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



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INTRODUCTION

1. Introduction to Land Dispute Tribunals in Puntland

To overcome the challenges posed by both the formal and customary legal systems, Land Dispute Tribunals (LDTs) are in the process of being established in Puntland. The LDTs are intended to be a hybrid institution harmonising formal and customary legal procedures to provide a trusted, efficient, and human rights-respecting dispute resolution forum.

I. Objectives of the LDTs

LDTs are intended to eliminate land grabbing and resolve urban land disputes through the provision of a simplified mechanism. Here, the term 'simplified' indicates that the process of land dispute resolution through LDTs should be more efficient, straightforward and less formal than through formal court mechanisms. They should be more accessible to users than existing mechanisms of dispute resolution. Further, LDTs were originally intended to achieve this by functioning as hybrid institutions, leveraging the experiences of both the courts and the customary justice system.

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

Objective 1: <i>Efficiency</i>	To provide for an efficient means of accessing legal redress and assistance in disputes relating to urban land.
Objective 2: <i>Accessibility</i>	To be accessible to all Puntlanders, both in terms of affordable and physical accessibility by being located in each municipality.
Objective 3: <i>Hybridity</i>	To create a hybrid body which utilizes the experiences of both the formal and customary legal systems.

II. Justification for Drawing Membership of and Responsibility over LDTs 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 different government authorities and where members are closely tied to the region in which they operate. Government representatives can provide specialized knowledge in certain areas relating to land. Where their knowledge is related to the particular area being considered by the LDT, this increases the value of that representative's experience to the Tribunal. In dividing the roles of administration, membership, management, and accountability responsibilities of the Tribunal between different Ministries the likelihood of corruption or mismanagement is reduced, thereby increasing accountability.

III. Inclusion of Elders

In Puntland, elders are regarded as the rightful arbiters of land disputes based on their presumed wisdom and balance of thought.

2. A Summary of Land Laws in Puntland

There are five key laws in Puntland that are relevant to land governance and which are practically implemented. These five pieces of legislation, as well as one piece of legislation that is relevant but not practically implemented, are listed below.

a) The Constitution (2012)

The Constitution protects the rights to private property, equality before the law, the 'inviolability of domicile', and the rights of women. It regulates government intrusion on private land and recognizes all decisions of elders. However, not well publicised.

b) Land Law 1975

Though most provisions of this law have been subsequently replaced by subsequent legislation, the Land Law of 1975 has had a significant impact in shaping the legal landscape. It transfers ownership of all land to the State, attempts to abolish customary ownership in rural areas, and makes registration of land compulsory. It is widely regarded as unresponsive to the needs of pastoralists and as having contributed to land conflict in Puntland.

c) Urban Land Law 1980 (amended in 1981)

This legislation makes management and registration of land the responsibility of each municipality. It distinguishes between "permanent" and "temporary" land title and establishes a municipal land department, municipality technical committees and permanent committees of the district councils relating to land. However, it offers little useful guidance on how the municipality technical committees should interact with and operate alongside the permanent committees of the district councils.

d) Urban Land Law 2000

The Urban Land Law restates the position of the Land Law 1975, which vests ownership of all land in the State. It references a "general town plan", but does not provide a procedure through which this plan is to be developed. It is not widely publicised.

e) Civil Code and Civil Procedure Code

The Civil Code regulates ownership, sale and transfer of immovable property, as well as registration and publication of related documents. The Civil Procedure Code regulates the procedure of the courts. It has been criticised for prolonging court cases through complex procedures.

f) Land Law 2005 (unpassed)

The Land Law of 2005 defines and regulates urban land. It gives authority for creating a 'master plan' to the municipalities. Similar to Somaliland's Law No. 17, the 2005 Land Law identifies the institutions responsible for urban land management, the allocation of land, the planning and development of land, and aspects of land tenure. The Land Law of 2005 only provides permanent land title to those who construct permanent structures. Consequently, this disadvantages those who seek title, but lack the wealth to build such structures.

THE LAND DISPUTE TRIBUNAL

The revised Land Dispute Tribunal regulation (the revised Regulation) establishes and regulates Puntland's Land Dispute Tribunals (LDTs). As stated in Article 6(3) of the regulation, LDTs are administrative and conflict resolution institutions legally mandated with resolving urban and peri-urban land disputes in Puntland. An LDT is comprised of seven members from various stakeholder bodies, approved by the Minister of Interior.

As set out in the Introduction above, the main objective of the LDT is to address land grabbing and resolve urban land disputes in an (1) efficient, (2) accessible way that leverages and combines the experiences of the formal and customary dispute resolution mechanisms ((3) hybridity). Like ordinary courts, LDTs are expected to provide services to the public in accordance with the principles of a just legal system guaranteed by the Puntland Constitution.

1. Features of the LDTs

- They are administrative bodies with quasi-judicial power;
- They are only mandated to hear disputes over urban land and peri-urban land within a defined area;
- Their objective is to hear disputes in a manner that is less complicated and more efficient than the courts; and
- They are intended to be accessible by all Puntlanders.

Unlike normal courts, LDTs are intended to be informal and more easily accessible. They adopt more flexible procedures than ordinary courts, allowing them to provide and deliver land dispute resolution services in a faster and more effective way. Currently, only the Garowe LTD is established and functioning in Puntland.

2. Scope of the Training Manual

This training manual was developed to assist with the implementation of the revised Regulation. It covers the following key training topics for the effective administration and management of urban and peri-urban land conflict resolution:

- Basic principles of administrative justice
- Jurisdiction of the land dispute tribunals
- Procedure for opening cases
- Procedure for hearing cases and decision making.

3. Target Audience & Methodology

The targeted trainees are;

- Members of the LDT;

- Key stakeholders; and
- Those involved in other decision-making mechanisms, such as civil courts, related to the work of the LDT.

The methodology set out for trainings are as follows:

1. The trainer(s) will explain the provisions of the revised Regulation to the trainees; and
2. The trainer(s) will use case studies to assist trainees in understanding practical application of the provisions of the revised Regulation.

BASIC PRINCIPLES OF ADMINISTRATIVE JUSTICE

Though LDTs are different from the formal court system, as administrative tribunals vested with quasi-judicial authority, they must uphold key principles inherent to the administration of justice and the Rule of Law. In upholding these principles, the LDTs can ensure effective access to justice as well as public trust and confidence in the LDT as an institution, thereby avoiding recourse to other dispute resolution mechanisms that may lead to injustice as well as insecurity/ instability.

There is a great deal of discussion and case law from around the world concerning the detail of the rights of individuals accessing courts and tribunals and duties incumbent on those courts and tribunals. Those most relevant to the work of the LDT are outlined below.

1. Fair and Timely Decisions

The principle of fair and timely decisions is fundamental to the mandate of LDTs. LDTs must avoid unnecessary delays in hearing and disposing of cases. Further, decisions must be 'fair' – that is to say, neither party must be unduly disadvantaged through the process of the LDT, and that the LDT considers all relevant information.

I. Ensuring Timely Decisions

The general provisions of the revised Regulation underscore the provision of efficient, reliable, and quick conflict resolution of urban land disputes. Where proceedings are unduly long or subject to excessive delay, this undermines the ability of the LDT to achieve this objective, but also, impacts the effectiveness and credibility of the LDT as a quasi-judicial body providing access to justice.

II. Ensuring Fair Decisions

The revised Regulation stresses the importance of fair decisions, providing that LDTs decisions can be challenged and nullified on ground of being unfair¹.

Ensuring a fair decision means that the LDT must see that all parties:

- i. Receive due notice of institution of a case;
- ii. Receive a fair hearing;
- iii. Can engage counsel;
- iv. Have the right to the disclosure of evidence;
- v. Have the right to call witnesses who can provide relevant evidence;
- vi. Have the right to be provided with reasons for a decision; and
- vii. Have the right to appeal in accordance with the law.

¹ According to Article 31(2) of the revised Regulation, the Supreme Court may reverse or alter decisions of the Tribunal only on ground of accessioned a failure of justice.

III. Criteria

Fundamental questions that LDTs must ask in assessing whether they are abiding by the principle of fair and timely decision include:

- Whether the parties were provided with sufficient information on the case against them;
- Whether the parties were given an appropriate opportunity to reply;
- Whether the parties were provided with a hearing and a decision within a reasonable period;
- Whether the parties were provided with sufficient reasons for a decision;
- Whether the decision was based on relevant and correct information;
- Whether the facts and/or law relied upon in the decision was correct; and
- Whether the decision was well-reasoned and delivered to the parties within a reasonable time.

Importantly, the principle of fairness also includes the provision of information and services that are easy to find, use, and understand and treating participants with respect. It is therefore relevant to consider the manner in which parties are, throughout their contact with the tribunal, treated by tribunal members and staff. Such questions include:

- 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

Ensuring accessibility to the LDTs promotes the individual's right to access justice. This in turn enhances public confidence over the Tribunal and its services. Where LDTs are not easily accessible to the public, it would amount to a denial of the right to access justice.

I. Potential Barriers to Accessibility

Potential barriers or obstacles that may inhibit access to justice are wide-ranging. They may be, but are not limited to, physical, logistical, and financial barriers, such as:

- The distance of the location of the Tribunal from potential parties to disputes;
- Case-related fees, and fees for advocates;
- Parties being unaware to whom or to which office they ought to submit their case;
- Parties being unaware about the procedure of submitting the case, application or petition;
- Parties being unaware about the conditions and requirements for filling and submitting applications to the Tribunals;

- Parties being unaware of the time and place of the hearing or the members hearing their case; and
- The prolonging of the case hearing and decision process.

The existence of any of such barriers may lead disputing parties and the public to lose confidence in the system.

To assess whether there are barriers to accessibility of a Tribunal, the following questions should be considered:

- Are Tribunal case-related fees affordable?
- Is there a written and known procedure exempting payment of Tribunal case-related fees for 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?

Those involved in management, oversight or day-to-day operation of a Tribunal should also be alive to other factors, not explicitly identified above, that may have the practical impact of reducing accessibility. Where access is reduced by such factors, the LDT must implement a solution addressing this.

3. Independence & Impartiality

I. Independence of the LDT

The LDT must be 'independent'. Its members must be able to exercise their professional duties without influence from any other government (local or central) body or official, or from any other inappropriate source. Without independence over the management and decision of the disputes, no Tribunal can ensure and provide disputing parties with the fair hearing they are entitled.

Individual Tribunal members should be free from any sort of influence, fear of personal criticism, or reprisal of any kind, and able to make decisions based solely on the facts and on the law as it applies to those facts.

Applicable laws ensuring the independence of the Tribunal

Article 5 of the revised Regulation provides as follows:

- 1) The LDT shall be fully independent in the administration of all cases that come within its jurisdiction.
- 2) No governmental institution, the Court and non-governmental institution may interfere, influence, or direct the LDT in the administration of land disputes
- 3) The Independence vested on the LDTs shall not be used to take any action or decision amounting to violation to this Regulation, existing Land Laws, other laws of Puntland prevailing this regulation or the applicable code of Conduct under this Regulation.

II. The Principle of Impartiality

While the principle of independence relates to the relationship of the Tribunal with other government organizations (executive and legislature), the principle of impartiality refers to, and conditions the attitude of the Tribunal members in relation to land disputes and concerned parties. Tribunal members must undertake their duties in an impartial manner thereby ensuring parties' right to equality before the law and their right to receive a just and fair decision.

Applicable laws on Impartiality

The revised Regulation does not specifically mention the requirement of impartiality, but the Judicial Code of Conduct and disciplinary rules of Puntland judges, which is referred as applicable laws within LDTs², postulate rules pertaining impartiality of LDTs and its members.

Accordingly, Tribunal members must always act objectively and base their decisions on relevant laws and facts without personal bias, without preconceived ideas on the matter or on parties involved, and without promoting the interests of one party over the other. The principle also prohibits LDT members from holding any pre-conceived notions about how a case will be decided; having a personal stake in the outcome of a case; expressing views that reflect a predisposition to deciding cases; making statements during proceedings that are indicative of unreasonable hostility towards a party, counsel, or witness; or treating a party of the case in a discriminatory manner.

Impartiality prohibits LDT members from being involved in the hearing of an LDT case where the concerned member:

- has a family relationship or close personal friendship or business relationship with a party of the dispute;
- has a 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.

In addition, the following grounds will render an LDT member biased:

- Where a member takes or demands a bribe;
- Where a member decides disputes based on bias, such as nepotism;
- Where a member discriminates between parties on whatever other ground; or
- Where a member involves themselves in the hearing of a land dispute where they have a personal relationship with one of the parties in the disputes.

It should be noted there may be other factors that impact on the impartiality of a tribunal member.

4. Accountability

It is important that the LDT and its members may be held accountable, thereby deterring, preventing, and addressing any abuse of power and further securing public confidence in the mechanism.

Consequently, there must be a mechanism through which individuals who believe that LDTs or its members violated the rights of the individual, or contravened their obligations (including those outlined above: ensuring a fair and timely decision; accessibility; independence and impartiality) can pursue redress.

For a dispute resolution mechanism to maintain accountability, it must ensure that it has the following features:

- i. a comprehensive code of conduct stipulating defined and detailed rules of ethics;
- ii. a well outlined stipulation of the duties of its members in relation to the administration and decision-making process;
- iii. a category of disciplinary measures to impose on members who violate such defined rules of ethics and duties;
- iv. a procedure for reporting and submitting public complaints against its members; and
- v. a procedure for the investigation, hearing, and decision making of public complaints against its members.

Applicable law regulating the accountability of LDTs

Article 17 of the LDT revised regulation sets out the rules concerning accountability. It provides that a Code of Conduct adopted by the Ministry of Interior shall be applied, *mutatis mutandis*, to LDT members.

Likewise, the Ministry of Interior is the body that oversees cases on LDT Members' conduct.

The referred Code of Conduct and disciplinary rules prescribe comprehensive accountability measures and procedures applicable to LDT members which include:

- i. rules of ethics and duties,
- ii. categories of misconducts,
- iii. disciplinary measures,
- iv. procedure for reporting misconduct or submission of public complaints, and
- v. the investigation and decision-making procedure on cases against LDT members.

It should be noted that the process for appealing a decision of the tribunal is distinct to 'accountability' more generally. The right to appeal to the Supreme Court of Puntland can be found at Article 30 of the revised Regulation.

JURISDICTION OF THE LAND DISPUTE TRIBUNALS

1. Adjudicative Jurisdiction of the LDT

The adjudicative jurisdiction of the LDT consists of a material jurisdiction and a territorial jurisdiction. Article 7 of the revised Regulation stipulates that before hearing and determining a dispute, an LDT must ensure that it has both material and territorial jurisdiction over the subject matter of the dispute.

I. Material Jurisdiction

Material jurisdiction refers to the jurisdiction of the Tribunal over the subject matter of the dispute. Article 7 provides that an LDT has jurisdiction over administrative and civil cases concerning disputes over undeveloped urban and peri-urban land within the districts.

Article 7(2) of the revised Regulation further clarifies the material jurisdiction of LDTs, stating that LDTs shall only adjudicate 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 and peri-urban land”?

Disputes over the administration of urban and peri-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 such as Local Government administrations and Local Councils.

What land is urban and peri-urban land?

Article 3 of the revised Regulation of the LDTs provides the following definitions:

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”.

Peri urban land means land located in urban expansion areas defined as “areas adjoining urban zones, scarcely built up and with low population density, to be reserved for urban expansion in the next twenty years.

II. Territorial Jurisdiction

After determining that it has the relevant material jurisdiction in respect of the dispute, the concerned LDT must ensure that it has territorial jurisdiction over the dispute as well. The

territorial jurisdiction of the LDT concerns the geographical location of the land under the dispute.

Article 6(2) provides that each LDT has a territorial jurisdiction “within the district in which it is established”.

2. Disputes excluded from the Jurisdiction of Land Dispute Tribunals

There are certain land disputes excluded from the jurisdiction of the LDTs.

Article 7(4) of the revised LDT Regulation lists these exceptions as disputes relating to:

- Land that is subject of a previous dispute, where the dispute was on the same issue, by the same parties and where this dispute has already been decided by a court;
- Land located beyond the administrative boundaries of the Local District Council.
- Land which is not an urban or peri-urban land, to be established as a matter of fact;
- Land that is not developed, to be established as a matter of fact
- Grazing range or farmland; or
- Land which is subject to ongoing mediation.

The above-listed exclusions 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 grounds that it has no jurisdiction to hear the matter. If the LDT hears and gives a decision over a case falling into this category, that decision shall have no legal effect.

Similarly, where the LDT has jurisdiction to hear a case but a situation exists preventing LDTs from hearing that case until that situation ends, the LDT must reject the admission of that case pending the outcome of that situation. This is the case where a 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, then the LDT can hear and decide the dispute.

3. Referral Pathways Between Courts and LDTs

In some cases, it is necessary for the LDTs to adjourn a hearing and transfer the dispute to an ordinary civil court to decide the dispute or a particular issue related to the dispute. In the same way, an ordinary civil court may transfer a civil court case or particular issue of a civil case to an LDT to determine.

Article 10 of the LDT revised Regulation

- a) Ordinary Courts shall refer the cases which fall under the jurisdiction of the LDT whenever:
 - a. the criminal case before the court primarily relates to an issue which falls under the Jurisdiction of the LDTs; or
 - b. civil case before court primarily relates to an issue falling within the jurisdiction of the LDTs
- b) LDTs shall refer cases to the Courts to determine entire dispute or a particular issue or issues in the case, whenever:
 - a. a criminal issue arises from the case before the LDTs;
 - b. the subject matter of the dispute is outside the jurisdiction of the LDT;
 - c. the major issue of the dispute before the LDT that needs to be determined before any other issues in the case relates to a civil matter which falls outside the jurisdiction of the LDT.

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

- The first situation is where the dispute brought to the Tribunal involves in a criminal matter. The LDTs have no jurisdiction over criminal matters and are required to refer these disputes to the competent criminal court. The facts of the following hypothetical case is an example of a situation where the Tribunal should refer the dispute to the competent criminal court:
- The second situation is where the dispute brought to the Tribunal primarily involves a civil matter beyond the jurisdiction of the LDTs. In such situations, an LDT 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:
- The third situation where LDTs must refer disputes to the civil courts is where said dispute primarily relates to an issue which LDTs have jurisdiction to hear, but which also involves in an issue falling outside the jurisdiction of the LDT, which must be decided before the primary issue of the dispute can be resolved. An example of such a type of dispute is outlined below:

PROCEDURE: OPENING CASES

1. Submission of Case Application

Anyone seeking to initiate a case before an LDT is required to submit a written or an oral application to the Office of the Secretary of the LDT clearly outlining all the information prescribed in Article 27(2) of the revised Regulation as listed below:

- Name and specification of the Tribunal the case was submitted to;
- Full name, residence, and address of the plaintiff;
- Full name, residence, and address of the respondent;
- 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 or in other words the summary of the material facts of the case.

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 an applicant provide all the above-mentioned information in a clear and easily understandable manner is essential for the timely hearing and disposal of the case.

Questions for consideration

- How can LDTs ensure the public knows the conditions required to submit a application?
- How can LDTs ensure anyone, especially those who are unable to read or write, has the opportunity to submit and file a case to the LDTs, without the need of hiring a lawyer to assist in writing the case application?

2. Checking Compliance, Returning and Rejection of Applications

I. Checking compliance

Upon receipt of the application, the LDT Secretary will ensure that the application is fully and properly completed and contains the aforementioned information required under Article 27(2) of the revised Regulation. Where the application does not provide some, or all, of the required information, the Secretary will return the application to the applicant and inform him/her of

the missing information required, as well as their right to re-submit the application (see Article 27(4) of the revised Regulation).

II. Case Application Fees and Fee Exemption

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 34(6) of the revised Regulation).

III. Rejection of application

The Secretary is also required to ensure that the received application falls within the jurisdiction of the LDT. Where the application relates to a dispute outside the jurisdiction of the LDT, the Secretary is required to issue a written and reasoned order rejecting the application (see Article 10 of the revised 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 of Puntland.

3. Registration and Opening Case File

After approving the compliance of the case application and ensuring that the case application fees are paid or 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 27(5) and (6) of the revised Regulation).

When registering the case application, the following information about the case application must be entered into the case Register:

- Reference number of the case;
- Registration date;
- Full name/names of respondent(s)/physical or postal address or care of/their ages;
- Names of their representatives if any;
- 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 favour of whom; and
- If appealed, date of appeal.

After the registration is done, the Secretariat Staff shall open a case file for the registered case. The case file opened for the registered case will become the specified file for the case, and will keep the case application and all other future documents and records related to the case. All relevant data regarding the case should be listed on top of the case file.

Information to be entered on top of the case file:

- Reference number of the case;
- Registration date;
- Full name/names of respondent(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 the opening of a case file for the received and approved case application, the Secretary shall submit the case file including the case application to the Chair of LDT to approve, appoint, and assign a Tribunal Panel to hear the case.

Upon approval of the validity of the case application, the Chair shall write the names of the Tribunal panel appointed and assigned to hear the case, indicating the presiding member of the Tribunal Panel on the case file folder.

The LDT Chair shall then return the case file folder to the Secretary to prepare and serve case notification to the respondent and to conduct the steps necessary for the preparation of the preliminary hearing of the case.

4. Case notification and serving procedure

After the LDT Chair 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 revised Regulation.

Article 27 sets steps to follow for the preparation and serving modalities of case notification orders to the concerned respondents as follows:

- Firstly, the secretary shall notify the respondent on the date and time of hearing of the case. Such notification shall be served through an LDT messenger in person at the respondent's residence or at their place of work.

- The notification shall be deemed dully served if the respondent is found but refuses to acknowledge the notification. The LTD messenger shall warn the respondent about the consequences of the refusal.
- If the respondent was not found in his/her residence or place of work, the LTD messenger will leave a message with the family informing the respondent to appear before the LDT within 3 working days with intention of receiving case notification.
- If the respondent does not appear before LDT within prescribed days, the LTD shall proceed the case in their absence.

1. General Rules

The revised LDT Regulation sets out 'General Rules' which must be respected and applied by the LDT at all stages of the dispute resolution process. The principles provided by the revised Regulation, and explained below, are necessary to ensure that LDTs determine and dispose disputes in a transparent, timely, and fair manner.

I. Open and public hearing

Under Article 29 of the revised Regulation, all hearing sessions of the LDT must be open to the public so that any person interested in the dispute may attend. However, the LDT may hear cases in a closed session where the Tribunal is satisfied that there is a issue related to the case that, if heard in an open session, may lead to disorder during the hearing sessions, or insecurity in the Tribunal Premises. Except in such situations, all hearing sessions of cases falling under the jurisdiction of the LDTs must be open to the public.

This principle of open and public hearings is based on the need to ensure transparency in the LDT dispute resolution process. It provides the public with an opportunity to see how the Tribunal handles the proceedings of the dispute and allows them to witness that the Tribunal is committed to justice.

Moreover, it also serves as a method of ensuring that Tribunal members adhere to the proper and applicable procedure by upholding the principles of fair and just hearing process.

II. Keeping proper and complete LDT case records

The Regulation obliges all Tribunals to record in writing and properly keep all records of proceedings. Article 23 of the revised Regulation also stipulates this rule making it the responsibility of the LDT secretary.

Article 23(d)

LDT secretary shall be responsible for holding, maintaining and safekeeping of registers, records, case files and all documents of land disputes filed and rendered by the LDT. The recorded proceedings shall include:

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."

Article 24 also obliges the presiding officer to ensure that the proceedings, applications, witnesses, and evidence presented by the parties are properly recorded and filed in the concerned case file folders.

The records addressed in Article 23 include:

- documentary evidence,
- tribunal orders such as hearings adjournments,
- all other documents such as case applications and their responses,
- Tribunal notifications and orders, and
- such other documents relating to each individual case.

The proper and safe recording of the proceedings and the safe storage of the records is essential in order to:

- Enable LDTs to receive comprehensive and reliable information of the cases it hears in order to render a just decision;
- Enable parties of the case to have access to information so as to evaluate and verify that the Tribunal has considered and based its decisions on all of their arguments, witness testimonies, and evidence which would guide their decisions to appeal or otherwise; and
- Enables the Supreme Court of Puntland, and other institutions responsible for the accountability and review of the decisions of the LDTs, to obtain a comprehensive report and information they would require to review the Tribunal's actions and decisions.

III. Mediation as an optional dispute resolution mechanism

The LDT should invite parties to consider using a mediation process to resolve the dispute. This is fully explained under "**3. Solving the Dispute through Negotiation and Mediation**" below.

IV. Case Presentation

The following is the detailed procedure for hearing disputes as prescribed by Article 28 of the revised regulation of LDT:

Article 28

- a. Both parties shall present their case as well as their objections. Each party may have the assistance of up to 2 persons, who may be elders, lawyers or any other person who may assist in resolving the dispute.
- b. Each party and their assistants shall have 30 minutes to present their case, including all evidence and witnesses. The applicant starts, followed by the respondent.
- c. The LDT asks parties if there is anything else they would add and shall allow each party 10 additional minutes to add to their case if they so choose.

- d. If the issue of contention in the dispute include disagreements as to the size or location of the land, or if the panel considers that neighbours in the area may be valuable witnesses who have not yet been called to the LDT, the Panel may together with the parties visit the location of the disputed land. This must occur within seven days of the hearing.
- e. The Tribunal Panel may, on its own motion, demand, obtain and consider additional evidence it deems necessary for disposing and rendering a just decision over the case.
- f. If a second hearing is necessary after the site visit or after additional evidence has been obtained, the LDT must call this hearing within 14 days of the initial hearing.
- g. After the final hearing, LDT shall issue its decision within 30 days.
- h. The LDT Panel shall, if it believes that an interested person is absent in the hearing, call such interested persons to join in the case.
- i. Either party of the case may request the LDT to call a third party to join in the case by indicating the existence of an interest necessitating for calling such third party to the case.
- j. Where the LDT accepts the application for joining a third party, or when by its own initiation it has ordered a third party to join the case, the Panel shall adjourn the hearing, and an order to join shall be delivered to the third party or parties within five days.
- k. Interested third parties should be notified of the decision of the LDT a day after its issuing. If a third party has a legal interest in the case and is dissatisfied with the LDT's decision, he or she has 5 days to present an appeal to the Supreme Court of Puntland.

V. 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.

Article 28 of revised Regulation prescribes the conditions that may justify adjournment of hearing of LDTs as follows:

- Where there is an absence of an important party to join the case;
- Upon concluding hearing of the case and after considering all the evidence;
- Where mediation and negotiation between the parties is still ongoing and until a decision is issued;
- Where an objection is submitted by one of the parties, and until a decision is issued on such;
- Where an important witness is absent;
- Where a third party is in custody of important documentary evidence;
- Where the LDT needs to refer the dispute or a particular issue to the competent ordinary court; and
- such other situations that 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.

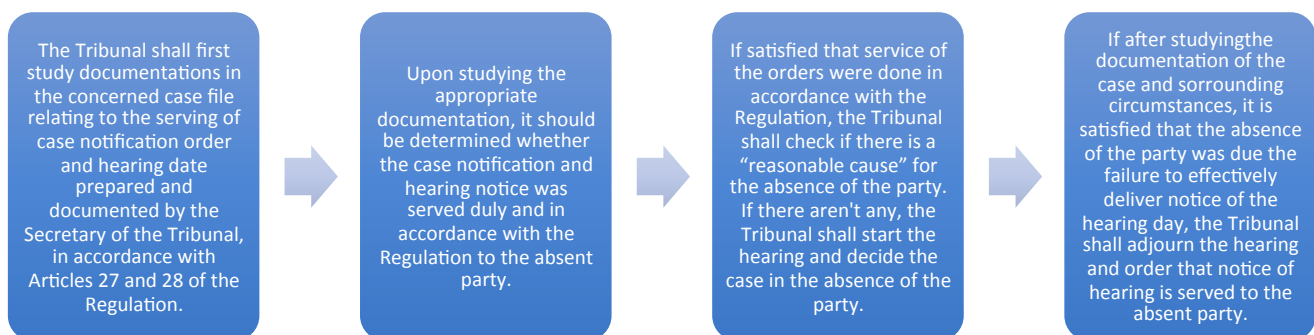
Importantly, no LDT is allowed to adjourn the hearing of cases due to the absence of a party or his/her lawyer or representative. The absence of the party or the lawyer or representative can only be reason for adjournment if such absence is based on a justifiable cause. The LDT is also prohibited from adjourning the hearing of a case due to a reason caused by the LDT or the Tribunal members hearing the case.

VI. Hearing the case in the absence of parties

Article 9 of the revised Regulation ensures the right to fair and speedy hearing. Article 27 sets a general rule obliging the Tribunal not to hear or decide a dispute where the parties are not present and heard.

Nevertheless, Article 27 provides for exceptions to this rule:

- when the respondent is absent and not represented in the hearing, the Tribunal is satisfied that the respondent was duly served and received the case notification order and notice of the hearing in accordance with the Regulation, but failed to appear and/or arrange for representation without reasonable cause;
- when the respondent is absent and not represented in the hearing, and the Tribunal is satisfied that the case notification order was served to the respondent duly and in accordance with the Regulation and that the respondent has refused to acknowledge receipt of the notification order; or
- when the Tribunal is satisfied that applicant was notified about the hearing date of the case in accordance with the Regulation, but failed to appear nor is not represented without reasonable cause.



The tribunal shall deem that a notification order was not served properly where:

- 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 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; or
- The person who was served on behalf of the party informed the Tribunal or the messenger who served the order, that the absent party is away and will not be coming back before the date ordered.

To ascertain if there is a reasonable cause for non-attendance after notice was duly served, the LDT shall consider the following circumstances:

- if the date the absent party received the hearing notice order was very close to the fixed date of the hearing meaning that they had no sufficient time to appear;
- if the absentee notified the party earlier that he/she could not appear on the date ordered due to prior court or Tribunal appointment, sickness, death of family member, being away for business and similar reasons; and
- in such other circumstances that the Tribunal deems that hearing the case in the absence of the party is detrimental to the rights of the absentee party and to the proper and just disposition of the dispute.

2. Preliminary Hearing Procedure

I. Preliminary Hearing of the Case

a) Purposes of the preliminary hearing of the case

The purpose of the preliminary hearing is to enable LDTs to have an opportunity to distinguish the parts of the dispute that can easily and quickly be resolved. For those parts of the dispute which are more complicated, the LDT is required to either persuade the parties to resolve their dispute by themselves or through mediation, or else adjudicate the case themselves.

b) Procedure of the preliminary hearing before the LDT

Article 28 describes the procedure to be followed by the members of the LDT during the initial hearing. The parties should arrive at the LDT at the time specified. If one of the parties is late without notice or reason, the proceedings should start without them being present.

The LDT Chair should ask the parties if they have a statement prepared. If they do, they may each read out the statement. If they do not, they may simply describe their version of events or the relevant situation. The applicant should start, followed by the respondent. Any interested parties to the proceedings that have been joined should follow the respondent.

The reading of the statements of description of events should go for no longer than ten minutes per person. If the person does not have a statement and is not sure what to say, the LDT should assist by asking questions such as:

- What is this dispute about?
- Who owns the piece of land?
- What happened to it?
- How did it happen, and how did you respond?
- Then what happened?
- Who was involved?

The LDT should avoid asking leading questions, such as:

- Did you own the piece of land?
- Did he take the land?
- Were you at the property on that day?
- Did that happen the next day?
- Was [person X] involved?

A **leading question** is a question that suggests the particular answer or contains the information the examiner is looking to have confirmed.

After each party has read their statement, the LDT should ask them if they have any clarifications after hearing the other person's statement. The LDT must be clear that this is not the time to make arguments or to say why they think the other person is in the wrong. It is simply a time to make sure their version of events is as clear as possible. For example:

“Mohamed mentioned that the dispute took place in October. The dispute I am speaking about began in early November.”

II. Framing Issues of the Dispute

It is important to frame the relevant issues of the dispute. This means identifying and clarifying the point or points of contention between the parties to the dispute (as opposed to irrelevant issues, or secondary issues (i.e. issues that would not be contentious, were it not for the primary contentious issue).

- The Tribunal Panel should frame the issue/s of the dispute in order for the Tribunal to effectively lead the hearing process and to ensure a timely determination of the dispute.
- After framing the issue/s of the dispute, the Tribunal shall give the parties the option to choose any of the following mechanisms:
 - mediation as an alternative dispute settlement mechanism; or

- if the parties do not choose to resolve the issue through mediation, the dispute shall come under jurisdiction of LDT.

What is the issue of the dispute?

The issue refers to matters or a point in a dispute which parties of the dispute disagree with or hold divergent views from. In other words, the issue of a dispute is a matter or a point relating to the dispute between the parties, which one party claims to exist and is expected to prove the existence or truthfulness of, whereas the other party claims otherwise and is expected to disprove the existence of that matter.

If the issue of the dispute is properly framed, the Tribunal is able to predict the possible advances it needs and is therefore able to focus arguments and evidence on the relevant issue. Commencing a hearing without a properly framed issue results in an unguided and inefficient hearing and decision-making process. Such a process would be contrary to the disputing parties' right to a fair and timely hearing. Therefore, the LDT panel shall always first frame the issue of the dispute.

When framing the issue of the dispute, the Tribunal Panel shall refer to the statements of claims and responses, the oral arguments of the parties, and the information gathered from their visit to the disputed land. The Tribunal shall only frame an issue where there is a matter disputed by the parties which the Tribunal is expected to hear and decide.

Scenario: *Ali, the applicant, and Abdi, the respondent, own neighbouring properties. Ali has claimed that Abdi occupied parts of his land, Land A and Land B.*

In respect of Land A, Abdi concedes that Ali is the owner and agrees to return this land. In respect of Land B, Abdi claims ownership of the land, arguing that it is part of his land.

As the situation of Land A is resolved, this need not be addressed by the LDT, and therefore need not be framed. The Tribunal Panel must frame the issues relevant to Land B as the ownership of this Land is in dispute; the question to be addressed by the LDT is who, between Ali and Abdi owns Land B.

III. Third Party Interventions

A third-party intervention refers to a situation where an individual who is not a party to the dispute before the Tribunal is allowed to join or is joined into the case in order to take part in the case hearing.

- When can someone intervene or be intervened into a case?

According to Article 28(4) of the revised Regulation, a third-party intervention in the hearing of the case can be allowed at any stage before concluding the hearing of the dispute.

- Who can intervene or be intervened into a case?

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(4)(a-c) of the Regulation:

- i. 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;
- ii. If either one of the parties of the dispute requests the LDT to call a third party/another person to join into the case; or
- iii. 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.

For example, if the Tribunal discovers during the preliminary hearing that the disputed land is owned jointly by more than one person and that not all the owners are present or represented, it shall order all such interested person to be joined to the case and will adjourn the hearing of the case pending the implementation of the order (see Article 28(4)(a) of the Regulation).

The Tribunal, in deciding whether to accept the application a third party's application 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. The Tribunal should not join a third party whose aim is to mislead, disturb, or prolong the hearing and resolution of the dispute.

The Tribunal must therefore ensure that:

- When an application is submitted by a third party, the Tribunal shall demand that the applicant produce evidence ascertaining their interest in the case and the profit or loss that they would incur if the decision on the dispute is taken without their having been heard in the proceedings;
- When one of the parties of the dispute requests for a third party to be joined to the case, the Tribunal must demand that the applicant demonstrate either:
 - the existence of an advantage to be secured or protected for the applicant or for the third party (where they are not the applicant) necessitating the third party to be joined and heard in the proceedings of the case; or
 - The existence of a disadvantage or loss that the applicant or the third party may incur, if the case is disposed without the third party being joined and heard in the proceedings of the case.

If satisfied by the application for the third party to join or be joined to the case, the Tribunal shall issue a written and reasoned order accepting the application, adjourning the hearing, and ordering that the third party be called to participate in the proceedings. If it is not satisfied, the Tribunal shall issue a written and reasoned order rejecting the application.

Scenario Hassan has filed a case at the Garowe LDT involving land located in 1 Agoosto district which he bought from Ali. As shown in the case application, Hassan argues that a Farah, Ali's brother, has been living on this land without his knowledge and permission. In the preliminary hearing of the case, Farah, the respondent, argued that he is the owner of land under dispute, as he and Ali inherited it from their father and so acquired ownership. Hassan has therefore requested the Tribunal to call Ali to be joined into the case as Ali sold him the land and must therefore prove his ownership of the land, or, otherwise compensate him.

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

Under Article 28, where the LDT accepts the application for joining a third party, or when by its own initiation it has ordered a third party to join the case, the Panel shall adjourn the hearing, and an order to join shall be delivered to the third party or parties within five days.

Interested third parties should be notified of the decision of the LDT a day after said decision is issued. If a third party has a legal interest in the case and is dissatisfied with the LDT's decision, he or she has 5 days to submit an appeal to the Supreme Court of Puntland.

3. Solving the Dispute through Mediation

I. Mediation

If, after the preliminary hearing, the parties agree to resolve their dispute through mediation, the LDT shall refer them to the mediation process and shall ensure that the final terms of the agreement between parties and elders are duly signed.

If the disputing parties opt for mediation, the Tribunal shall apply Article 28(2)(b) of the revised Regulation.

The Mediation Process

- a) The Tribunal 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.
- b) The LDT shall provide the parties with an officer to write down the discussions and the final agreement.
- c) Along with the procedure mediation in the Regulation, the mediators are required to comply with the following standard rules of mediation:
 1. They should hear the disputing parties and their witnesses equally and fairly;
 2. They should focus and determine only the issue/s of the dispute which the

Tribunal Panel has ordered them to consider and resolve;

3. They should decide with fairness and impartiality; and
4. They should resolve the dispute within the timeframe prescribed by the Tribunal Panel.

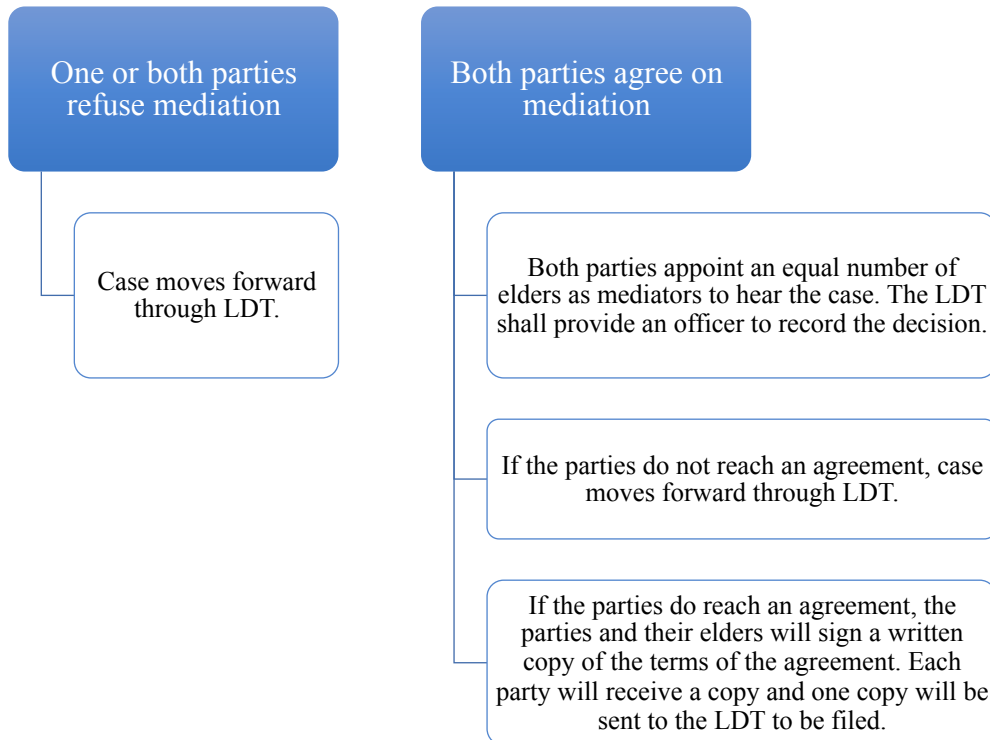
These obligations form the core of the validity of the decision reached by the elders. Accordingly, if it appears or it is discovered that the elders did not comply with one or all of the above rules or by the principles outlined in the revised Regulation, the Tribunal shall not accept and approve their decision.

- d) After the mediators resolve the case, they have to submit the mediation decision in writing to the Tribunal, and give a copy of the same to all parties of the dispute.

Following the mediation process, elders and mediators must sign and date their decision:

- When it receives a copy of the mediation decision, the LDT panel must check that it contains all the information it is supposed to provide. If the decision does not contain all the required information, the LDT will return the copy of the decision to the mediators and order them to amend it.
- If the mediation decision is in compliance with the prescribed requirements, the LDT will hold a hearing session with all parties to approve the mediation decision submitted by the elders. In the hearing, the Tribunal panel will give the parties the opportunity to present any objections or arguments against the mediation decision. If no objection or argument is raised, and the panel is satisfied with the validity of the mediating decision, they shall issue a decision approving and resolving the case based on the decision of the mediators.

If the dispute cannot be resolved through mediation, the Tribunal will adjudicate the dispute.



4. Procedure for Adjudication of the Case

In accordance with the revised regulation, the Tribunal shall hear the disputing parties and their witnesses, and examine relevant documentary evidence.

The LDT, in ensuring a timely hearing process and fair decision, shall bear the following responsibilities:

- i. The LDT shall 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;
- ii. The LDT shall ensure that witnesses stay outside of the room/hall until they are called;
- iii. The LDT shall properly lead the hearing of the case and ensure that parties adhere to the context specified by the LDT and submit evidence that is directly related to the context or conflicting points of the case; and
- iv. The LDT shall bar the parties and witnesses from providing arguments, evidence or testimony that are not relevant or related to dispute, the issue, or disputed points of the case.

I. First substantive hearing

If the parties move to a substantive hearing by the LDT, the LDT should set a date that is as close as possible and no longer than 14 days after the initial hearing. The procedure at this hearing should be as follows:

Both parties shall present their overall case and disagreement with the other person's case, starting with the applicant. (10 minutes each.) Each party may have the assistance of up to 2 persons, who may be elders, lawyers or any other person who may assist in resolving the dispute.

The LDT should describe the issues in contention, and then invite each party to address each issue in turn, starting with the applicant.

The applicant and defendant each have 30 minutes to address all issues of contention, including calling witnesses and producing evidence. This can be done informally, through either asking the witness to speak or having the applicant/ respondent ask them specific questions.

The LDT should ask the parties if there is anything else they would add and shall allow 10 additional minutes to each party and their assistants to add to their case if they so choose.

At the first hearing, the LDT may ask for additional evidence to be brought. The LDT should do this whenever there are important issues to be resolved that cannot be finally determined without more evidence, in circumstances where the LDT members are sure or have good reason to believe that this evidence actually exists.

If the evidence is visual or documentary, the LDT can ask for evidence to be brought and deposited with the LDT registrar, to allow the members to properly consider it. If the additional evidence must be presented by a witness, the LDT may set a date for a second hearing which that witness may attend. The second hearing must take place within 14 days of the first.

The LDT Panel Members may also consider it necessary to undertake a visit to the disputed land.

II. Visit to the land

It is important to note that visiting the land is not a necessary requirement of resolving the case. For example, a dispute that rests on whether a sale of land was validly conducted is very unlikely to warrant such a visit, as the only issues in contention are the circumstances surrounding the attempted sale, contract and exchange of money. Visits to the land should only be carried out where there is a tangible benefit to be gained.

If the issues of contention in the dispute include disagreement about the size or location of the land, or if the panel considers that neighbours may be valuable witnesses who have not yet been called to the LDT, the Panel may visit the location of the disputed land. This must occur within seven days of the first hearing. If a second hearing is necessary after the visit to the land, this must take place within 14 days of the first hearing.

III. Hearing Witnesses and the Submission of Evidence

In the adjudication phase of the dispute, the LDT shall allow parties to submit any documentary evidence and call witnesses other than those submitted and heard in the preliminary hearing stage as provided for in Article 28(3)(c) of the revised regulation.

Upon opening the hearing, the Tribunal Panel will order the applicant to submit any relevant documentary evidence. When submitting documents, the applicant shall briefly explain the content, date, and issuing body of any document submitted and then will provide the original version of each document and a copy to the Tribunal.

IV. Expert Evidence

If deemed necessary to have evidence from a technical expert in order to reach a fair decision, the LDT may appoint a technical expert to write technical report(s) to be used as evidence in the dispute as prescribed under Article 28(3)(e) of the revised Regulation.

The technical expert may be appointed through either of the following ways:

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

When assigning a technical expert, the Tribunal will issue a written order addressed to the expert providing the details and location of the disputed land and the matter on which the expert is required to address. The order shall include a timeframe within which the expert should report.

V. Admissibility and Weighing of Evidence

There are no strict rules about what evidence is admissible. Parties may adduce any evidence they think is relevant to the case. Where the LDT holds that evidence is not relevant, for example, because it does not relate to an issue in the case, they may find that evidence inadmissible.

Scenario *Abdullahi and Fatima entered into a contract in 2005 in which Abdullahi sold his land to Fatima at a low value. The land is now very valuable. Abdullahi now says that at the time he entered*

into the contract for the sale of the land, he was 15 years old and not of legal majority. He says that Fatima knew this at the time, and was taking advantage of him. This means the sale was invalid and the land is still his.

Fatima does not dispute that Abdullahi was 15 at the time of the sale and said that the title deed he claims to have acquired from the local administration is a forged document.

In the example above, the LDT should inform Fatima that her evidence is not admissible, because it is irrelevant. The only relevant facts of this case are whether Abdullahi was 15 at the time of the sale, and whether Fatima knew this. The potential existence of a forged title deed is not relevant to this case.

In weighing evidence, the LDT members should consider the following, and its relevance to the dispute:

- The existence of any title deed, contract of sale or other documentary evidence;
- Testimonies of the parties;
- Evidence given by those who know the parties and live in the area;
- Information collected during the visit to the land;
- Public documents such as newspapers;
- Photographic evidence;
- Communications during and leading up to the dispute, including text messages, emails and social media interactions.

The weighting of this evidence is a matter to be determined by the LDT on a case by case basis.

Some LDTs place the most weight on the existence of a title deed or contract of sale. While these documents are important, if one party alleges that they are forged or issued by a government agency that did not or was not able to determine the legitimate owner of the land, *there should not be an automatic presumption in favor of the owner of the title deed or purchaser in the contract*. The LDT should carefully consider all other evidence to determine what weight to give the document in these circumstances. In some circumstances, a title deed may be proven completely irrelevant.

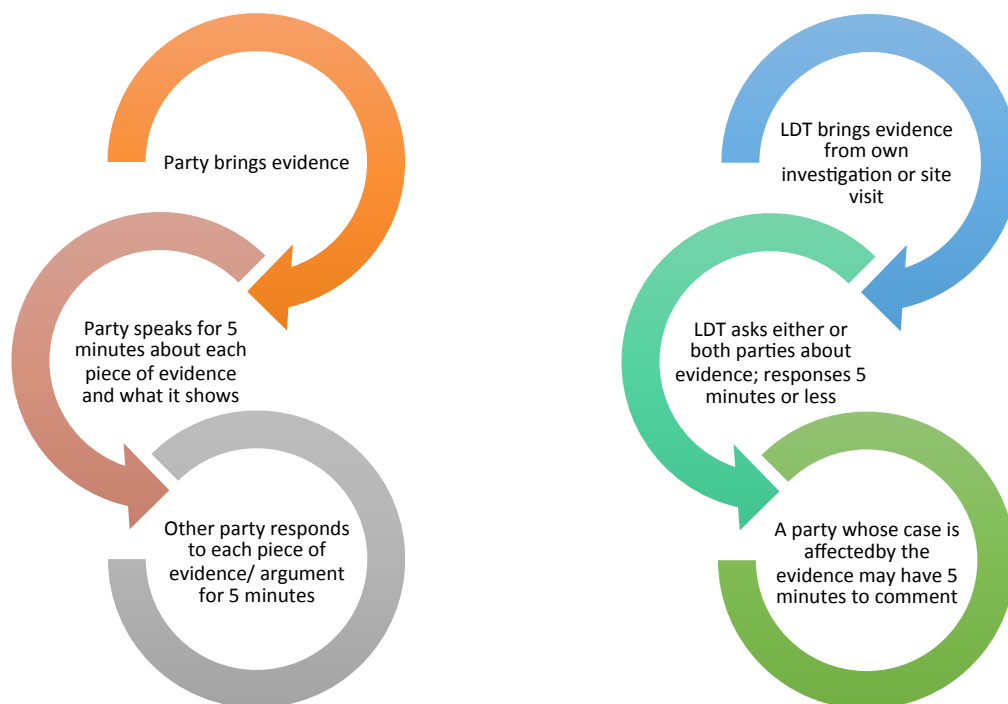
VI. Second hearing

The purpose of the second hearing is to consider any additional evidence brought by the disputants, third parties, discovered by the LDT or gathered after the site visit. It is not to repeat arguments or evidence made in the first hearing.

At this hearing, whichever party brought the new evidence should present and describe the evidence and make an argument as to what that evidence proves. The applicant should start,

followed by the respondent, and followed by any third party. The person presenting that evidence should have no more than five minutes to describe and make an argument in relation to each piece of evidence. The party whose case is damaged by the evidence should then have five minutes to respond to the evidence and arguments. The LDT members can ask any follow up question from either party.

If evidence is brought by the LDT itself, either due to investigations undertaken by its members or following the findings of the site visit, a member of the LDT should describe the evidence and then ask either party to answer specific questions about the evidence. They should each also be given the opportunity to make a comment about evidence damaging to their case.



After a second hearing, the LDT shall issue its decision within 30 days.

VII. Conclusion of the hearing and decision of the LDT

Upon concluding hearing of the case and after considering all the evidence, the LDT panel shall adjourn the hearing. After the hearing has been adjourned, the LDT shall issue its decision within 30 days. The decision of LDT shall be by majority of members of the LDT panel and all panel members shall sign the decision.

The LDT Panel shall read out its decision over the case to parties in public hearing, and give copy of the decision to any of the parties when requested.

Under Article 29, decisions of the LDT panel must be written and contain following information:

- case reference number;
- date of the decision;
- parties of the dispute;
- a summary of the facts of the case including indication issue/s of the dispute;
- reasons for the decision, including the information or evidence taken into account and relied on;
- notice to both parties on their right of appeal and the legally prescribed deadline to appeal;
- Name of LDT Panel members and their signatures.
- After the LDT has issued its decision, if no party appeals within 30 days, the case is considered settled and LDT proceeds to the execution of its decision.

5. Making and Writing Decisions

I. Decision-Making Process

Though no specific decision-making process or procedure is mentioned in the revised Regulation, the Tribunal is advised to handle the dispute resolution proceedings by taking the following steps:

- a. Identify key issue/s to the dispute

Guiding question

What is the issue or disputed matter/s that the Tribunal is 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 LDT to easily identify the relevant evidence in deciding the dispute, thereby avoiding wasted time through the consideration of irrelevant evidence.

After highlighting the issue/s of the dispute, the LDT must decide which party carries the burden of proof, that is to say, which party is supposed to prove or disprove the claimed issue/s of the case. In most cases, it will be incumbent on the applicant to prove their case. Where credible evidence has been provided by the applicant, it may be for the respondent to provide further evidence that counters or mitigates the evidence provided by the applicant.

- b. Review of all evidence including witness testimony produced or obtained in relation to the case

In reviewing the evidence received, the LDT must determine the relevance of said evidence to the issue or matters disputed by the parties. The LDT must also consider the admissibility of each piece of evidence submitted at this stage. In relation to this topic, please read **Section II “Standard of Proof”** below.

- c. Consideration of the evidence in the context of the issue/s of the dispute

Having identified relevant and admissible evidence, the LDT should consider such evidence in the context of the disputed issue/s. The LDT’s task is to determine whether the evidence it has identified is sufficient to prove or disprove the disputed issue/s. The Tribunal must determine if the party on whom the burden of proof is incumbent, has submitted sufficient evidence to prove or disprove the disputed issue/s. In relation to this topic, please read **Section II “Standard of Proof”** below.

- d. Making a decision

The LDT must then make a decision on the dispute based on the evidence available to it. This must be done on a case-by-case basis. In relation to this topic, please read **Section II “Standard of Proof”** below.

- e. Giving reasons

To ensure that its decisions comply with the principles outlined in the revised Regulation, the LDT is required to provide reasons for the decision it came to under ‘d’ above. To do this, the Tribunal will outline the disputed issue/s of the case it framed against the evidence submitted to it. It shall therefore reason its decision through correlation between the issues and the evidence received.

- f. Debate and voting

After undertaking all the tasks above, the LDT shall assign one of its members to prepare a draft written decision. The draft decision must reflect all the tasks undertaken under the steps above and comply with the decision writing modality prescribed in the revised Regulation. The draft shall then be submitted to the Tribunal Panel for debate.

When debating the decision, all members of the Tribunal Panel are obliged to act in accordance with the basic principles of impartiality and fairness to ensure that they render a fair and just decision. Following the debate, the Tribunal Panel members will take a vote, adopting the decision of the majority.

II. Standard of proof

There is no set standard of proof in LDT decision making.

Standard of proof

The 'standard of proof' refers to the level of certainty and the degree of evidence necessary to establish proof of a certain fact. For example, in criminal proceedings the standard is that of proof beyond reasonable doubt. In the civil proceedings, proof on the balance of probabilities is required.

The members of the LDT do not have to follow a specific standard such as 'beyond reasonable doubt' or 'on the balance of probabilities'. They simply need to be satisfied that a fact has been proven. However, their finding must be reasonable. This means that any ordinary, objective person could come to the same decision on the same facts. If a decision is unreasonable, the aggrieved person may challenge it to the Supreme Court of Puntland.

III. Drafting of LDT Decisions

As stated in Article 49(5) of the revised Regulation, the written decisions of the Tribunal Panels shall contain the following information:

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

After writing its decision over the dispute it has heard, the Tribunal Panel is required to read out the decision to the disputing parties in a public hearing and to give a copy of the decision to any of the parties when requested as set out under Article 29(4) of the revised Regulation.

After the LDT has issued its decision, if no party appeals within 30 days, the case is considered settled and LDT proceeds to the execution of its decision.

IV. Execution of Decisions

To have a decision executed, the Secretary of the LDT must provide a copy of the written decision to the court of first instance and must request in writing that the court takes the necessary action to execute the decision.



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