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Training Manual on Land Disputes before the Somaliland Urban Land Dispute Tribunals

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Introduction

The Urban Land Management Law of Somaliland, Law No. 17/2001 (“Law No. 17/2001”), establishes and regulates Somaliland’s Urban Land Dispute Tribunals. As stated in Article 28 of Law No 17/2001, Urban Land Dispute Tribunals are administrative committees composed of seven members from various Government Ministries, and are appointed by the Minister of Interior. LDTs are established to provide conflict resolution services to the public, especially on disputes related to urban land. The Preamble of Law No. 17/2001 defines the main objectives of the LDTs as: “...to control land-grabbing, and devise a mechanism to solve urban land disputes in a way which is much faster and easier...than civil courts process.” LDTs, therefore, are administrative and conflict resolution institutions vested with the legal mandate of resolving urban land disputes in Somaliland. Like the ordinary courts, LDTs are expected to provide their services to the public in a manner that is compatible with the fundamental right to navigate a just legal system guaranteed by the Somaliland Constitution.

Features of the LDTs

- Administrative bodies with quasi-judicial power;
- Only mandated to hear disputes over urban land within a particular area;
- Objective is to hear disputes in a manner that is less complicated and more efficient than the courts;
- Intended to be accessible to all Somalilanders.

LDTs, however, are intended to be informal and accessible mechanisms. They adopt more flexible procedures than ordinary courts which allow LDTs to provide and deliver urban land dispute resolution services to the public in a faster and more effective manner.

Currently there are three LDTs established and functioning in Somaliland: the Hargeisa LDT, established in 2010, and the Berbera and Boorama

LDTs, both established in mid-2014. In September 2014, the Ministry of Interior Affairs of Somaliland, fulfilling its duty under Article 28 of the Law No 2001, issued and adopted the first Regulation for the establishment and operations of Somaliland LDTs. In particular, LDT regulation No. 1/2014 outlines the establishment, structures, and operations of the LDTs, as well as a procedure for handling urban land disputes. Under these Regulations, the LDTs followed the strict and rigid procedure of the ordinary courts. An assessment undertaken in 2015 and 2016 concluded that these Regulations were an inappropriate mean for achieving the stated objectives of the LDT, including the provision of a simplified and more efficient procedure than that followed by the courts.

Discussions on the findings of this study and subsequent workshops on challenges in resolving urban land disputes in Somaliland outlined recommendations for enhancing and improving the capacity of LDTs to deliver quality and reliable urban land dispute resolution services. Among the key recommendations agreed and prioritized were the review and amendment of existing LDT Regulation. A new Regulation was drafted in accordance with this recommendation and is due to be passed by the Ministry of Interior Affairs of Somaliland in 2017. This training manual is based on the revised Regulation.

The revised Regulation of the LDTs clearly defines the jurisdiction of the LDTs and the conditions for the appointment of membership sets up a special procedure for LDTs to manage filing and registration, and sets out the procedure for the hearing process to be followed by the LDTs. This training manual was developed to assist with the implementation of the revised Regulation.

The training manual covers the following key training topics for the effective administration and management of urban land conflict resolution:

1. Jurisdiction on the Tribunals
2. Procedures for filing and opening cases

3. *Procedure for hearing and managing proceedings*
4. *Decision making and formality for LDT decisions*
5. *Enforcement.*

The training manual consists of five chapters, which cover both the principles behind the operation of the LDTs and the practical and procedural steps for hearing a case:

1. *Chapter 1: Basic Principles of Administrative Justice*
2. *Chapter 2: Jurisdiction of the Land Dispute Tribunals*
3. *Chapter 3: Procedure for Filing and opening LDT Cases*
4. *Chapter 4: Procedure for case Hearing and decision making*
5. *Chapter 5: Enforcement of decisions*

The methodology set out for trainings delivered in this training manual are as follows: First, provisions of the Amended LDT Regulation relating to the above-mentioned training topics will be explained to the trainees; and second, there will be practical and hypothetical case studies to assist trainees in learning the most appropriate way of applying the procedures and provisions of the revised Regulation in their daily practice. The targeted trainees are the members of the LDT, other key stakeholders, and decision makers related to the LDT or dispute resolution over cases involving urban land.



1.1 Introduction to Land Dispute Tribunals in Somaliland

To overcome some of the challenges posed by both the formal and customary legal systems, Land Dispute Tribunals (LDTs) were established by the Ministry of Interior in Somaliland in 2010. The LDT in Hargeisa, Somaliland has been in operation for five years. The LDTs in Berbera and Boroma were established in 2015. The LDTs are intended to be a hybrid institution harmonising formal and customary legal procedures to provide a trusted, efficient and rights-respecting dispute resolution forum.

2.1.1 Objectives of the LDTs

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.¹ 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:

Objective 1: Efficiency	To provide for an efficient means of accessing legal redress and assistance over disputes relating to urban land.
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¹ 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 prioritising mutual satisfaction of the parties.

Objective 2: Accessibility	To be accessible to all Somalilanders, both in terms of affordable and physical accessibility by being based in each municipality.
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Objective 3: Hybridity	To create a hybrid body which utilises the advantages of both the formal legal system and the customary courts.
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2.1.2 Justification for drawing membership of and Responsibility over Land Dispute Tribunals from diverse Government Agencies

Comparative jurisdictions have experimented with various member compositions and selection processes for their land tribunals. These tribunals have been most effective when members are appointed or elected by several different government authorities and where members are closely tied to the region in which they operate. The added value of the government representatives is their specialized knowledge in certain areas relating to land. If their knowledge is related to the particular area being considered by the LDT, this increases the advantage to the Tribunal. The added value of splitting the administration, membership, management and accountability responsibilities for the Tribunal between different Ministries is that such an approach limits corruption and reduces the likelihood of mismanagement by sharing responsibilities and increasing accountability.

3.1.1 A summary of Land Laws in Somaliland

There are five main laws in Somaliland which are relevant to land governance and which are implemented in practice:

a) **The Constitution (2001)**

The Constitution protects the right to private property, equality, access to justice and rights of women. It also gives some recognition to the rules of international law.

b) **The Urban Land Management**

Article 10(2): Foreign Relations

The Republic of Somaliland recognises and shall act in conformity with the United Nations Charter and with international law, and shall respect the Universal Declaration of Human Rights

Act (Law No 17)

Law No 17 regulates urban land and regulates urban land governance, allocation of land, planning and development of land, land tenure, appropriation of land for public use and compensation and the establishment of the LDTs.

It, however, lacks clarity and coherency and provides for complicated systems of land governance.

c) **Urban Land Dispute Resolution Regulation, Regulation No: 01/2014**

Regulation No 01/2014 governs jurisdiction, internal organisational structure, filing and opening cases, procedural guidelines, rules as to the submission of evidence and hearing of witnesses, execution of decisions, appeal and the relationship between the LDTs and other governmental organizations. Besides lacking clarity and coherency, it provides for complicated systems of

land governance, tedious procedures and with no security of tenure for poor and displaced people.

d) **The Agricultural Land Ownership Law**

The Agricultural Land Ownership Law regulates agricultural land and recognizes pastoral/ grazing land. It allocates management responsibilities to ministries and the dispute resolution mandate to the courts. It, however, does not define grazing land nor does it secure rights of pastoralists.

e) **The Civil Code and the Civil Procedure Code**

The CPC 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, sale and transfer of property and registration and publication of documents. Despite both Codes requiring that title deeds are filed with the court, there is no registry in the court for title deeds.

Article 28: Right to Sue and Defend

1. Every person shall have the right to institute proceedings in a competent court in accordance with the law.
2. Every person shall have the right to defend himself in a court.
3. The state shall provide free legal defence in matters which are determined by the law, and court fees may be waived for the indigent.

CHAPTER 1. BASIC PRINCIPLES OF ADMINISTRATIVE JUSTICE

As noted above, LDTs are administrative agencies vested with quasi-judicial authority for the purpose of providing effective and speedy conflict resolution services over urban land disputes to the public. In order to undertake their duties and role in the justice administration, LDTs, like the courts, are required to respect and uphold the following fundamental principles of justice:

1. Fair and timely decisions
2. Accessibility
3. Independency and impartiality
4. Accountability.

These fundamental principles of the justice administration that LDTs and all members of the each LDT are expected to uphold, when undertaking the duties of the LDTs, derive from the basic right to access justice. The Somaliland Constitution recognizes and protects the right of the individual to access justice in Article 28 and provides that every person has the right to submit a complaint or defend themselves in a competent court. Although they are not courts, LDTs are administrative institutions that have the legal mandate to hear and make decisions over urban land disputes. Article 28 of Law No. 17/2001, which established LDTs, stipulates clearly that all final decisions of LDTs over urban land disputes are appealable by the Supreme Court, which is the highest judiciary institution in the country. Overall, LDTs are administrative agencies vested with judicial-like mandates to provide the public with dispute resolution services over urban land disputes in accordance with the right of an individual to access justice.

The Somaliland Constitution does not define what is meant by the right to access justice. However, the constitution provides that all the fundamental human rights it recognizes should be interpreted in accordance with the accepted practices of

internationally recognized human rights law. The right to access justice by the individual is universally accepted and prescribes certain principles which are fundamental for the administration of justice. Without observing and upholding the fundamental principles of the administration involved with ensuring that justice is accessible, it can be difficult for any dispute resolution body or institution to handle and resolve disputes in a manner that is timely, fair, and in a way that is compatible with the expectation of the public at large to secure public confidence.



This raises another important value of the justice administration and its ability to secure public confidence. Like any other conflict resolution service provider, it is very important and necessary for the LDTs to have and sustain public confidence and trust in their services. Without having or securing public confidence, LDTs would have difficulty carrying out their duties to the justice administration system, and protecting peace and stability for society. If the public loses confidence in the LDT system, it is quite clear that the public would resolve disputes themselves—potentially leading to instability, insecurity, and widespread injustice. This may occur if LDTs, as a conflict resolution institution, fail to:

- ❖ Treat the public and disputing parties fairly and courteously
- ❖ Resolve disputes efficiently, have a thorough understanding of the case
- ❖ Hear the needs and expectations of members of the LDTs and staff, and respond accordingly

To secure or prevent losing public trust and confidence, LDTs are required to undertake their duties in delivering conflict resolution services to the public in accordance with the fundamental principles of justice that emanate from the basic right to access justice. These principles involve making fair and timely decisions, as well as maintaining accessibility, independency and impartiality, and accountability. Each one of these basic justice principles will be explained and outlined below.



1. Fair and timely decisions

The principle of fair and timely decisions is the most fundamental in the administration and delivery of conflict resolution services to the public, forming the basis of the Land Dispute Tribunals. These fundamental principles are one of the main principles upon which the Land Dispute Tribunals of Somaliland are established on. According to the Preamble of Somaliland Urban land management Law, Law. No 17/200, the very objective of Urban Land Dispute Tribunals is to provide efficient, reliable, and quick conflict resolution of urban land disputes for the public.

The principle of fair decision entitles all disputing parties to their fundamental right to be heard which includes: due notice, a fair hearing, the right of cross-examination, the opportunity to engage counsel, the right to the disclosure of evidence, the right to call witnesses who can provide relevant

evidence, reasons for the decision, and the right to appeal in accordance with the law.

Fundamental questions that the Tribunal should ask include following:

- Were parties provided with sufficient information of the case against them?
- Were the parties given an appropriate opportunity to reply?
- Were the parties provided with a hearing and a decision within a reasonable period of time?
- Were the parties provided with sufficient reasons for the decision?
- Was the decision based on relevant and correct information?

Chapter three of the Regulation provides the procedure for handling and making decisions over urban land disputes and stipulates provisions which oblige LDTs to avoid delaying the disposition of disputes². It also includes provisions demanding LDTs to dispose the dispute quickly unless there is justifiable reason to postpone the hearing³. The Regulation also provides provisions requiring that the final decisions of LDTs over urban land disputes to be well reasoned decisions and based on relevant and correct evidence⁴.

However, the principle of fairness is much more than just providing parties with a fair and timely decision. It also includes the provision of information and services that are easy to find, use, and understand; treating participants with courtesy and respect. It poses questions on the manner or the way in which parties were treated by tribunal members and staff throughout their contact with the tribunal, such as:

² See Articles 32 of the Regulation providing provisions regulating adjournment of case hearings.

³ Article 34 of the Regulation

⁴ See Article 51 of the Regulation setting formalities of LDT final decisions

- Were tribunal members and staff approachable and helpful?
- Were the parties treated with courtesy and respect?
- Were the parties provided with appropriate guidance throughout the process?

2. Accessibility



If LDTs are not easily accessible to the public, it will lead denial of the right to access justice for the disputing parties, and hence loss of public trust and confidence thereto. The potential barriers for the public in accessing LDTs are many and include visible and non-visible barriers:

- ❖ *Visible barriers*—The distance of the location of the Tribunal, Tribunal case-related fees, and fees for advocates are among potential and visible barriers for individuals in accessing services of the LDTs.
- ❖ *Invisible Barriers*—Parties not knowing who or which office to submit their case, or to whom to talk about their case or about submitting petitions or complaints; conditions and requirements for filling and submitting complaints to the Tribunals; the time, place and members hearing their case. Prolonging case hearing and disposal process is also another potential and invisible barrier to accessibility of the Tribunal.

The above-mentioned factors are barriers to accessibility of the Tribunal, and the existence of any of such barriers will lead disputing parties and public at large to lose confidence over the system. To know whether there are barriers to accessibility for your Tribunal, you need to ask and answer the following:

- *Are Tribunal case-related fees high or affordable?*
- *Is there a written and known procedure exempting payment of Tribunal case-related fees from the persons who cannot afford to pay?*
- *Are premises of the Tribunal known to the public?*
- *Are the working premises of the Tribunal easily reachable and without the incurrance of unaffordable costs?*
- *Are the Tribunal staff approachable and helpful?*
- *Are the disputing parties treated with courtesy and respect?*
- *Are the parties provided with appropriate guidance throughout the process?*

If any one or more of the above referred barriers is/are found to exist, then it is for you to discuss and devise a solution thereto.

3. Independence and Impartiality

Independency of the Tribunal means that the Tribunal and its members must be able to exercise their professional duties without influence from any other government (local or central) body or official or by any other inappropriate source. The principle of independence is very important in enabling the Tribunal and its members to ensure fair decisions over disputes they review.

The principle of independency entails that in hearing and managing proceedings processes, and in making Tribunal decisions, individual Tribunal

members have a duty to decide cases before them based on the law, free from any sort of influence, fear of personal criticism, or reprisal of any kind.

The importance of the principle of independency of the Tribunals is recognized and guaranteed under Article 8 of the LDT Regulation which provide as following:

- 1) The Tribunal shall be fully independent when administering the hearing, forming decisions, and taking all necessary steps in relation to cases that fall in their jurisdiction.
- 2) No governmental institution, the Court, or non-governmental institution may interfere, influence, or direct the Tribunal in the administration of land dispute affairs.

Accordingly, LDTs and LDT members are required to undertake their duties in the management and disposition of disputes brought to them in an independent manner.

Impartiality is another basic principle without which no Tribunal could be independent, or provide disputing parties with fair and timely decisions over their disputes. The principle of impartiality underlies the work of the Tribunal and Tribunal members. While independence refers to the separation of the Tribunal from other bodies of government, means that Tribunal members must always act objectively, without personal bias or preconceived ideas on the matter and parties involved, and without promoting the interests of any of the parties⁵.

The LDT regulation does not specifically mention the requirement of impartiality, but the Judicial Code of Conduct and disciplinary rules of Somaliland judges, which is referred as applicable

⁵ See note no 8 above

rules to LDTs⁶, postulate rules pertaining to impartiality of LDTs and LDT members. Impartiality prohibits LDT members to involve themselves in the hearing of any LDT cases, when the concerned member:

- ❖ *has a family relationship or close personal friendship or business relationship with a party of the dispute;*
- ❖ *history of animosity toward a party or the party's family;*
- ❖ *has a pecuniary interest (direct or indirect) in the outcome of the case; or*
- ❖ *has a previous professional connection with the case.*

The principle also prohibits LDT members from expressing views that reflect a predisposition to deciding cases, or making statements during proceedings that are indicative of unreasonable hostility towards a party, counsel, witness of the case, or treating party of the case in a discriminatory manner.

As indicated above, taking or demanding a bribe, deciding disputes based on bias such as nepotism, discriminating between parties on whatever ground and similar biased behaviours, or involving themselves in the hearing of a land dispute in which the LDT member has personal relationship with the party of the dispute, are among key factors that affect and prejudice the impartiality of the LDT. A lack of impartiality will likely lead to a violation of the independency and accessibility of the LDTs, and the disputing parties' right to equality before the law and right to receive a fair and just decision.

4. Accountability

The principle of accountability of the LDTs is important and necessary for two main reasons: to prevent the abuse of power by individual LDT

⁶ See Article 8(3) of the LDT Revised Regulation

members or the LDTs, and to secure public confidence of the judiciary. If there is no means by which to hold the LDTs and LDT members accountable for their actions, it will not be possible to ensure that LDTs and LDT members are undertaking, or have undertaken, their duties in a way that is in accordance with the law and done for the purpose for which LDTs are established. Without accountability, individuals who believe LDTs or LDT members violated their duties relating to land dispute solution could not have access to any mechanism to resort to get redress thereto and this will lead LDTs to the loss of public trust and confidence.

The principle of accountability requires LDTs to have an adequate system comprising of:

- ❖ a comprehensive code of conduct stipulating defined and detailed rules of ethics, duties of LDT members in relation to the administration and decision making of LDT cases, and categories of disciplinary measures to impose LDT members who violate such defined rules of ethics and duties.
- ❖ a process and procedures for reporting and submitting public complaints against members of the LDTs; and
- ❖ a procedure and process for the investigation, hearing, and decision making of public complaints against LDT members.

The revised LDT regulation recognizes the importance of the principle of accountability in the LDT systems, and provides certain provisions to set the procedure for holding LDT members accountable. Article 15 of the LDT revised regulation stipulates the rules outlining accountability. According to this article of the regulation, the Judicial Code of Conduct and the disciplinary rules of the Somaliland judges are, to the extent possible, to be applied in holding LDT members accountable when they manage and make decisions for disputes within their jurisdiction. The Somaliland Higher Judicial Council is the responsible body for holding LDT members

accountable for misconduct. LDT members need to know such rules and procedures provided in the Somaliland Judicial code of conduct and disciplinary rules they are supposed to observe and uphold.

CHAPTER 2. JURISDICTION OF THE LAND DISPUTE TRIBUNALS



1.1 Adjudicative Jurisdiction of Tribunals

Both Law No. 17/2001 and the Amended Regulation provide the adjudicative jurisdiction of the LDT. The adjudicative jurisdiction of the LDT has two components: material jurisdiction and the territorial jurisdiction. Before hearing and determining the dispute brought to it, the LDT must check and ensure that it has both material and territorial jurisdiction over the subject matter of the dispute in accordance with Article 6 of the Regulation as explained below.

1.2 Material Jurisdiction

Material jurisdiction refers to the jurisdiction of the Tribunal over the subject matter and issue of the dispute. The material jurisdiction of the LDTs is provided in 28(5) of Law No. 17/2001, which provides that the LDT has jurisdiction over disputes over urban land. Article 6 (2) of the revised Regulation provides further clarification over the material jurisdiction of LDTs, and states that: The LDT adjudicates disputes over

ownership, tenure, use, sale and transfer of urban land that fall under the Jurisdiction of First Instance Courts of the Country”.

What is meant by “disputes concerning administration of urban land”?

Disputes over administration of urban land falling within the material jurisdiction of the LDT are those disputes that arise from administrative decisions and/or actions taken by government agencies and authorities under Law No 17/2001. This includes Local Government administrations and Local Councils.

Example: *The local government administration has legal authority to demand taxation from a landlord whose land remains unbuilt after a legally prescribed timeframe within which buyers of land are expected to erect permanent structures. Local government administrations also have the right to demand owners of farmlands which come under the town plan give plots equivalent to 30% of that farmland to the government for allocating to public purposes. The Local Government Administration may file a case in the LTDs in relation to these legal obligations. Disputes that may arise from such administrative decisions are “disputes concerning the administration of Urban land”, which the LTDs have material jurisdiction to hear and resolve.*

1.3 Territorial Jurisdiction

In Somaliland, ‘planned provision of infrastructure;’ would include any land included in the master plan issued by the urban planning office of the Ministry of Public Works in accordance with the Urban land management Act. Where such master plan does not exist, it would include any land under the town plan of the land department of the local district council. Where this does not exist, the urban characterisation of the land should be established as a matter of fact, taking into account the extent to which it is built up, the development of the infrastructure and the services available.

After determining that the dispute brought to it is an urban land dispute falling within its material jurisdiction, the concerned LDT should ensure it has a territorial jurisdiction over the dispute as well. The territorial jurisdiction of the LDT concerns the location of the land under the dispute.

Article 6(I) provides that each LDT has a territorial jurisdiction “...over disputes relating to urban land within the geographical area represented by the local council members of the District in which the LDT is established.”

When determining whether it has a mandate to decide the specific dispute submitted to it, the concerned LDT should check if it has both material and territorial jurisdiction.

Which land is urban land?

Urban land is not defined in law No 17. The revised Regulation of the LTDs provides the following definition:

Urban land means land located in urban areas, defined as “the space characterized by parcelled land and continuous built up areas in which there is actual or planned provision of infrastructure and services such as roads, electricity, draining and water supply systems and sanitation.”

In Somaliland, ‘planned provision of infrastructure;’ would include any land included in the master plan issued by the urban planning office of the Ministry of Public Works in accordance with the Urban land management Act. Where such master plan does not exist, it would include any land under the town plan of the land department of the local district council. Where this does not exist, the urban characterisation of the land should be established as a matter of fact, taking into account the extent to which it is built up, the development of the infrastructure and the services available.

2.1 Disputes excluded from the Jurisdiction of Land Dispute Tribunals

There are certain land disputes excluded from the jurisdiction of the LDTs. Article 6(4) of the revised LDT Regulation lists these exceptions as disputes relating to:

- ❖ Land that has already been decided by a court; or
- ❖ Grazing, range or farmland; or
- ❖ Land which is subject to ongoing mediation;
- ❖ Land located beyond the administrative boundaries of the Local District Council.

The above-listed disputes excluded from the jurisdiction of LDTs can be divided into two categories: disputes which the LDTs have no jurisdiction to hear, and those which they should reject to hear. If a case falling into the first category is brought to the LDT, the LDT is required to dismiss that case on the ground that it has no jurisdiction. If the LDT hears and gives a decision over a case falling into this category, that decision shall have no legal effect.



The second type of disputes which are excluded from LDT jurisdiction are the disputes that the LDTs have jurisdiction to hear and decide, but where a situation exists preventing LDTs from hearing the case until that situation ends. This is the case where the dispute brought to attention of the Tribunal is already pending before elders or mediation for reconciliation. When such a situation

exists, the LDT must refuse to hear the dispute, and wait for the result of the mediation process. If the mediation fails for whatever reason, the LDT can hear and decide the dispute.

2.2 Referral pathways Between Courts and LDTs

In some cases, it is necessary for the LDTs to adjourn the hearing and to transfer the dispute to ordinary civil court to decide the dispute or a particular issue/s of the dispute. Similarly, it is possible that ordinary civil court may transfer a civil court case or particular issue of a civil case to the concerned LDTs to determine and give decision thereto. Situations in which the LDT should refer the dispute or particular issue/s of dispute over urban land are provided in Article 7 of the LDT revised Regulation which reads as follows:

“Tribunals shall refer cases to the Court whenever they deem that the ordinary court is more appropriate to determine the entire case or a particular issue or issues in the case, according to the Laws applicable and the following criteria:

1. When the case submitted to the LDTs concerns to a criminal matter or issue, it must be referred to the competent court to investigate and decide the criminal issue.
2. When the dispute before the Tribunal primarily relates to an issue beyond its jurisdiction, the Tribunal shall refer the entire case to the competent court to hear and dispose;
3. When the case before the Tribunal involves in issue/s falling under the jurisdiction of the court which need to be decided first and before the essence issue of the dispute, then the Tribunal shall submit such issue/s to the competent civil court to decide.”

There are three situations in which the Tribunal should refer the case to the ordinary civil courts.

The first situation is where the dispute brought to the Tribunal involves in a criminal matter or issue. As Tribunals has no jurisdiction to adjudicate and decide criminal related matters, they are required to refer disputes involving in crimes to the competent ordinary criminal court to investigate and decide the alleged criminal matter. The facts of the following hypothetical case are example of situations where the Tribunal should refer the dispute to the competent criminal court:

Scenario 1: *A complainant in a land dispute presented to an LDT panel a title document to prove his/her claims of land ownership. The respondent argued that the document presented by the complainant has been forged and is fraudulent. Fraud is a criminal offence under the Somaliland Penal Code. LDTs have no jurisdiction over criminal offences. Ordinary courts have this jurisdiction. The LDT is therefore required to adjourn hearing of the dispute and to refer the case to the competent criminal court to decide the criminal issue arising from the dispute. The land dispute case will remain pending in the LDT until the competent criminal court renders a final decision in relation to the forgery. The LDT will resume hearing of the land dispute upon receipt of the criminal court's final judgement. The decision of the criminal court will be relevant evidence to the determination of the issue of ownership of the disputed land.*

The second situation is when the dispute brought to the Tribunal primarily involves a civil matter beyond the jurisdiction of the LDTs. In such situations, the LDTs should refer the whole case to the competent civil court to decide.

Consider the following facts showing a dispute involving a matter beyond the jurisdiction of the Tribunal:

Scenario 2: *In a case relating to dispute over ownership of urban land filed in the LDT of Hargeisa, the complainant argued that he acquired the disputed land through inheritance, passed down through a valid will. The respondent argued there was no will, and that the disputed land was inherited equally by him and the complainant from their father. He argues that the land is therefore owned jointly by him and the complainant.*

This dispute relates to a dispute over urban land. However, the primary issue in this case is to decide whether the complainant has acquired ownership over land through valid will, or whether the land is land inherited jointly ownership of the disputing parties. And the LDT is not the appropriate venue to determine and solve this dispute, as it concerns a matter of inheritance. Therefore, the LDT should refer the whole case to the competent court to dispose and decide accordingly.

The third situation in which LDTs must refer disputes to the civil courts is in situations where the dispute primarily relates to an issue which LDTs have jurisdiction to hear, but which also involves in an issue/s falling under the jurisdiction of the courts which need to be decided before the primary issue of the dispute can be resolved. An example of such a type of dispute is outlined.

Scenario 3: *The dispute is over ownership and sale of urban land. The respondent, who is the seller of the land, confirms that they sold the land to the complainant, but argues that at the time he/she sold the land he/she was not mature and had no legal capacity to enter into the contract of sale. The respondent therefore argues that the sale of land was illegal, and null and void as it was not done in accordance with the applicable laws of sale contracts stipulated in the Somaliland Civil Code. The major issue in this dispute is the validity of the sale of the land, which is an issue that LDTs are not the appropriate venues to determine. The concerned LDT therefore should refer the case to*

the competent civil court to decide the validity of the sale of the disputed land. After the LDT receives the court's final judgement on the validity of the sale of the land, it would begin a hearing regarding on the ownership of land. The judgement of the court over the validity of the sale would be evidence that the LDT should consider in deciding the ownership of the disputed land.

Chapter 3. Procedure for Filing and opening LDT Cases

3.1. Procedure for Opening LDT cases

3.1.1 Submission of Case application/Complaint

Anyone who is interested in opening a case at an LDT is required to submit to the Office of the Secretary of the LDT a written application clearly mentioning all of the information prescribed in Article 25 (1) of the LDT Amended Regulation, listed below:

- ✓ Name and specification of the Tribunal the case was submitted to;*
- ✓ Full name, residence, and address of the plaintiff, if the plaintiff is representing another party, or other party is representing the plaintiff, it should state the full name of the representative or represented person;*
- ✓ Full name, residence, and address of the respondent. Where applicable if he/she is a representative of another person or he/she is represented by another person the full name of the representative should be stated.*
- ✓ If one of the parties to the case is a corporation or institution, the name of the entity and its headquarters,*
- ✓ The size, directions, plot number, if any, and the location of the disputed land; and*
- ✓ The point of dispute which the Tribunal is needed to solve*

The purpose of providing this information is to enable the LDT to easily determine who the disputing parties are, their contact information, where the disputed land is, and the dispute that must be resolved. Having a complaint provide all of the above-mentioned information in a clear and easily understandable manner to the LDT is essential for the timely hearing and disposal of the case. If the complaint does not provide all of the above legally prescribed information in a clear and easily understandable manner, it would result in a

prolonged process at the expense of the right of the disputing parties to have their case heard in a timely and efficient manner.

Questions for consideration

- *How can the LDTs make sure that public knows the conditions required to submit a complaint to the LDT?*
- *How do the LDTs ensure that anyone, especially illiterate people, will get an opportunity to submit and file a case to the LDTs, without the need of hiring a lawyer to assist in writing the complaint/case application?*

3.1.2. Checking Compliance, Returning and Rejection of Complaint/case application

Upon receipt of the case application, the LDT Secretary will ensure that the application is fully and properly filled with all the information required as per Article 25(1) of the LDT Regulation. If the application does not provide some, or all, of the required information, the Secretary will return the application to the complainant and inform him/her of the missing parts that need to be added, as well as their right to re-submit the application after filling it properly and correctly (See Article 25(2) of the LDT Amended Regulation).

If the application is written in accordance with the requirements and all the required information is entered, the Secretary shall order the applicant to pay the case application fees. If the applicant cannot afford the case application fees, the Secretary shall inform the applicant of their right to be exempted from the fees and explain the process required to obtain such an exemption (See Article 25(3) of the LDT Amended Regulation).

The Secretary is also required to ensure that the received application relates to a dispute falling within the jurisdiction of the LDT. If the application relates to a dispute which the LDT has no jurisdiction to hear and decide, in accordance with Article 6 of the LDT Regulation, the Secretary is required to issue a written and reasoned order rejecting the application (See Article 25(6) of the LDT Amended Regulation). The Secretary is required to give a copy of the rejection order to the applicant and inform them of the right to appeal to the Supreme Court within 15 days starting from the date of the rejection order (See Article 25(7) of the Amended LDTs Regulation). If an appeal is taken and the Supreme Court orders the LDT to hear such a case, the Secretary, after receiving the order from the Supreme Court, would then register the case.

3.1.3. Registration and opening case File

After approving the compliance of the case application and ensuring that the case application fees are paid, or that the LDT approved case application fees are exempted, the Secretary will proceed with the registration of the case application. The Secretary will assign a case identifier, order the Secretariat Staff to enter the case into the LDT case Register, and then open a case file for the application (See Article 25(4 and 5) of the Amended LDTs Regulation).

When registering the case application, the following information about the case application will be entered into the LDT case Register: Case identifier number, registration date, full names and addresses of the parties of the case, and names of representatives, if any, measurement and location of the disputed land, and the amount of case application fee paid, or fee exemption, if exempted. After the registration of the case, it is also important to register essential information in the LDT register concerning the registered case, such as the members of LDT Tribunal panel assigned to

hear the case, the disposed date, the date of appeal, if appeal taken, and the date and result of the appeal received.

Information to be entered into the registration of the LDT Cases include:

- ✓ Reference number of the case;
- ✓ Registration date;
- ✓ Full name/names of defendant(s)/physical or postal address or care of/their ages;
- ✓ Location, measurement, direction of the disputed land;
- ✓ Nature of the case/dispute;
- ✓ Amount of fees paid, or amount of fees exempted;
- ✓ Names of LDT members assigned to the case;
- ✓ Date the LDT reached a verdict and in favor of whom; and
- ✓ If appealed, date of appeal.

After the registration is done, the Secretariat Staff will open a case file for the registered case. The case file opened for the registered case would become the specified file for the case, and should keep the case application, and all other future documents and records related to the case (See Article 25(5) of the Amended LDTs Regulation). On top of the case file, all the entered data regarding the case should be listed, including: the case identifier, the type of case, the names and addresses of the parties, the disputed land and its location, and the amount of fees paid, etc.

Information to be entered on top of the case file:

- ✓ Reference number of the case;
- ✓ Registration date;
- ✓ Full name/names of defendant(s)/physical or postal address or care of/their ages;
- ✓ Location, measurement, direction of the disputed land;
- ✓ Type of the case/dispute;

- ✓ Amount of fees paid, or amount of fees exempted;
- ✓ Date the case file opened; and
- ✓ Names of LDT members assigned to the case.

After the registration and opening of a case file folder for the received and approved case application, the Secretary would submit the case file folder including the case application to the Chairman of LDT, in order to approve, appoint, and assign a Tribunal Panel to hear the case. Upon approval of the validity of the case application, the Chairman shall write the names of the Tribunal panel appointed and assigned to hear the case, with indication of the presiding member of the Tribunal Panel, on the case file folder. Subsequently, the LDT Chairman would return the case file folder to the Secretary to prepare and serve case notification to the respondent and to conduct steps necessary for the preparation of the preliminary hearing of the case (See Article 25(8) of the Amended LDTs Regulation).

3.2. Case Notification and Serving Procedure.

After the LDT Chairman approves the application and assigns a tribunal panel to the case, the Secretary will prepare case notification to be served and delivered to the respondent of the case in accordance with the process prescribed in Article 27 of the Amended LDT Regulation. The cited Article of the regulation sets steps to flow for the preparation and serving modalities of case notification orders to the concerned respondents, which are as follows:

1

The Secretary will check if the mobile phone of the respondent is known and available; and, if available, call and send an SMS message to the respondent and notify about the case filed against him/her and at the same time order to appear to the Office of the Secretary of the Tribunal at a fixed day and time to take copy of case application filed. If the respondent or his/her representative appears at the office of the Secretary on the date ordered in the phone call and MSM message, the Secretary shall give copy of the case application in accordance with Article 28 of the Amended LDT Regulation.

3

If the respondent is not found, or is out of the country, the case notification order shall be served to the home, place of business, or job centre of the Respondent by delivering it to a responsible or mature person who can be trusted to deliver the notice to the respondent, such as a: spouse, sibling, or close relative who is living with the respondent, the manager of his/her business, one of his employees at his/her business, or another person who is occupying, using or in charge of the land subject to the dispute. The person delivered to the order shall be asked to sign copy of the notice order as an acknowledgement of receipt of the order on behalf of the respondent.

2

If the mobile phone of the respondent is not known or if the respondent was called and contacted through his/her mobile phone, but does not appear on the date ordered to appear to collect the case application, the Secretary will prepare a written case notification order notifying the respondent about the case filed against him/her and at the same time ordering him/her to appear to the Office of the Secretary of the Tribunal at a fixed day and time to make a copy of the case application filed in the LDT. The notice order is also required to communicate and warn the respondent that, if not present at the office of the Secretary on the ordered date, the Tribunal may hear and decide the case in his/her absence. The case notification ordered will be served to the respondent by a Tribunal messenger. It will be delivered to the respondent personally, if found.

- ❖ If the respondent is found, the messenger or the person serving the order shall give a copy of the order to the respondent and require the respondent to sign and enter the date served at the back of a copy of the notification. This is needed to prove or acknowledge receipt of the order. Such copy of the order signed by the respondent shall be given to the Secretary and filed in the appropriate case file folder.
- ❖ If the respondent is found, but refuses to take the notification order, the messenger or the person serving it is required to notify two witnesses to witness the refusal of the respondent by putting their signature on the back of the notification order. The person serving the notice order shall report back to the Secretary regarding the refusal by submitting copy of the notification order, signed by the two witnesses. Such copy shall be filed in the case file folder opened for that case.

4

If the respondent is not found or is out of the country and there is no available person to deliver or place to serve the case notice order to the respondent, the Secretary will send the notification order to the respondent registered post office or courier or email, if the correct address of the respondent is known or through the local media. Upon sending the notification order, the Secretary will prepare copy of such notification order with a note providing serving mechanism employed and the date sent it to respondent to be filed in the concerned case file folder.

Another important point which should be taken into account when sending a notification order to the respondent is the setting or timeframe within which the respondent should be required to appear and collect copy of the case application filed against him/her. This is authority and discretion vested in the Tribunals' Secretary. However, when deciding the time frame for the case notification order, the Secretary should keep in mind the right of parties of the case to have a timely and final trial. To reflect this fundamental right of the parties, the Regulation prescribed criteria that the Secretary should strictly follow when setting the notification period. The Secretary is required to give special consideration about the possible serving modality of the notice, the location and availability of the respondent, and at the same time ensure that the notice shall not be more than 10 days where the respondent is residing in the country, or 30 days where the respondent is out of the country.

If, as per the notification order, the respondent appears at the Office of the Secretary of the Tribunal, the Secretary will, in consultation with the presiding member of the concerned Tribunal Panel, fix a date for the first session of the preliminary hearing of the case. They will accordingly take the following steps under and in accordance with Article 28 of the LDT Amended Regulation:

- ❖ Give the respondent copy of the case application against him/her, and require them to sign and enter the date to prove receipt of the case application. At the same time, inform him/her of the date of the preliminary hearing of the case, while also warning them that if they do not appear on the hearing, the Tribunal may hear and decide the case in his/her absence; and*
- ❖ Notify the Claimant of the preliminary hearing date and similarly warn them that the Tribunal may decide over the dispute in his/her absence, if they do not appear on the fixed hearing date.*

The following are among typical situations that the Secretary should decide that the notification order was not served properly and in accordance with the Regulation or that there is justifiable reason for the absence of the respondent, such as if:

- ❖ the serving modality employed was contrary to the order of the serving modalities prescribed by the Regulation. For instance, before trying to find the respondent to deliver the notification order personally, the serving messenger delivered the notification order to the home or business place of the respondent;*
- ❖ the notification order was served and delivered to a person who was not mature or who has no relation and can be trusted to deliver the notice to the Respondent;*
- ❖ the date the respondent received the notice order was very close to the date ordered to appear to the Office of the Secretary and had not received sufficient time to appear as ordered;*
- ❖ the respondent communicates to the Tribunal that he/she cannot come at the fixed time and proposed a date he/she can come; or*
- ❖ the person served the document on behalf of the party informed the Tribunal or the messenger served the order, that the party is away and will not be coming back before the date ordered.*

If the notice order is served to the respondent properly and in accordance with provisions of Article 27 above, and the respondent refuses to take and acknowledge receipt of the notice order, or does not appear, without justifiable reason, at the Office of the Secretary of the Tribunal to collect copy of the statement of claim, as ordered in the notice, the Secretary shall fix a preliminary hearing date for the case and accordingly notify the claimant of such fixed date.

If satisfied that the notice order was not served in accordance with the LDT Regulation to the respondent or that there was justifiable reason for the absence of the respondent, the Secretary shall prepare a written case notification order to be served to the respondent in accordance with Article 27 of the LDT Regulation. At this point, there are very important questions which need to be answered. When can the Secretary decide that the notification order was not proper and in accordance with the Regulation served to the respondent, or that the notice order was served properly and in accordance with the Regulation, but justifiable reason prevents the respondent to appear as per notification order?

Chapter 4. Procedure for case" Hearing and decision making

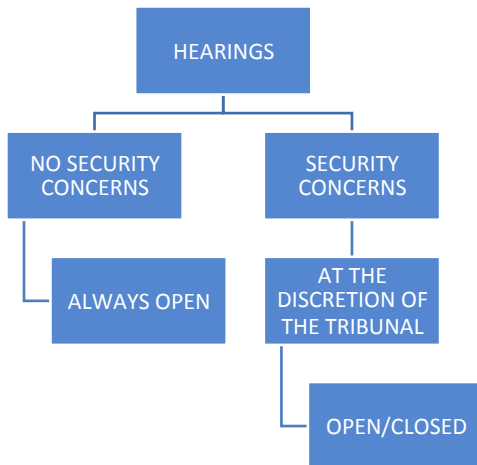
Part I: General Rules

4.1. General Rules

The Amended LDT Regulation prescribes the General rules which must be respected and applied by the LDTs in all hearing sessions and in all stages of the land dispute proceeding processes they handle. The principles provided by the Regulation and explained below are helpful and necessary for ensuring that LDTs determine and dispose disputes in a transparent, timely, and fair manner.

4.1.1. Open and public Hearing

According to Article 29 of the LDT Amended Regulation, except in situations where the LDT is convinced that a hearing in a closed session is warranted due to security concerns all hearing sessions of cases falling under the Jurisdiction of the LDTs must be open and public hearing sessions. This Principle of open and public hearing sessions is based on, and reflects from, the need to ensure transparency in the case hearing process. The openness of the case hearing process provides the public with an opportunity to attend hearing sessions to see how the Tribunal hears and handles proceedings of the dispute and allow them to witness whether the Tribunal is committed to justice and can be trusted. Moreover, the attendance of the public in an open and public case hearing session serves as a method of pressuring Tribunal members to adhere to the proper and applicable procedure and as to avoid taking any action against applicable procedures of fair and just hearing and decision making.



4.1.2. Keeping proper and complete LDT Case Records

The LDT Amended Regulation obliges all Tribunals to record in writing and properly keep all proceedings of every hearing session of the individual cases they hear.

Article 30 of the Regulation states as follows:

“Every Tribunal Panel shall ensure that:

1. All arguments of the parties, witness testimony, questions from the panel to parties and witnesses and all and anything said in each and every hearing of the proceeding of the case are written in a legible and clear manner, and are properly recorded, and;
2. That all written records of the proceedings of the case, documentary evidence, tribunal orders and all other documents relating to the case are recorded and properly placed and kept in the case file folder of the case.”

As ordered and required in this Article of the Regulation, Tribunals are obliged to ensure that all arguments of the parties, witness testimonies, questions from the panel to parties, witnesses, and anything said in each hearing session held are

written in a legible and clear manner, and are properly recorded. In addition, Tribunals are supposed to and are obligated to ensure that all records of the proceedings of the case hearing sessions are recorded and properly placed and kept in the case file folder belonging to such records and documents. These include all: documentary evidence, tribunal orders such as hearings adjournments, notifications and Tribunal orders, and all other documents such as case applications, responses, and such other documents relating to each and every individual case.

Availability of case file folder containing all records written in the hearing sessions of the case and all such other records and documents pertaining to the case heard by the Tribunal is essential and necessary for:

- ❖ Enabling LDTs to receive comprehensive and reliable information evidence, which are reflective of the case proceedings it hears, to render a just decision;
- ❖ Enabling parties of the case to have access to information to evaluate and verify that the Tribunal has considered and based its decisions on all of their arguments, witness testimonies, and evidences as they presented to it in the hearing sessions of the case. Having complete and comprehensive records of the case, parties would be able to evaluate the decision of the Tribunal, and so to decide if to appeal or otherwise; and
- ❖ Enabling the Supreme Court, and other institutions responsible for the accountability and correction of final decisions of the LDTs, to obtain a comprehensive report and information they may require for reviewing and checking Tribunal actions and decisions.

The Clerk of the Tribunal Panel is responsible for writing records of hearing sessions, and to place and properly organize such case proceeding records together with all documents pertaining to the case in the appropriate case file folder. However, in

order to carry out its duties, the Tribunal Panel hearing the case, especially the presiding member of the panel, is expected to ensure that its supporting clerk should thoroughly write statements and utterances of the parties, and witness testimonies given at any hearing session of the case and that the Clerk has also placed and neatly organized all written records and other documents of the case⁷. This in turn will require the presiding member of the Tribunal Panel hearing the case to properly lead hearings of the parties and witnesses, so as to ensure that the Clerk has understood and recorded everything being said during every hearing session of the case.

4.1.3. Hearing the Case in the Absence of the Parties

Article 32 of the LDT Amended regulation is essential for ensuring the right to fair and speedy hearing. This Article postulates a general rule which obliges the Tribunal to not hear or make a decision in a dispute in which all the parties are not present and heard. Nevertheless, the Article provides an exception to the aforementioned rule which mandates and requires the Tribunals to hear and/or decide the dispute in the absence of the parties, subject to the following conditions:

- ❖ when the respondent is absent and not represented in the hearing;
- ❖ when the Tribunal is satisfied the respondent was duly and properly served and received case notification order and notice of the hearing date of the case in accordance with the Regulation, but fails to appear, and not represented, in the hearing without reasonable causes;
- ❖ when the respondent is absent and not represented in the hearing, and the Tribunal is satisfied the case notification order was served to the respondent duly and in

accordance with the Regulation and that the respondent has refused to take and acknowledge receipt of the notice the order; or

- ❖ when the Tribunal is satisfied that complainant was notified about the hearing date of the case in accordance with the Regulation, but fails to appear, and not represented, in the hearing session without reasonable causes.

When any of the above listed situations exists, the Tribunal panel is required to start the hearing or decide on the case, regardless of the absence of the absent party of the case. When determining if it should hear and decide the case in the absence of a party, the Tribunal shall first study documentations in the concerned case file of the case relating to the serving of case notification order and hearing date prepared and documented by the Secretary of the Tribunal, in accordance with Articles 27 and 28 of the Regulation. Upon studying the appropriate documentation, it should be determined whether the case notification and hearing notice was served duly and in accordance with the Regulation to the absent party. If, for instance, the absent party is the respondent, the Tribunal may decide that the notification order was not served properly and in accordance with the Regulation, if it finds out that:

- ❖ the serving modality employed was contrary to the order of the serving modalities prescribed by the Regulation. For instance, before trying to find the respondent to deliver the notification order personally, the serving messenger delivered the notification order to the home or business place of the respondent,
- ❖ the notification order was served and delivered to a person who was not mature, who had no relation, or who could not be

⁷ See Article 21(5) of the Amended LDTs Regulation)

trusted to deliver the notice to the respondent.

- ❖ *the date the respondent received the notice order was very close to the date ordered to appear to the Office of the Secretary and did not receive sufficient time to appear as ordered;*
- ❖ *the respondent communicates to the Tribunal that he/she cannot come at the fixed time and proposed a date he/she can come.*
- ❖ *the person served the document on behalf of the party informed the Tribunal or the messenger served the order, that the party is away and will not be coming back before the date ordered.*

If satisfied that service of the orders were done in accordance with the Regulation, the Tribunal shall check if there is a “reasonable cause” for the absence of the party. The question need to answer which the Tribunal Panel should consider carefully is this: when can the Tribunal decide that there is a reasonable cause justifying the absence of the party? Following circumstances are reusable causes to justify the absence of the party:

- ❖ *the date the absent party received the hearing notice order was very close to the fixed date of the hearing, and has no sufficient time to appear*
- ❖ *earlier notification on the part of the party that he/she cannot come the date ordered due to prior court or Tribunal appointment hearing; sickness, death of family member, being away for business and similar reasons*
- ❖ *in such other circumstances that the Tribunal deems that hearing the case in the absence of the party is detrimental to the right to the fair hearing of the party and to the proper and just disposition of the dispute.*

The Tribunal panel shall adjourn the hearing and order to serve notice to the absent party when,

after studying the documentation of the case and sounding circumstances, it is satisfied that the absence of the party was due the failure to effectively deliver notice of the hearing day. In all other situations, the Tribunal should start the hearing and decide the case in the absence of the party.

4.1.4. Adjournment of Hearing Sessions

In order to avoid prolonging the case disposal process, each Tribunal is expected to avoid adjourning the hearing of the disputes, unless there are justifiable reasons or grounds for the adjournment of the hearing. Article 31 of Amended LDTs Regulation prescribed a rule which is very vital for ensuring the timely and fair disposition of the disputes filed in LDTs, and postulates the conditions that may justify adjournment of hearing of LDTs cases. According to the cited Article of the Regulation, no Tribunal Panel can adjourn the hearing of a case it started without having a reasonable cause including when:

- ❖ *there is an absence of an important party to join the case;*
- ❖ *power of attorneys, representation letters of the parties are not completed, until they are completed.*
- ❖ *mediation and negotiation between the parties is still ongoing, until a decision is issued,*
- ❖ *an objection is submitted by one of the parties, until a decision is issued on such; or*
- ❖ *any other necessary cause for the proper and just disposition and determination of the dispute.*

The above listed reasonable causes for the adjournment of case hearings are clear and easily understandable, except what is meant by “any other necessary cause for the proper and just disposition and determination of the dispute”. As such, grounds that could be considered reasonable

cause for adjourning the hearing of a dispute before the Tribunals may include: absence of an important witness, documentary evidence in the custody of a third party, the need to refer the dispute or particular issue of the case to competent ordinary court to decide, other situations where the adjournment of the hearing is necessary for ensuring proper disposition of the case, and respect for the parties right to receive a timely and fair decision.

One important point to mention is that under this rule, no tribunal is allowed to adjourn the hearing of cases due to the mere absence of a party or his/her lawyer or representative. The absence of the party or the lawyer or representative can only be a good reason for adjournment of the case if such absence is based on a ground or a cause justifiable under Article 31 of the Regulation.

This rule prohibits the Tribunal from adjourning the hearing of a case due to a reason caused by the Tribunal itself or Tribunal members hearing the case. As a result, the Tribunal needs to think of how to best prevent adjourning the hearing of its cases for reasons caused by its Members.

Part II: Preliminary Hearing Procedure

4.2. Preliminary Hearing of the Case

4.2.1. Purposes of the Preliminary Hearing of the Case

As outlined in Article 33 (1) of the Regulation, the main objective of the preliminary hearing of the case is to, “... prepare the case so as to hear and dispose in the speediest way as possible”. The purpose of the preliminary hearing is to enable the LDTs to have an opportunity to distinguish the parts of the dispute that can be easily and quickly resolved. Each Tribunal panel must properly apply the procedure described below.

4.2.2. Procedure for Conducting the Preliminary Hearing of the case

On the date set for conducting the preliminary, the Secretary of the Tribunal is required to arrange the hearing hall and to give the case file of the case to be heard to Tribunal panel assigned to the case. Before starting the proceedings of the preliminary hearing, the Tribunal panel will take following steps:

Step 1: Check and ensure that all disputing parties of the case appeared and are present in the hearing, or are represented, or their representative or lawyers, if there is a lawyer who has a legal or official representation authority. Article 33 (2 and 3) of the Amended LDT Regulation

The presiding Member of Tribunal panel will call the names of the parties to ensure the presence of the parties or their representatives, if any.

If either party does not appear and no representative or a lawyer appeared, the Tribunal panel will check and ensure if the absent party was duly and properly served and received notification of order of the case and/or notice of the preliminary

hearing date in accordance with Article 32 of the Regulation and as discussed above. If it is satisfied that the case can be heard or decided in the absence of a party, the Tribunal will proceed and take decisions over the case accordingly. And if it is satisfied that it cannot hear the case in the absence of the party in, the Tribunal panel shall adjourn the hearing and order to send and serve notice to the absent party.

If a party is or both parties are absent, but a representative appeared on behalf of the absent party/parties, the Tribunal will check and ensure the validity and completeness of the representation, and likewise order the representative or the lawyer to produce a written and valid letter of representation or power of attorney. If the representation is not a representation by law, such as a parent representing an immature child or if found the representation or power of attorney is found to be invalid or incomplete, the Tribunal panel will order the concerned party to complete and correct the representation, and will then adjourn the hearing within a reasonable time frame to that effect.

After checking the presence of parties and/or the validity or completion of representative and representation, if represented, the Tribunal panel will proceed to the second step of the hearing process.

Step 2: Reading of the complaint and the response, and hearing the oral arguments of the parties, recording a list of witnesses and documentary evidences, if any, the parties have for the case; and ensuring if there is any interested party in the case to be called to join in the case (Article 33 (4 to 6) of the Amended LDT Regulation

After checking the presence of parties and/or the validity or completion of representative and representation, if there is any, the presiding member of the Tribunal panel will read out the compliant and the response, if the response is

submitted in writing or if the respondent does not submit a written response, the complaint will be read out to the parties and then the respondent will be asked state his defence orally. After reading case to the parties, the Tribunal will give the parties an opportunity to add or amend their statements of the case. In doing so, the Presiding member of the panel will ask first the Complainant if s/he would like to add, clarify, or say anything regarding the complaint and then the respondent will be asked if s/he has anything to say his/her response to the complaint. If deemed necessary, the Tribunal may ask both or one of the parties a question to obtain further details or clarification as necessary to understand the dispute and to identify the point of the dispute between the parties.

After reading the case and hearing oral arguments of the parties, the Tribunal panel will ask and record the party's list of names, details, and addresses of witnesses, and about details of documentary evidences they have to prove for their case. If there is a documentary evidence in the custody of another body, the concerned party will let provide the Tribunal with the name and address of that body.

After recording a list of witnesses and documentary evidences, if any of the parties, the Tribunal will adjourn the hearing within not more than five days and fix a hearing date for the second session of the preliminary hearing of the case⁸. Before closing this first session the presiding member of Tribunal will inform the parties of the activities to be done in the second session of the hearing which are: the visit of the location of the disputed land and submission of documentary evidence in their possession, if any, to the Tribunal. As stated earlier, the Regulation sets a timeframe for the period between the first session and second session of the preliminary hearing stage, which is not more than 5 days. Thus the Tribunal panel, and particularly the Presiding member, should make sure that the panel has conducted the second session of the preliminary

⁸ See Article 33(6) of the Regulation.

hearing within not more than five working days from the day the Tribunal conducted the first preliminary hearing session. If, upon hearing the statements and oral arguments of the parties, it is satisfied that there is a third and interested party to the case, the Tribunal will require to adjourn the hearing and to order to call such interested party to join to the case⁹. Similarly, the Tribunal will adjourn the case to decide a request submitted by one or both parties about joining a third and interested party to the case. If, within the first preliminary hearing session, one of the parties raises an objection, the Tribunal will record such objection and will order that the objection will be heard and decided after it visits the location of the disputed land, following with the second preliminary hearing session of the case¹⁰.

Step 3: visiting location of the disputed land, submission of documentary evidence; and deciding objections, if raised any. (Article 34 of the Amended LDT Regulation).

On the day of the second preliminary hearing session, the Tribunal accompanied with the parties of the case will go and visit the location of the land-in-dispute¹¹. During its visit to the disputed land, the Tribunal will, if necessary, use Local Government technical experts to measure directions and measurements of the disputed land or develop a general technical report on the disputed land¹². During the visit of the disputed land, the Tribunal is required, with or without the presence of the parties, to ask neighbouring occupants of the disputed land about their knowledge of the disputed land and the ownership

⁹ See Article 38(1 and 2) of the Regulation.

¹⁰ See Article 35 of the Regulation.

¹¹ See Article 34(1) of the Regulation.

¹² See Article 34(2)(a) of the Regulation

of such land, as well as any other facts relevant to that particular land¹³.

The next day that follows the visit of the disputed land, the Tribunal will proceed to continue holding the second session of the preliminary hearing of the case to hear the submission of documentary evidence, if any, from the parties ordered to submit under Sub-article 6 of Article 33 of this Regulation, if possible. If it is not possible to continue the session, the Tribunal panel will adjourn the hearing for not more than three days and fix a date for submission of above referred documentary evidence¹⁴. However, the Tribunal panel shall adjourn the hearing of the second preliminary session to hear and decide objections, if there is any, in accordance with Article 34(6) and Article 35 of the Regulation and as explained in section 4.5 below.

If there is no objection raised, or if the Tribunal finds the objection as groundless, the Tribunal panel will proceed to the second preliminary hearing session and will order the parties to submit documentary evidences they have in their possession, as recorded in the first preliminary hearing session of the case. When managing submission of documentary evidences, the Tribunal panel shall apply provisions of Article 34 (4 and 5) of the Regulation. The presiding member of the Tribunal panel will first ask the Claimant to share the panel documentary evidence he/she has for the case by submitting two copies—an original and a photocopy—of each of such documents. Subsequently, the respondent will be ordered to do the same.

When submitting documents to the Tribunal panel, each party will be required to provide a brief explanation of the document about the authority, he time issued, the content, as well as such other necessary and relevant details of each document he/she is submitting to the Tribunal Panel so as to enable Tribunal panel members and the other

¹³ See Article 34(2)(b) of the Regulation

¹⁴ See article 34(3) of the Regulation

party of the case to understand about the nature, content, and relevancy of the document to dispute.

The presiding member of the panel will show each piece of documentary evidence to the other party, in order for the party to possibly have an opportunity to challenge or to argue against the legality or validity of the document and/or its relevancy to the disputed issues of the case.

After recording details of each documents submitted by each party, and challenges raised by the other party against each of such documents, the Presiding member will order the return of the original document the party submitted to it and file copy that document in the case file folder of the case. It will then pronounce closure of the preliminary session, and adjourn the case within not more than five working days for the fourth step of the process of the case – to frame the issue/s of the dispute and to determine if the dispute is simple, which it could then decide or dispose quickly and easily.

4.3. Framing issue or issues of the dispute¹⁵

The fourth step of the process involves two important tasks that the Tribunal panel should undertake. The first task of the Tribunal panel is to frame the issue/s of the dispute.

What is the issue of the dispute? The 'issue' is refers matters in a dispute which parties of the dispute are in disagreement with or have in divergent views.

Hearing the dispute without setting an issue of the dispute to determine results in an unguided and inefficient hearing and decision-making process. This is contrary to the disputing parties' right to a timely and fair trial hearing. Therefore, the Tribunal panel shall always frame the issue of the dispute, as required under the Regulation.

When framing the issue of the dispute, the Tribunal panel should refer and study statements of claims and responses, oral arguments of the parties, and results of the visit of the location of the disputed land. They must then decide which matters the parties disagree on.

Even where the parties have divergent views on a certain fact, the Tribunal does not need to frame an issue if it is not a matter which the Tribunal is expected to hear and decide. The matters to be decided by the Tribunal are those that affect the outcome of the case.

For instance, in a dispute over land ownership between Ali, the claimant and Abdi, the respondent, Ali has claimed that Abdi occupied part of his land. Ali argued before the Tribunal panel that he and Abdi have two plots of land which are side by side, and that Abdi has occupied part of his land. Abdi in responding the claim informed the Panel that he knows and has some part of Ali's land and that he has no problem if Ali is taking back his land. In this case, it is quite clear that Abdi admitted that he has the missing part of land which Ali is claiming. Since both of them have agreed upon, and the missing land is not in dispute as who owns it, the Tribunal does not need frame issue to determine. Rather, the Tribunal shall reach a quick decision of the case, as Abdi has admitted the validity of Abdi's claim.

In the above dispute over ownership of land between Ali and Abdi, Abdi has claimed that Ali has sold him the part of the Land, and that Ali cannot claim ownership of that part of the land. Facts of this case shows that Ali and Abdi are in disagreement as the ownership of part of the land in dispute. And so there is an issue that the Tribunal should frame to decide to resolve the dispute between Ali and Abdi. The Issue to frame is, therefore, who owns part of the land under the dispute: Ali or Abdi?

¹⁵ Article 36 of the LDT Amended Regulation

After framing the issue(s) of the dispute, as explained above, the Tribunal panel will assess and determine if the dispute is:

- a simple dispute for which the Tribunal can reach a speedy decision in accordance with Article 37 of the Regulation; or
- a dispute which cannot be easily decided or resolved under Article 37 of the Regulation, but need to be resolved through an alternative dispute mechanism in accordance of the Regulation.

4.4. Taking speedy decisions on simple and easy disputes (Article 37 of the LDT Amended Regulation)

After framing the issue/s of the dispute under Article 36 of the Regulation, the Tribunal panel, if satisfied that it can decide the dispute based on the results of the Preliminary hearing session shall, without proceeding to the trial or hearing stage, immediately give a decision resolving the dispute in accordance with the provisions of Article 37 of the Regulation. Circumstances in which the Tribunal shall immediately decide the dispute as include those listed in the following table:

- ❖ Where the Tribunal Panel is satisfied that the respondent has accepted, or has not argued or defended the claim against him/her;
- ❖ Where the Tribunal Panel has considered an objection and given a decision accepting the objection;
- ❖ Where the Tribunal Panel is satisfied following a site visit conducted under Article 33 (1 and 2) of the Regulation that the land constituting the subject matter of the dispute is different from the land visited;
- ❖ Where the Tribunal Panel is satisfied that the manner in which one of the parties acquired ownership over the disputed land does not comply with Land Law No.17/2001 or the other accepted practices related to land acquisitions;
- ❖ Where the dispute relates to a technical matter

and can be resolved by engaging technical experts from the Local Government and/or independent land surveyors or civil engineers;

- ❖ Where, upon the request of the parties or upon its own initiative when it deems necessary, the Tribunal may request and obtain from the local government administration reliable information it can use to decide and settle the dispute;
- ❖ When one of the parties proposes a conclusive oath to the other party and other party serves the conclusive oath; and

Any other situation where the Tribunal Panel is satisfied that it can reach a decision based on the results of the preliminary hearing of the case.

This Article of the Regulation reflects the LDTs' objectives, the main objective being to devise a mechanism to solve urban land disputes immediately easily. Accordingly, every Tribunal Panel is required to settle a dispute immediately after the case's preliminary hearing under certain circumstances, including, where the respondent has not argued or defended the claim, where the Tribunal Panel has accepted an objection, where the land claimed is different from the land visited by the Tribunal Panel, and any other situation where the Tribunal Panel is satisfied it can reach a decision based on the results of the preliminary hearing.

4.5. Deciding objections

Questions for consideration:

- What is an objection?
- Who can raise an objection?
- When can an objection be raised?
- What are the grounds for an objection?
- What effect does the Tribunal Panel's decision to accept or dismiss an objection have?

These questions are addressed in Article 35 of the Regulation.

Definition of an objection under article

35: An objection is a written statement arguing that the Tribunal Panel does not have jurisdiction to hear and decide the dispute and demanding that the Tribunal Panel close the case. An objection can be raised by a party in the dispute and can only be raised during the preliminary hearing stage of the case.

Article 35 of the LTD Amended Regulation sets out a list of grounds for an objection, these include:

- a. The Tribunal Panel has no jurisdiction to hear and decide the dispute: because the disputed land is not urban land, or the dispute primarily involves an issue, which the Tribunal has no jurisdiction to hear, such as inheritance.*
- b. A court has previously determined and issued a final judgement concerning the dispute.*
- c. The dispute is pending under a process of reconciliation and is in the hands of appointed and agreed upon by all parties, mediators.*
- d. One of the parties is not an interested party in the dispute.*

The Tribunal Panel decides objections only after hearing the opposing party and ordering the parties to produce such evidence as may be necessary for the Tribunal Panel to reach a decision.

- ❖ *If, upon hearing the parties, the Tribunal Panel accepts the objection, it will issue a written, reasoned order accepting the objection, ordering the closure of the case, and dismissing the case file from the case register.*
- ❖ *If the Tribunal Panel does not accept the objection, it will issue a written, reasoned order dismissing the objection and ordering the continuation of the case.*

The aggrieved party of the decision has the right to appeal to the Supreme Court within (15) fifteen days from the date of the order. When an appeal is taken to the Supreme Court relating to a Tribunal Panel order which rejected an objection, the Tribunal Panel will be required to stop hearing the case until it receives a Supreme Court judgment dismissing the appeal.

4.6. Third party Interventions

Questions for consideration:

- What is a “third party intervention”?
- When can someone intervene or be intervened into a case?
- Who can intervene or be intervened into a case?

Definition of an intervention: Intervention refers to situations whereby an individual who is not a party to the dispute before the Tribunal is allowed join or may be joined to the case to take part in the case's hearing.

According to Article 38 (1) of the Regulation, third party intervention in the hearing of the case can be allowed at any stage before concluding the hearing of the dispute.

An initiation of a third-party intervention into a case before a Tribunal Panel may come from either one the following three circumstances as provided in Article 38 (2 and 3) of the Regulation:

- *If someone who is not among the disputing parties of the case, but has an interest in the case, requests the Tribunal to allow him/her to join into the case;*
- *If either one of the parties of the dispute requests LDT to call a third party/another person to join into the case; or*
- *Upon initiation of the Tribunal itself, provided that the Tribunal is satisfied that there is someone who has an interest in the case who should be called to join the case.*

Situation 1: *Third party intervention is initiated by the Tribunal Panel*

If the Tribunal Panel is satisfied from the hearing that there is someone who has an interest in the case but is absent, the Tribunal Panel shall join them to the case. For example, if the Tribunal Panel finds out during the preliminary hearing that the disputed land is owned jointly by more than one person and not all of the owners are present or represented, it should order all such interested person to be joined to the case. It will adjourn the hearing of the case, pending the order's implementation - all interested persons to the case join the case. (see Article 38(2) of the Regulation).

Situation 2: *Parties of the case want to join a third party to the case*

If one of the parties to the case wants a third party to be joined, they must submit a written request to the Tribunal clearly indicating the existence of an interest in the case, necessitating their joining the case. (see Article 38(4) of the Regulation).

The main objective of the Regulation in setting out procedures to manage third party interventions is to ensure that no Tribunal should accept an application for a third party to join or to be joined into the case which is aimed to mislead, disturb, or prolong the hearing and resolution of the dispute. Accordingly, the Tribunal, in deciding whether to accept or not the application for a third party to join or be joined, must ensure that the application submitted clearly indicates an existing interest in the case which needs to be protected or defended. To do this task, the Tribunal must ensure:

- ❖ *When the application is submitted by a third party, the Tribunal Panel should demand the applicant produce evidence and convince it to recognize his/her interest in the case and the advantages he/she may realize if joined into the case or losses he/she may incur if the decision on the dispute is taken without him/her having joined and heard in the proceedings;*
- ❖ *When one of the parties of the dispute requests a third party be joined to the case, the Tribunal must demand the applicant show and convince it of either:*
 - *The existence of an advantage to secure or to protect for him or for the third party necessitating the third party to be joined to the case, or*
 - *The existence of a disadvantage or loss he or the third party may realize or incur, if the case is disposed without the third party being joined and heard in the proceedings of the case.*

If satisfied and convinced of the application for the third party to join or be joined to the case, the Tribunal Panel needs to issue a written and reasoned order accepting the application, adjourning the hearing, and ordering the third party to be called to join and take part in the hearing and proceedings of the case. If it is not satisfied and convinced of the third-party intervention request, the Tribunal Panel must issue a written and reasoned order rejecting the application.

Scenario 1: *Hargeisa LDT was hearing a land dispute between Ali and Hassan, concerning ownership of blot of land with the size of 100m x 180 m which is located in Kooth-Bour District. However, (20) twenty families who are internally displaced people or (IDP) have been living for the past four years in the piece of land under dispute. These IDPs families has chosen among themselves three members to represent them and take necessary action to the case involving in the concerned land they live in. And the three members representing the IDPs families have submitted a written application in which they requested the LDT to allow them to join to the dispute. As stated in the application they have submitted to the LDT, the three representatives grounded their request to join the case on the following facts: they indicated that the IDPs families they are representing have been living in the disputed land for almost four years and are still living the concerned land. They have also mentioned that the IDPs families they were representing have settled in land under dispute after displacement from their homes and as per an executive order of the Local Government Administration authorized and directed those displaced families be settled in that land. Furthermore, they argued that any Tribunal's decision over dispute may likely affect the IDPs families living the disputed land and, therefore, it is necessary for them to join and take part in the case as they have an interest*

in the dispute.

- *Should the Tribunal accept the application submitted by the representatives of the IDPs Families?*
- *Is it advisable for the Tribunal to, on its own initiation, call and demand the Local Government Administration to join the case?*

If the LDT did not call, on its own initiation the Local Government Administration to join the case, can any of the parties of the case request from the LDT to call the Local Government Administration to be joined to the case?

Scenario 2: *Hassan has filed a case at the Hargeisa LDT involving land located in Kooth-Bour which he has bought a District from Ali who used to own it. As shown in the case application submitted, Hassan argued a man called Farah lives in this land without his knowledge and permission. Hassan also mentioned that Farah is the brother of Ali, the seller who sold the land to him (Hassan). In the preliminary hearing of the case, Farah (respondent of the case) has argued he is the owner of land under dispute, and stated that this land (disputed land) is land he inherited from his father and so he acquired its ownership. Farah has also pointed out that land under dispute is part of land which was inherited by him and his brother Ali from their father.*

Hassan has requested the Tribunal to call Ali to be joined into the case. His reasoned out his request that Ali had sold him this land. Therefore, Ali has to clarify and prove his ownership of the land, or, to refund and pay compensation to him with the money which he bought the land and loses incurred thereto.

- *Can Hassan's application be accepted?*
- *Should the LDT itself by its own motion call and demand Ali to join to the case?*

Part III: Solving the Dispute through Negotiation and Mediation

4.3. Negotiation and Mediation between Parties.

If after the preliminary hearing, the Tribunal is satisfied that it does not have and/or cannot find sufficient evidence to reach a quick and final decision, the Tribunal will proceed to adjudicate and decide the dispute (Article 37 of the Regulation).

But, before this, the Tribunal is supposed to ask the parties if they want to resolve the dispute through negotiation or mediation. (Article 41 of the Regulation). The Tribunal shall undertake the negotiation and mediation process as explained below.

4.3.1. Negotiation Procedure

If parties choose to settle their dispute through negotiation, the Tribunal shall apply the provisions of Article 42 of the Regulation outlining the negotiation procedure. Accordingly, the Tribunal Panel will adjourn the hearing, and then give the parties a time frame in which to negotiate and settle the dispute. If parties reach an agreement within the time frame, they will be required to submit a certified and signed copy of the agreement outlining points they have agreed upon to the Tribunal. And as prescribed by the Regulation, the copy of the agreement reached by the parties must indicate and clearly state the following information:

- a. The name of the Tribunal in which the agreement being is addressed;*
- b. The Tribunal case reference number relating to the dispute;*
- c. Names of the parties who reached the agreement;*
- d. Points agreed;*

- e. Confirmation that both parties are satisfied with the agreed points;*
- f. Signatures of the parties and date of the agreement; and*
- g. Names and signatures of two witnesses present when the parties signed the agreement:*

After ensuring that the agreement submitted by the parties contains all of the required information and that the parties confirmed that they reached and signed that agreement, the Tribunal shall decide and resolve the case based on the points of the agreement reached by the disputing parties.

If satisfied that the copy of the agreement does not provide all of the required information, or that the parties did not reach an agreement and solved the dispute within the given time frame, the Tribunal will adjudicate the case and will accordingly inform the parties to prepare and appear for the hearing of the case at a fixed date.

4.3.2. Mediation



If the disputing parties chose to opt for mediation, the Tribunal shall apply Article 43 of the Regulation. The Tribunal Panel will adjourn the hearing and order the parties to each appoint an equal number of elders, and to submit within a specified time frame the list of elders appointed by

each member to solve the case. Upon receipt of the lists of elders, the Tribunal will, in accordance with Article 43(2) of the Regulation, issue a written order:

- a. approving the appointment of mediators as appointed by the parties;*
- b. defining the specific issue/s of the dispute that the mediators are required to hear and resolve; and*
- c. prescribing a specified time frame which may not be more than 20 days within which the mediators must determine and resolve the dispute and submit the mediation decision thereto to the Tribunal*

Upon issuing the order, the Tribunal will hold a session which the appointed mediators and disputing parties should attend and will read and explain to the mediators and the parties the content of the order it has issued and the obligations of the mediators and disputing parties in relation to the performance of tasks and duties of the mediation as per Article 44 of the Regulation. The Tribunal must inform the members of the mediation that they are required to undertake and implement the mediation in accordance and in compliance with their obligation as mediators as per the provisions of the Regulation. This is vital and important. As provided in Article 44(3) of the Regulation, throughout the mediation process, it is the duty and obligation of all mediators to:

- 1. hear disputing parties and their witnesses equally and fairly;*
- 2. focus and determine only the issue/s of the dispute which the Tribunal Panel has ordered them to consider and resolve;*
- 3. decide with fairness and impartiality; and*
- 4. resolve the dispute within the timeframe prescribed by the Tribunal Panel.*

These obligations form the core of the validity of the mediating decision reached by the elders. Accordingly, if it appears or is discovered that the elders did not comply with one or all of the above

obligations, the Tribunal should not accept and approve their decision.

If the mediators resolve the case within the prescribed time frame, they will submit the mediation decision in writing to the Tribunal, and at the same time provide or give a copy of such decision to each of the parties of the dispute. The mediating decision that the elders are required to submit to the LDT must be in writing and contain the below information according to Article 44 (5) of the Regulation:

- 1. The name of the Tribunal to which the agreement is addressed;*
- 2. The Tribunal case reference number;*
- 3. Names of the disputing parties;*
- 4. Names of the mediators;*
- 5. The issue/s of the dispute under mediation;*
- 6. Steps and activities undertaken for the mediation process*
- 7. Points of the mediating decision;*
- 8. Signatures of the elders/mediators and date of the mediating decision*

When it receives a copy of the written mediation decision submitted by the mediating elders, the Tribunal panel will check if the decision contains all of the information it was supposed to provide. If the mediation decision does not contain all of the required information, the Tribunal will return the copy of the mediation decision to the mediators and order them to complete and correct it. After ensuring that the mediation decision is written in compliance with the prescribed requirements, the Tribunal will hold a hearing session with all parties to approve the mediation decision submitted by the elders. In the hearing, the Tribunal panel will ask the parties if they have any objections or arguments against approving the elders' decision. If no objection or argument against approving the elders' decision is raised, and it is satisfied with the validity of the mediating decision, the Tribunal Panel shall issue a decision approving and resolving the case based on the decision of the mediators.

1. *The Tribunal shall dismiss the mediation decision and adjudicate the case if: The elders did not reach a decision over the dispute within the given time frame*
2. *One party is dissatisfied with the validity of the elders' decision and the Tribunal, upon hearing the other party's response is satisfied that the mediation decision does not comply with any or all of the legally prescribed mediation rules, particularly those conditions provided in Article 44(3) of the Regulation*
3. *The Tribunal found out that mediation decision does not comply with the Regulation.*

Part IV: Adjudicating and Deciding the Case

4.4. Procedure for adjudicating the dispute

If the dispute cannot be resolved through negotiation or mediation, the Tribunal will adjudicate the dispute: hear the disputing parties, and witnesses, and examine any documentary evidence in accordance with the procedure provided in Articles 45 to 48 of the Regulation.

The Tribunal has the following duties to ensure a smooth hearing process and fair decision:

- *Ensure the stability and order of the room/hall in which the case is being heard, in order to make it possible for the parties and other participants to hear and easily understand the arguments and testimonies;*
- *Make sure that witnesses stay outside of the room/hall till they are needed and called;*
- *Properly lead the hearing of the case and ensure that parties stick to the context or conflicting points, specified by the LDT, in the case dispute; and submit evidence that is directly or indirectly involved or related to the context or conflicting points of the case;*
- *Stop the parties and witnesses from providing arguments or proofs, and testimonies that are*

not relevant or related to dispute, the issue, or disputed points of the case.

4.4.1. Hearing Witnesses and the Submission of Documentary Evidences

In this adjudicating phase of the dispute, the Tribunal will demand the parties submit any documentary evidence other than that submitted and heard in the preliminary hearing and to call witnesses they wish the Tribunal to hear¹⁶.

On the day fixed for the hearing and upon opening the hearing, the Tribunal Panel will order the claimant to submit any relevant documentary evidence. The Tribunal will undertake the hearing and submission of documentary evidence in accordance with Article 33 (4, 5, and 6) of the Regulation. Accordingly, when submitting documents, the claimant will explain briefly to the Tribunal about the content, date, and issuing organization or body of any document he/she is submitting, and then will give the original and a copy of each document to the Tribunal Panel. The Tribunal will pass the original copy of each document submitted by the claimant to the respondent and will ask if the respondent has any concerns or objections relating to the validity or content of the document/s. The Panel can also ask the claimant any question it deems necessary in order to understand the content and details of the document

If another body/person possesses an evidentiary document relevant for the claimant's case, the Tribunal Panel will send an oral or written request to the concerned person/body to submit the document to the Tribunal. When the requested document is received, the Panel will, in a hearing session, read out its contents to the disputing parties. Likewise, the Tribunal Panel will share the document with both the claimant and the

¹⁶ See Article 46 (1 and 3) of the Regulation

respondent to hear and consider any concerns as to validity or content.

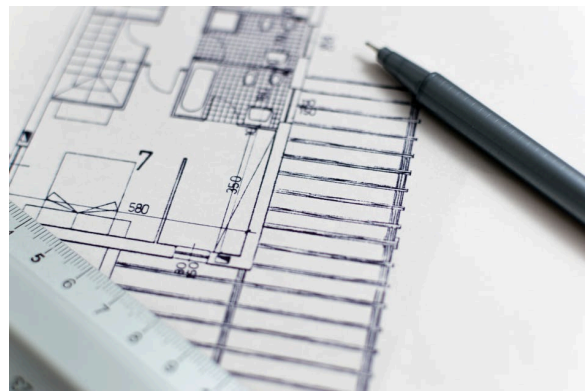
Following the submission of the documents, if any, the Panel will shift to hear witnesses in accordance with Article 46 (2 and 6) of the Regulation. Firstly, the Panel will hear witnesses that the claimant wants the Panel to hear, if any. The Panel will ask the witness, under oath, after asking and recording his/her name, age, address and occupation, to tell in detail about what he/she knows about the dispute. Before the witness gives testimony, the Panel will ask the respondent if he/she has an objection against hearing the witness. If the respondent gives reasons to disqualify the concerned witness, the Panel will be required to immediately consider and decide the matter. When the witness gives and finishes his/her testimony, the respondent would be asked if he/she has any concerns about what the witness testified to or if he/she wants to ask the witness questions. The Tribunal Panel can also ask any question which it deems necessary to clarify testimony and/or the veracity of the witness.

When the hearing of evidentiary documents and witnesses for the claimant comes to an end, the Panel will order the respondent to submit documentary evidence, if any, and to call witnesses that he/she has and wants to be heard. In handling the submission of documentary evidence and hearing of witnesses for the respondent, the Tribunal Panel shall apply the same procedure to that applied for hearing the claimants evidences and witnesses. The claimant would be given a similar opportunity to respond and put forward his/her arguments against the respondents' documentary evidence and witness testimony.

During the hearing, if a technical problem arises and the Panel deems a technical expert necessary for the proper and fair disposition of the case the Tribunal Panel can send or assign a technical expert/s who will study the matter and report back to the Tribunal in accordance with Article 48 of Regulation. This will be explained in Section 4.4.2 below.

Upon the completion of the submission of documents and hearing of the parties and their witnesses, the Tribunal will adjourn the hearing pending a decision. When adjourning the hearing, the Panel will be required to fix and notify the parties of a session date in which the Tribunal shall inform the parties of its decision. Similarly, the Panel would also inform the parties that, if it deems it necessary, the Tribunal can independently look for obtain additional evidence for the proper and fair disposition of the case.

4.4.2. Expert evidence



If deemed necessary to have evidence from a technical expert in order to reach a fair and final decision, the Tribunal Panel can appoint and assign technical experts who will study and write technical reports which can be used as an evidence in the dispute. The Tribunal Panel may, as per the provisions of Article 48 (1) of the Regulation, appoint and assign technical expert/s in one of the two following ways:

- *the Tribunal may by its own motion request in writing an expert or group of experts from the concerned department of the Local Government Administration; or*
- *The Tribunal may with the agreement of the parties appoint an independent expert or experts on the matter.*

When assigning a technical expert/s, the Tribunal Panel will issue a written order addressed to the technician/s providing the details and location of the disputed land and the matter which the experts

are required to study and to report back on within a specified time period¹⁷. A copy of this written order will be given to the expert/s appointed and assigned by the Tribunal. After finishing the assignment, the technical expert/s will be required to prepare and submit a written technical report to the Tribunal. The report should describe the tasks carried out for the implementation of the assigned study and the findings of the study¹⁸. The Tribunal will give a copy of the technical report to each party of the case and then hold a hearing session in which the expert will present the technical report¹⁹. In this session, the Tribunal will, after taking the oath of the technical expert/s, request the expert/s to present the technical report they have submitted in detail. After the presentation of the report the Panel will give each party an opportunity to question the expert/s on anything related to the technical report. The Tribunal Panel may also ask the experts any question it deems necessary in order to verify the accuracy and truthfulness of the report they submitted.

4.4.3. Evaluation of evidence

When the Tribunal Panel concludes the hearing of the case, it is very important for it to carefully study all of the evidence – documentary evidence and witness testimony - it received or obtained in relation to the dispute. The Tribunal Panel needs to study all of the evidence it has obtained so that it can identify relevant evidence it should take into consideration, evaluate available evidence for the case, and determine the most considerable and relevant evidence it should consider to render a fair decision over the dispute

Article 47 of LDT Regulation provides a set of provisions that the Tribunal should apply when studying and evaluating evidence. According to Article 47(1), “Any evidence produced before the Tribunal panel shall be considered relevant when it

is sufficient to prove or disprove any material issue of the dispute”.

1) Lawfully issued documents of the Local Government

As stated in Article 47(2) of the LDT Regulation: “Lawfully issued documents of the Local Government Administrations shall be considered relevant and prevailing evidence to prove ownership....”

When the disputed issue before the Tribunal is ownership over land, the most relevant and prevailing evidence to prove the claim of land ownership is to produce a lawful document issued by the competent Local Government Administration. A document issued by the local Government shall not be accepted and considered as prevailing evidence to prove a land ownership claim, if it is challenged and proven that:

- a. there was a legally acquired ownership title at the time the document was issued; or
- b. there was legally acquired possession over the land at the time the document was issued; or
- c. the document was issued in the course of the dispute; or
- d. the document was issued based on a falsified ownership title; or the document was issued in unlawful manner.

2) Land ownership document from the previous Government of Somalia

According to Article 47(6) of the LDT Regulation: ‘A lawful ownership document over land issued by the previous Government shall be considered relevant evidence unless proven otherwise’. The above grounds for disqualifying admissibility of documents of the Local Government administrations shall apply to the admissibility and legality of Land ownership documents issued by the former Government of Somalia.

3) Long term possession

¹⁷ See Article 48 (2) of the Regulation.

¹⁸ See Article 48(4) of the Regulation.

¹⁹ See Article 48 (5) of the Regulation.

As stipulated in Article 47((3) of the LDT Regulation: 'Long term possession, residential structure such as building, foundation, cultivation, fence etc. could be appropriate and considerable evidence of ownership of land, unless proven that possession was acquired through force, coercion means, in bad faith or any other illegal manner'.

When there is no lawful ownership document over land, admissible under Article 47(2 and 6) of the LDT Regulation, long term and lawfully acquired possession is considered the most appropriate evidence of land ownership. Such possession should be considered as prevailing evidence over ownership of urban land unless proven that the possession was acquired illegally.

4) Witness Testimony

Article 47(4) of the Regulation deals with witness testimony: 'Testimony given by a credible witness and in accordance with Islamic and Sharia principles will be considered relevant evidence when it directly relates to the disputed land and is sufficient to prove a relevant issue to the dispute.' According to this provision, the Tribunal is expected to not consider witness testimony where it possesses or has obtained a lawful document proving the disputed ownership claim. It is only in the absence of lawful and reliable documentary evidence that the Tribunal shall consider witness testimonies.

Sworn Oaths and Confessions of Parties

Article 47(5) provides guidance as to when the Tribunal should consider confessions and affidavits as evidence to prove or disprove the dispute, and it states as following "Confession and affidavit of a party shall be considered relevant evidence when they are sufficient to fully to prove disposition of the dispute, or when they are sufficient to prove a relevant issue of the dispute". According to this provision, a confession and/or sworn oath of a party to the dispute could be considered relevant evidence when there is no lawful document evidence and/or credible testimony to decide the dispute, provided that such

confession or oath is sufficient to fully resolve the dispute.

An exception to this would be where the confession is a confession that the documentary evidence is not valid or does not apply.

Consider the following example: A Case of Comparison and Evaluation of evidences

Asha, a businesswoman tycoon, has filed a case relating to ownership of land in Hargeisa LDT against a man named Ahmed. In her case, Asha claimed that Ahmed has, without her knowledge and permission, settled/resided on a plot of land which she bought from a man called Jama in 2010. She also stated that she applied and obtained a lawful ownership document from the Local Government Administration in 2014. The land in dispute is located in the east of Hargeisa and it is an area which has rapidly expanded and is only recently covered by the town plan. Ahmed argued that the land that he lives on, and that Asha is claiming, belongs to him. Ahmed claimed in front of the LDT that the land was owned by his father and he inherited it. He said that his late father used to rear livestock on the land and used to farm it during wet seasons. Ahmed also argued that people in the area and the neighbours to the disputed land know about him and they know that the land belonged to his father. He stated that his father died in 1990, and that he lived there from 1993 to 2001 before he left for the Arab Countries. He added that he returned home in mid- 2012, and he was planning to construct buildings on the land.

When the LDT visited the site of the disputed land, it interviewed three older men, neighbours to the disputed land; and they told the LDT that the land belonged to a man named Farah Ali, Ahmed's father, who, above-all lived there from 1970. The LDT saw the traces of farming where

Farah used to farm. Meanwhile, Asha called Jama and intervened him into the case. Jama argued that the land he sold to Asha belonged to him, and that he has a legal document issued by the former Government in 1989.

The facts of the case show that the three parties involved in the case have three different types of evidences, the issue is which is the most important evidence to be considered, as evidence to claim ownership over the disputed land.

- ❖ *Does the land belong to Asha since she has an ownership document issued by Hargeisa Local Government, and she bought the land from Jama who had a legal ownership document from the former Government of Somalia?*

Is evidence of a long-term possession stronger than the documentary evidence that Asha has to prove her ownership claim over the disputed land?

Part V: Making and writing decisions of the Tribunal

Decisions of the Tribunals

In this section, we will answer the following two questions:

- 1) *How should the Tribunal make a reasoned decision over the land dispute?; and*
- 2) *How should the Tribunal write its decisions over the dispute?*

4.4.4. Decision-making Process

Although not mentioned in the LDT Regulation, there is a process which can facilitate the Panel Tribunals in reaching reasoned decisions over disputes. This process requires the Panel Tribunal to study and review the hearing record and dispute proceedings by taking the following steps:

Step 1: Identify key issue/s to the dispute

The first step that the Tribunal must take is to highlight the issue/s of the dispute. Questions the Tribunal should ask:

- ❖ *What is the issue or disputed matter(s) that the Tribunal was supposed to determine and decide?*
- ❖ *Was it an ownership claim?*
- ❖ *Does it concern possession?*
- ❖ *Does it concern a boundary, mapping, or land planning issue?*
- ❖ *Does it concern a sale or transfer of title?*

Highlighting the precise issue of the dispute will enable the Tribunal to easily identify and determine evidence it needs to decide the dispute and avoid wasting time on consideration of evidences or matters not concerned or otherwise relevant to the disputed matters of the case before it. After highlighting the issue/s of the dispute, the Tribunal needs to decide which party has the burden of proof, i.e. who is supposed to prove or disprove the disputed or claimed issue/s of the case.

Step 2: Study all evidences including witness testimonies produced or obtained in relation to the case.

When studying evidence, the Tribunal needs to identify and distinguish evidence that is admissible and relevant as well as other evidence it has or obtained by its own motion, if any. The Tribunal will determine the relevancy of evidence by verifying each piece of evidence it received or obtained relates to the issue or matters disputed by the disputing parties. The Tribunal also needs take into consideration the admissibility of each and every piece of evidence submitted or obtained for the dispute.

Step 3: Applying the evidence to the issue/s of the dispute

After identifying relevant and admissible evidence, the third step that the Tribunal should undertake is to apply such evidences to the disputed issue/s of the case. The Tribunals task is to determine

whether the evidence it has identified is sufficient to prove or disprove the disputed issue of the case. So the Tribunal will determine if the party on whom the burden of proof resides submits sufficient evidence to fully prove or disprove the disputed issue/s.

Step 4: Making a decision

The main task of the Tribunal under step four is to determine and make a decision on the dispute based on the outcome it realized when it applied available evidences to the issue/s of the dispute. For instance, if satisfied the party on whom the burden of proof belongs did not submit sufficient evidence to fully fully prove or disprove the disputed issue/s, the Tribunal will, based on this conclusion, reach a decision resolving the dispute.

Step 5: Reasons

To ensure that its decisions are lawful, the Panel Tribunal must reason out its decisions. In step five, the Panel Tribunal is required to provide reasons for the decision it came to under step four above. To implement this task, the Tribunal will need to outline disputed issue/s of the case it has framed and was expected it to decide, and then state clearly evidences it has obtained and based its decision of the dispute or each issue of the dispute, when dispute involves in more than one issue

Step 6: Debate and voting

After undertaking all of the required tasks, it is important for the Tribunal Panel to assign one of its members to prepare and write its decision and submit the draft to Tribunal Panel members for a debate and vote. The draft decision must reflect all tasks undertaken under the above steps and comply with the decision writing modality prescribed in the LDT Regulation. All members of the Tribunal Panel must sit to debate and vote on such prepared draft decisions. When debating the decision, every individual member and all members of the Tribunal Panel is obliged to act in accordance with basic principles of impartiality and fairness to ensure and render a fair and just decision. After the

debate, Tribunal Panel members must vote and come to its decision by a majority vote of Tribunal Panel members.

4.4.5. The Writing of the Decisions of the Tribunal

The LDT Regulation addresses the writing modality of decisions of the Tribunal Panels. As stated in Article 49(5) of the LDT Regulation:

“Decisions of the Tribunal panel must be in writing and contain following information:

- a) The Republic of Somaliland title;*
- b) Name and Logo of the Tribunal;*
- c) Case reference number of the dispute;*
- d) Date of the decision;*
- e) Parties to the dispute and their legal representatives, if any;*
- f) A summary of the facts of the case including an indication of the issue/s of the dispute;*
- g) Reasons for the decision, including what information or evidence was taken into account and relied upon;*
- h) Holdings of the Tribunal member;*
- i) Notice to both parties on their right of appeal and the legally prescribed deadline to appeal;*
- j) Name of Tribunal Panel members and their signatures; and*
- k) Stamp of the Tribunal.”*

Therefore, any decision of the Tribunal should be in writing, contain the correct data reflecting the criteria above, and outline legally prescribed requirements.

After preparing and writing its’ decision over a dispute it has heard, the Tribunal Panel is required to read out the decision to the disputing parties in a public hearing and, at the same time, give a copy of the decision to any of the parties when requested²⁰.

²⁰ See Article 49(4) of the LDT Regulation.



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