



UPHOLDING PEACE FOR A PROSPEROUS AND INTEGRATED REGION SINCE 1986
AU SERVICE DE LA PAIX POUR UNE REGION PROSPERE ET INTEGREE DEPUIS 1986

LAND GOVERNANCE IN IGAD REGION



SOMALIA

Country Profile

Assessment of Land
Governance Framework,
Training & Research Land
Governance Institutions

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1.1 Somalia

1.1.1 Country Context

After the fall of the Siad Barre regime in 1991, the Somali Republic splintered into three autonomous regions: South-Central Somalia, Somaliland, and Puntland. South-Central Somalia lacked a formal government from 1991 until August 2012. The appointment of the new federal government in 2012 is encouraging, and the new administration has made many commitments to passing legislation and policy to ensure a stable nation state governed by the rule of law. However, they too have lacked the capacity to draft, pass and implement legislation. Somaliland has functioned independently since 1991, and formally voted to succeed in 2001, though their sovereignty is not recognized by any country.

Somalia occupies a land area of 637,540 square kilometers and only 13% of Somalia's land is arable, of which only 8% has been cultivated and 98 % is made up of rangelands. Livestock production is the primary economic activity in the country, comprising approximately 50% of the gross domestic products and more than 80% of the export revenue. About 55% of the national population participates in nomadic pastoralism and 80% is engaged in livestock raising of some kind. The use of land for grazing plays a crucial role in the lives of people and the economy in Somalia, since roughly 55% of the Somali population is pastoralist. It is estimated that a population of roughly 8,050,000 people.

Population estimates for Somalia vary from 6.8 million, according to the Somalia Watching Brief (2003), to 10.3 million, according to the UN (2004) (Table 1). About 65 percent of the population is rural. Population density is 16 inhabitants/km² and the annual population growth rate was 2.3 percent between 1990 and 2002. A majority of the population remains nomadic, either pastoralist or agro-pastoralist. Agriculture is the second most common occupation. Somalia's agro-pastoralist and settled farmers live in villages or small settlements where water resources are reliable, while the nomadic

pastoralists move seasonally with their livestock depending on the availability of pasture and water. In 2001, Somalia counted about 300 000 internally displaced persons and 264 000 refugees in neighbouring countries. Up to 77 percent of the population is without access to safe water and 49 percent are without access to sanitation (1999). The prevalence of HIV/AIDS is estimated to be less than 1 percent.

1.1.2 Policies and Laws Relevant to Land Governance in Somalia

In 1969, the Government adopted the socialist system where land was nationalized and redistributed; customary laws were totally ignored. Currently a plural system operates: the pre-1991 statutory law (secular), the Islamic/sharia laws and the Somali customary law (popularly known as Xeer).

(a) The Constitution of the Federal Republic of Somalia (2012)

According to Article 4 of the Constitution, after the Shari'ah, the Constitution of the Federal Republic of Somalia is the supreme law of the country. It binds the government and guides policy initiatives and decisions in all departments of government. The Constitution of Somalia has provisions on land. Under Article 43 land is Somalia's primary resource and the basis of the people's livelihood. It shall be held, used and managed in an equitable, efficient, productive and sustainable manner. The Federal Government shall develop a national land policy that shall be subject to constant review. That policy shall ensure:

- Equity in land allocation and the use of its resources;
- The guarantee of land ownership and registration;
- That land is used without causing harm to the land;
- That any land and property dispute is resolved promptly and satisfactorily for all;
- That the amount of land that a person or a company can own is specified;

- That the land and property market is regulated in a manner that prevents violations of the rights of small land owners.

The Constitution requires Parliament to enact a law regulating the size, timeline and conditions of permits of land use and the Federal Government, in consultation with the Federal Member States and other stakeholders, shall regulate land policy, and land control and use measures. The Federal Member States are empowered to formulate land policies at their level.

No permit may be granted regarding the permanent use of any portion of the land, sea or air of the territory of the Federal Republic of Somalia.

(b) The Agricultural Land Law of 1975

The Agricultural Land Law of 1975 was the first land tenure legislation after independence. The law officially transferred control of all Somali land from traditional authorities to the Government of Somalia Democratic Republic (GSDR). It provides the following conditions:

- Individuals desiring access to land were forced to register their holdings within 6 months of the passage of the law.
- Landholders are permitted to register limited amounts of land as state leaseholds or concessions, with usufructuary rights for up to fifty years, with the possibility of renewal.
- One concession can be obtained per individual/family, for up to 30 hectares of irrigated land, 60 hectares of rain-fed land and 100 hectares of banana plantations.
- The government can revoke a concession that exceeds size restrictions, is used for non-agricultural purposes, is not used productively, is unnecessarily fragmented, is transferred, or is not farmed for two successive years.
- Cooperatives and state farms received preferential access to land in the registration process, particularly in terms of leasehold size, number, and duration

of lease. Registration was most active in the Shabelle and Jubba river valleys, where irrigation is possible.

This law does not recognize the customary rules and procedures of the indigenous institutions that still govern access to land, and weak legal enforcement resulted in disparities between statutory tenure and actual land use and allocation. Many farmers bought, sold and rented land, and ownership above allowed ceilings was common, as were multiple parcel holdings. Individuals circumvented restrictions against multiple parcel holdings by registering leases in the name of sons, daughters, and wives.

1.1.3 Land Tenure Systems

Somalia was formed from two colonies i.e. British Somaliland and Italian Somalia and this explains the complex nature of the land tenure system at present. The land tenure system in Somalia is therefore complex and not clear. The Agricultural Land Law of 1975 abolished private ownership and was embarking on major conversions to leasehold from the state, but the current position in that country is unclear. The law vested all the land in government and required cultivated agricultural land to be registered with the government in order for the occupant to obtain a 50-year leasehold. As a result, few locals registered and instead the titling system became a means of rewarding a few loyal clans by the then government with valuable leases over land which had been in use by others for generations. The civil war that broke impacted negatively on the land tenure system of the country.

The fall of the central government saw the rise of customary xeer law take the center stage in governing relations between clans. It addresses aspects of land management with a focus on pastoral land use and it views rangelands as a collective clan asset though clans allow other clans to graze on the land in times of need. It prohibits building enclosures or permanent settlements on pasture land.

Somalia has created a new formal legal framework by developing hybrid institutions that blend aspects of customary and formal land tenure which has been well documented. The Somaliland Constitution provides that land is public property, commonly owned by

the nation. Government has created means of transferring some land into private hands as private citizens can be granted ownership especially for urban and agricultural land.

South Central Somalia has created formal legal frameworks and institutions that function alongside customary systems for managing land rights. It should be noted that the formal state is beginning to re-assert itself into the land tenure system of South Central Somalia especially Mogadishu.

Apart from the statutory based tenure, there is community-based tenure which has intensified the struggle for land. These struggles are grounded in multiple contexts; the main areas of contestation are local (community membership), regional (rural-urban linkages and pastoral-agricultural interactions), and state or national (government policy, legal and administrative structures). Intersecting all three arenas are the politics of ethnicity and class. As a result, titles were unproportionately issued to outsiders/town-dwellers, while state and cooperative farms resulted in the displacement of small farmers as well as pastoralists.

Community elders do not accept the statutory system of land allocation and there is often active opposition to anyone with a documentary title. Since uncultivated land risked appropriation by the government as well as outsiders, unregistered farmers were forced to clear their bush land although they might not actually have plans for cultivating it.

Within community-based tenure systems, access to, rights to, and/or control over land is most often dependent upon one's social identity. Land can be acquired by individual clearing, inheritance, request from the village council, by purchase or by gift. Transactions are not entirely matters between the parties, and may require approval by community elders, especially if the transferee is an outsider. Landholdings have many of the characteristics of private property, and as a result, tenure security—provided by communal recognition of land ownership--has been high.

It is important to note that systems of community-based tenure have been created in response to an unpredictable environment. Nomadic pastoralism is one such example, where survival is increased by subsisting on more than one type of land under different

climatic conditions. Community-based tenure varies with land quality; oftentimes land suitable only for grazing is overseen by the clan as a whole, while land which produces regularly is controlled by individuals to whom use-rights have been allocated. Land left in bush (uncultivated) by a farmer cannot be claimed by anyone else unless it is clear that the farmer intends to abandon the parcel. The right to bush land is a critical aspect of community-based land tenure, because such land is crucial in terms of population growth, inheritance, and the need to offset potential soil fertility losses on cultivated land.

1.1.4 Land Administration and Institutions

Land administration in Somalia is very weak and there is no specific Ministry that is responsible for land. There are some institutions that are responsible for land administration. The key ones are as follows:

(a) Ministry of Livestock, Forestry and Range

The Ministry of Agriculture has three broad areas that include agriculture, food processing and co-operation;

(b) The Local Government structures of the District

These have been empowered to deal with land management. The mayor, with the approval of the municipal council, has the authority to grant permanent ownership over land and this authority can be delegated to a committee appointed by the mayor. A technical committee also assists the local government; it is the committee's responsibility to analyse and make recommendations on the general town plan, construction layout and all other relevant issues concerning the land for settlement.

- In Bossaso, the land department is in charge of land allocation, planning, land regulation and other such activities. The land department includes: a land section, in charge of land allocation, registration and records keeping; a planning section; and a monitoring section to check compliance with the regulations. The

department reportedly uses previously existing land laws as a basis for operation and by 2006 had registered approximately 6 000 plots.

- The registration office has the authority to register ownership, land taxation and rehabilitation authorization documents, building permits and inheritance certificates, but this is not a compulsory process. Land information collected by the different registration offices is not shared among them. Each office must transfer land information to the district responsible for updating information. When updating is not done, it leads to mistakes about the identity of the owner
- The Islamic Court in Bossaso is also authorized to register the same legal documents and this is commonly done to ensure recognition of people's rights under the Islamic law.

(c) Other Institutions include:

- The Coalition for Grassroots Women Organizations (COGWO) is an umbrella organization composed of 30 local women's non-governmental organizations (NGOs), drawn from different clans. It was established with the intention of protecting the human rights of women after the breakdown of the government and the war.
- Daryeel Women Organization (DAWO) aims to: **(i)** Advocate for women's rights for health services, education, environmental protection, employment and decision making; **(ii)** Strengthen the capacity of women's groups to participate in the advancement of women's status; **(iii)** Establish educational centres for women; **(iv)** Create awareness about modern teaching methods among the teachers and managers of existing educational institutions; **(v)** Build health care centres with improved facilities especially for women and children; **(vi)** Participate in the promotion of peace and development of the nation; **(vii)** Raise awareness about the spread of HIV/AIDS; and **(viii)** Fight illiteracy;
- We Are Women Activists (WAWA) is a network of groups which advocate for women's participation as decision makers at all levels of civil society and

government. WAWA has focused on training and sharing resources among women's groups, including capacity building in institutional and organizational development for all member organizations. Following training, WAWA has distributed small seed funds to all of the member organizations to start their own projects.

1.1.5 Gender concerns in Somalia land governance

The war torn Somalia has had several challenges but despite these challenges, Islamic laws allow women to inherit land though in practice farmers only granted rights to men. Women were also able to secure economic partnerships over land use with their sons particularly if the son was unmarried or had a wife who was occupied with children. The 1979 constitution of the Somali democratic republic outlines social and cultural rights including gender equality but the civil war has deprived women of a central government that could protect these rights. As efforts to return peace are ongoing, it cannot go unnoticed that the land governance framework is gender sensitive and aims at achieving equal opportunity for all citizens men and women inclusive in respect to land matters.

1.1.6 Land taxation in Somalia

The war torn Somalia has no taxation of land. The only tax is on goods that enter the country through the ports. The situation at present is not conducive for a successful tax regime. However efforts by the country are underway to establish a tax regime from the revenues within and coming from outside the country.

1.1.7 Summary of challenges, Gaps, conflicts and Duplications

There are a number of challenges and gaps that affect land governance in Somalia. The major ones are as follows:

- Land and property relations are governed by three different sets of legal regimes. Western law, customary law and Sharia/Islamic law. These legal regimes have been a source of confusion when operating alongside other types of tenures;
- There is no national institution to manage land;
- There is insecurity of tenure smallholders because the granting of titles to outsiders has undermined security of tenure of most of the smallholders in the irrigated schemes;
- Eradicating of the legitimacy of customary land tenure and making state leasehold title the only legal means of claiming land rights has tipped the balance of tenure claims in favor of those with privileged access to the mechanisms of registration. Under the statutory tenure system the rights of individual farmers and pastoralists were diminished.
- The appropriation of all land to the state has led to consolidation of governmental power over individual interests. As a result, Somali farmers and pastoralists have lost control over their land to the government-created village council, which replaced the community leaders;
- There are clan conflicts over natural resources which is a most serious obstacle to democratization and establishment of stable governance;
- Although women are not prohibited from inheriting, purchasing and otherwise acquiring land independent of their husbands under the community-based tenure system, most women especially in the Bay Region of Southern Somalia) do not

hold title to their own land since they are guaranteed access rights to the land of their husbands or brothers.

- The legal system tenure jeopardizes the rights of women by allowing only one concession holder per household, since titles were almost always issued in the husband's name;
- Most women register their lands in the names of brothers or sons due to cultural factors that restrict their involvement.

1.1.8 Recommendations

While land governance reforms cannot be addressed until there is effective government in Somalia, the following recommendations can be made to guide possible policy and legal directions. These are:

- There is a need to provide security to rural farmers and herders for their possession of land and their access to resources. The neglect of important rural interests and poor management of the scarce agricultural land were among the key factors leading to the collapse of national government. It is important that planners tap the knowledge and expertise of rural people in developing new strategies;
- There is need to concentrate on the understanding indigenous ways of dealing with changes in land use and the traditional social institutions which continue to dictate access to natural resources. Accordingly, policies which take environmental, social and cultural conditions into account should be formulated. Such policies should be flexible enough to reflect changing conditions the same way community-based tenure systems do;
- Alternatives to individualized titling should also be explored, such as registering land at the village level and allowing community-based tenure systems to continue to govern resource access and control. Under such a system, multiple parcel holdings and land sales could be allowed, some parcels of land could be

retained in bush (uncultivated), women could retain access rights to land and equity could be maintained. Such a method of registration would also reduce costs, as village lands are already clearly demarcated in some areas;

- If the formal registration system is to be resurrected, some important revisions will need to be made. Its purpose should be to confirm traditional right-holders in their control of the land. The registration process should be more efficient, less expensive and decentralized so that smallholders are able to partake of it; the district level is the most appropriate in which to conduct registration procedures. In addition, smallholders should be granted exclusive rights of occupancy for an unlimited term, and restrictions on the number of parcels held should be reduced. There will need to be consideration of whether leasehold tenure should be used for land formally titled, or whether full private ownership or other options should be considered.



African Union



African Development Bank



Economic Commission for Africa



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LAND POLICY INITIATIVE

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SOMALIA

Country Profile



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Agency for Development
and Cooperation SDC