customary system, the LDT will begin a second hearing.
- 18. Referral to the regional court following decision by the LDT:** Once the LDT makes a decision, it should be submitted to the regional court for enforcement. The regional court does not play a role in determining the legality of the decision.

## ANNEX XVI: Procedure of the Vanuatu Customary Land Tribunals (Part 6 of Customary Land Tribunal Act)

### 25. Notice of hearing

- (1) Within 21 days after the establishment of a land tribunal, the secretary of the land tribunal must give notice under subsection (2) to the parties to the dispute.
- (2) The notice must:
- (a) be in writing in Bislama, French, English or another language of the one or more of the parties to the dispute; and
  - (b) specify the date and time of the meeting of the land tribunal to hear the dispute; and
  - (c) the place of meeting of the land tribunal, being a place which is convenient having regard to the location of the land, the residences of the tribunal's members, the residences of the parties and the availability and security of meeting places; and
  - (d) the name and address of the secretary of the land tribunal; and
  - (e) if applicable on the grounds of the appeal.

### 26. Start of hearing and objections

- (1) The land tribunal must, so far as practicable, meet to hear a dispute at the time and on the date and at the place specified in the notice given under section 25.

- (2) Whenever a land tribunal first meets to hear a dispute, the chairperson must:
- (a) open the meeting with a prayer; and
  - (b) introduce himself or herself, the other members and the secretary of the land tribunal; and
  - (c) ask if there are any objections to the qualification of the chairperson, any of the other members or the secretary.
- (3) Subject to subsection (4), the chairperson must consider any objection, and if he or she considers that the objection is justified, he or she must disqualify the person concerned and adjourn the meeting to enable another person to be appointed.
- (4) If the objection is to the chairperson of the land tribunal, the other members of the tribunal must consider the objection, and if they consider that the objection is justified, they must disqualify the chairperson and adjourn the meeting to enable another chairperson to be appointed.
- (5) If a party to a dispute fails to follow any of the procedures under this Act, another party to the dispute may apply to the land tribunal for an order directing the party to comply with the procedure.

<sup>97</sup> Articles 33(4), 34, and 35.

## 27. Hearing of dispute

- (1) The chairperson of a land tribunal must:
- (a) invite the party who instituted the hearing to present their case; and
  - (b) on completion of that party presenting his or her case - invite the other party or parties to present their cases and specify the order in which parties are to do so if there is more than one.
- (2) In presenting his or her case, each party must be allowed an adequate opportunity to present arguments, produce evidence and call witnesses.
- (3) Each party and his or her witnesses may be questioned:
- (a) by each member; and
  - (b) by any other party, subject to the consent of the chairperson of the tribunal.
- (4) A person with legal qualifications, experience or training is not permitted to represent any party or witness before a tribunal, but may appear as a party or as a witness.
- (5) A land tribunal must inspect the land in relation to which there is a dispute and, if possible, must walk around the boundaries of the land.
- (6) Without limiting this section, a land tribunal hearing and determining a dispute for the first time or on appeal must do so in such a way that is fair and reasonable in all the circumstances to the parties.

## 28. Disputes to be resolved in accordance with custom

- (1) A land tribunal must determine the rights of the parties to the dispute according to custom.
- (2) The parties may at any time try to reach an amicable settlement of the land dispute, and the tribunal must encourage and facilitate any such attempts.
- (3) The chairperson may adjourn the hearing of a land tribunal for a period not exceeding 10 days to enable an amicable settlement to be reached.

- (4) However, if there is no amicable settlement within that time, the chairperson must recommence the hearing.

## 29. Decisions of land tribunals

- (1) After the hearing of a land tribunal is completed, the chairperson must adjourn the meeting of the land tribunal to enable the members to make their decision. The decision must be made within 21 days after the completion of the hearing.
- (2) Decisions of a land tribunal are to be made by consensus. However, if this is not possible each member of a land tribunal has a single vote and the tribunal is to make its decision by a majority vote of its members. If the votes are tied, the chairperson of the land tribunal has a casting vote.
- (3) The chairperson of a land tribunal must announce the decision in public and, if possible, in the presence of the parties.

## 30. Orders

A land tribunal may as part of its decision make one or more of the following orders:

- (a) an order declaring the rights of the parties;
- (b) an order that a person move out of occupation of the land on a permanent basis or for a specified period;
- (c) an order that a person pay compensation for the use of land, or damage done to land, crops, plants, or animals, or injury caused to a person;
- (d) an order that a person pay a fine as punishment for misconduct on the land;
- (e) an order that a person pay a fine as punishment for misconduct at the tribunal hearing;
- (f) such other orders as it considers necessary.

## 31. Customary reconciliation ceremony

The parties may enter into a customary reconciliation ceremony after a land tribunal announces its decision.

### 32. Allowances and costs

(1) Before a land tribunal sits on any day (“the sitting day”) to hear a dispute, the secretary of the land tribunal must work out:

- (a) the sitting allowances to which the chairperson, each other member and the secretary is entitled to for the sitting day in accordance with Schedule 2; and
- (b) the reasonable transportation and communication costs of the chairperson, each other member and the secretary for the sitting day.

(2) Each party to the dispute must pay to the secretary an equal share of the total of the amounts worked out under paragraphs (1)(a) and (b) before the land tribunal meets on the sitting day. For example, if the total amount is VT 9,000 and there are 2 parties, each party must pay VT 4,500.

(3) If any of the parties do not pay the amounts required under subsection (2), the land tribunal must not meet on the sitting day.

(4) If the land tribunal meets on the sitting day, the secretary must, at the end of that day, pay to:

- (a) the chairperson; and
- (b) each other member; and
- (c) himself or herself;

the sitting allowances, and transportation and communication costs, to which he or she is entitled.

### 33. Decisions are final

Subject to:

- (a) the Constitution; and
- (b) the rights of appeal to, and rehearing by, other land tribunals provided for under this Act; and
- (c) the rights of supervision by the Supreme Court under section 39;

a decision of a land tribunal is final and binding on the parties and those claiming through them, and the decision is not to be challenged, appealed against, reviewed, quashed, set aside or called in question in any court on any ground.

### 34. Records of decisions

(1) The secretary of a land tribunal must record the tribunal’s decision in the form set out in Schedule 3, and on it being signed by the chairperson and secretary it constitutes an accurate record of the decision for all purposes.

(2) If the decision of a land tribunal is not appealed against or there is no re-hearing, the secretary of the tribunal must as soon as possible send the record of the decision to the Director.

(3) If the decision is appealed against or there is a re-hearing, the secretary of the tribunal must as soon as possible send the record of the decision to the secretary of the land tribunal hearing the appeal or undertaking the re-hearing.

## ANNEX XVII: Trainings and Conversations: Expanded

- Legal reasoning: Legal reasoning refers to the technique of reviewing the information and evidence and coming to a decision that is logical, clear, and fair. It includes an understanding of the requirements set out by the relevant legislation and jurisprudence, weighing and analysis of evidence, assessment of witnesses, and general debating and reasoning skills.
- Legal procedure: The legal procedure to be followed is that set down by the relevant legislation and regulation, principles underlying that procedure, as well as any formalities prescribed by practice or jurisprudence. This module will include visits to formal courts to observe proceedings and meet with judges immediately after, as well as observing elders' proceedings followed by meetings with elders.
- Constitutional and human rights: Constitutional and human rights standards refer to the protection of minimum rights guaranteed under all relevant laws. This topic includes consideration of and attention to barriers that women, minority groups, and IDPs face in accessing justice.
- Land-related legal literacy: Land-related legal literacy may be described as including the following:
  1. Context of legal pluralism
  2. A knowledge of land laws, including family law and related procedures
  3. An understanding of the complexity of land issues
  4. Some familiarity with the relationships between different laws and practices
  5. A knowledge of the available transactional opinions
  6. An understanding of the limitations of the legislation and the implementing bodies

Good governance and access to justice: This includes the respective rights and duties of government and citizens; principles of equity and inclusivity in access to justice; ethics in decision making; transparency, including ensuring that the tribunal is understandable and accessible to users; accountability, including obligations of tribunal members, as well as accountability mechanisms and procedures; and how to respond to conflicts of interest when adjudicating cases.

## ANNEX XVIII: Kenya Justice Project Activities

- Community conversations: Conversations with women about land issues, rights, security of tenure, and their concerns surrounding these issues. Conversations should be had with groups of women, men (including elders), teachers, and youth; these categories can be further divided into groups of similar demographics.
- Training on human rights, with a focus on women: Most men and women consulted for this project indicated that most women and many men are not aware of women's rights relating to land. The rights training should also be conducted as conversations with groups of women, men, teachers, and youth about human rights, land rights, women's rights, and what they mean in Somaliland and Puntland. It should also focus on the services offered by the LDT.
- Public speaking training for women: This training should be designed to give women trainees the skills and confidence to speak at and lead public meetings.

- Alternative dispute resolution training for women: Mediation is at present seen as a skill exercised by men in Somaliland and Puntland. Alternative dispute resolution training should equip women with mediation skills so that they may begin exercising this role informally, and eventually move towards being included as elder decision makers.
- Peer sessions: Women, elders, and youth convene their own peer sessions with up to ten people of the same demographic from their community to share lessons learned during the project. These were extremely successful in Kenya, both in reaching a larger number of people and in solidifying the lessons learned for those who attended the trainings and community conversations.
- Organized trips: Visits with women, minority clan members, IDPs, and refugees to the formal courts and the LDTs.

### ANNEX XIX: Women Interviewed in Somaliland Disaggregated by Age, Marital Status, and Clan

	Age	Marital status	Clan status	Case ongoing?	Feels that justice has been or will be done
Woman 1	32	Single	Majority	Yes	No
Woman 2	35	Married	Not disclosed	Yes – two years	No
Woman 3	40	Widow	Not disclosed	Yes – one year and several months	No
Woman 4	Early 40s	Married	Majority	Yes – over two and a half years	No
Woman 5	Over 50	Widow	Minority	Yes – three years	No
Woman 6	Over 50	Married	Minority	Yes – eight months	Yes
Woman 7	Late 20s	Single	Majority	Has not had a case, but knows about LDT through working at the Ministry of Justice	No





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## Harmonization Of The Legal Systems Resolving Land Disputes In Somaliland And Puntland: Report And Recommendations

This report is part of the activities funded through the United Nations Joint Programme on Local Governance and Decentralized Service Delivery. It sheds light on important aspects of the resolution and transformation of land disputes, a phenomenon that has been constantly increasing in Somaliland and Puntland, and a potential driver of conflict, if left unaddressed. The study received technical and financial support by UN-Habitat and it was conducted by Legal Action Worldwide.

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Somaliland Ministry of Interior



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