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## LAND TENURE IN SOMALIA

A POTENTIAL FOUNDATION FOR SECURITY AND PROSPERITY

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### ABSTRACT

Land has been a source of both prosperity and conflict for Somalia. For generations, the region's varied terrain has provided forage for herds, land for crops, and space for commerce. At the same time, uncertainty over land rights has led to violence and contributed to the civil war of the last 20 years. Today, as stability returns to many parts of Somalia, the question of how to govern the land is a pressing challenge for all who are interested in reducing conflict and increasing prosperity.

This paper seeks to present an accessible overview of historical land tenure practices in Somalia as well as recent efforts to clarify land rights. This analysis will highlight the differences between the small pockets of urban areas and farmland where the central state may be able to formalize land tenure practices and the vast rangelands of the country where collaboration between the relatively weak central state and civil society actors may offer the best way forward. The analysis also points out the large differences between Somaliland and the rest of Somalia, suggesting how lessons learned in this self-declared independent region may be transferable to other parts of the country.

### ACKNOWLEDGEMENTS

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*Design & Layout by Andrea Jovanovic*

*Cover: An employee of Ray's Sheep & Goat Fattening Farm grows sorghum in Boroma, Somaliland. Photo by Abdikarim Gole, Sharaako*

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## INTRODUCTION

Somalia is a country of vast rangelands, pockets of cultivated agricultural land, and growing urban areas which are governed by a diverse land tenure regime that suffered significant disruptions during the country's prolonged civil war. The civil war in Somalia is often explained through the lens of clan rivalry and outside interventions, but many scholars see the failed land policies of the Siad Barre regime and on-going struggles for resources as major sub-texts to the conflict. As the country takes tentative steps towards peace, efforts to strengthen the land tenure system hold the potential to reduce overall conflict while simultaneously boosting pro-poor growth.

Today, the legal framework for Somalia's land tenure system is a mix of secular, *sharia*, and customary *xeer* law. This legal pluralism has often provided a flexible structure that local actors have used to craft appropriate solutions, but it has also left grey areas within which conflicts begin. In order to reduce potential clashes and raise incentives to invest in the country's largest economic sector – agriculture – Somalia needs greater transparency and certainty in its land tenure regime. In addition, the current system largely excludes women from control over property, impoverishing them and the society as a whole.

While certain practices are common to land tenure systems throughout Somalia, there are important differences between north and south and urban and rural areas. The contrast between Somaliland and the rest of the country is particularly pronounced as this region has been much more peaceful over the last two decades. Furthermore, there are significant differences between pastoral lands where communal ownership has predominated and areas such as cities and cultivated farmland which have a history of individual land ownership.

Overall, Somaliland has moved the furthest to reestablish the formal property registries that existed before the war and has begun negotiating a more stable arrangement between formal and customary law. Meanwhile, in South-Central Somalia, efforts to strengthen the land tenure regime are just beginning. Hopefully successes from Somaliland will offer templates that can be transferred to the rest of the country.

Looking ahead, successful land tenure interventions are likely to be focused, small-scale efforts that occur in areas with some minimum level of good governance. Somaliland has achieved potentially replicable advances in land tenure formalization by issuing titles for some cultivated farmland and demarcating urban property boundaries. In Somalia's expansive rangelands where communal ownership predominates, strengthening traditional land management practices and harmonizing their interaction with formal systems would seem to be the best strategy for boosting productivity and preventing conflict and overuse. In areas where violence is on-going, there are few options for intervention aside from documenting land-related aspects of the conflict. Throughout Somalia, empowering women to participate in decisions about land and building the capabilities of local actors will help ensure that interventions achieve sustainable, wide-spread benefits.

# SOMALI GEOGRAPHY

## Agricultural Land Use and Natural Resources

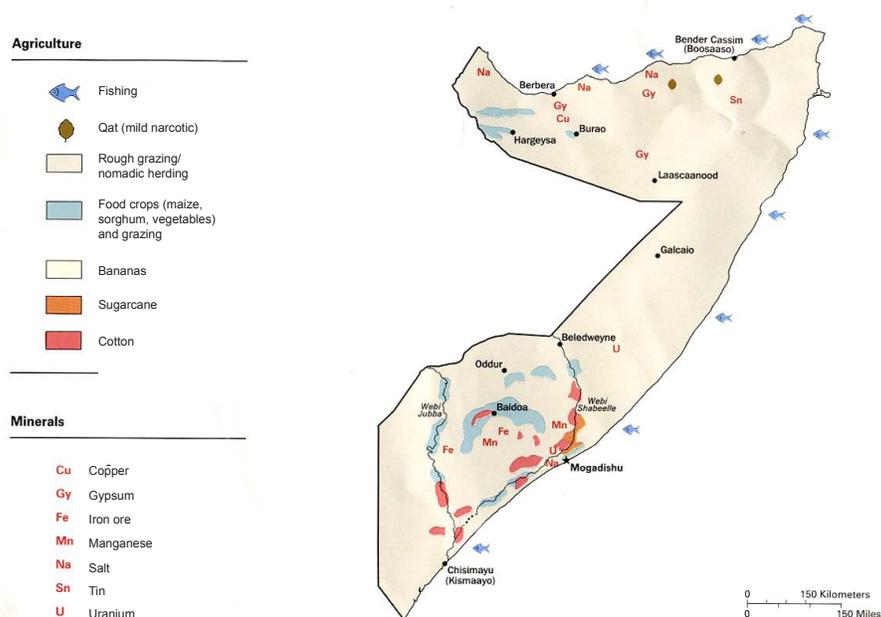


Figure 1 – Map of Somali Land Use<sup>2</sup>

With slightly less surface area than France and around 10 million inhabitants, Somalia is a relatively sparsely populated country. Most Somalis have been pastoralists who have used the country’s wide rangelands to raise herds of goats, camels, cattle, and other livestock. The country also has small areas of arable land, particularly along the two rivers in the south of the country – the Shabelle and Jubba (See Figure 1). During both the colonial and post-colonial periods, these regions were the focus of investments in irrigation and the production of cash crops such as bananas. In addition, Somalia has large urban areas including the capital, Mogadishu, with over one million people. Overall, more than one third of Somalis live in urban areas.<sup>1</sup>

## LAND TENURE – A KEY TO FUTURE PROSPERITY

In order to better understand the role that changes in land tenure might play in the economic prospects of Somalia's largely rural population, it is helpful to step back and look at the wider literature on the role of agriculture in economic growth. Some scholars like Paul Collier and Stefan Dercon question whether smallholder-based agriculture is the most effective pathway to economic growth, suggesting instead that agricultural commercialization, industrial development, and urbanization are better paths for increasing the income of the very poor.<sup>3</sup> However, numerous other scholars emphasize the importance of smallholder agriculture for realizing broad increases in living standards. For example Diao *et al.* have carefully reviewed past economic growth in Africa and have found that agricultural development is more pro-poor than industrial development.<sup>4</sup> In addition, prominent groups such as the Gates Foundation and the Alliance for a Green Revolution in Africa (AGRA) follow approaches that focus on small family farmers.<sup>5&6</sup>

Assuming agriculture can spur improvements in the lives of Somalia's poor, a more transparent and robust land tenure system can play an important role in realizing this potential. Evidence shows that when farmers and herders do not have clear rights over land, they lack adequate economic incentives to invest in their production through, for example, improved seeds and fertilizers and better herd rotation practices.<sup>7&8</sup>



*Hives Of A Honey Production Operation (Photo By Abdikarim Gole - Shuraako)*

Creating more robust land tenure systems that promote agricultural growth can mean expanding the reach of formal tenure systems. In Africa, formal tenure covers only 2% - 10% of the land so there is obviously scope for expansion.<sup>9</sup> However, customary legal systems may also have a role to play in improving the potential for investment. As a recent report on customary legal systems notes, traditional frameworks are often viewed “as more transparent, less expensive, more in touch with community values ... than their formal system counterparts.”<sup>10</sup> Thus in many instances it may be economically beneficial to bring reforms to this part of the system that is functioning rather than trying to impose a new form of legal uniformity. The key in these efforts is reducing the areas of conflict between the formal and the customary.

***Estimated Percentage of Land in Africa under Formal Tenure: 2-10%***

In urban areas, the same logic linking improved land tenure and economic growth also applies. These areas have traditionally seen more formal, individualized ownership patterns. The case for focusing on land tenure reform in urban areas may be particularly strong in post-conflict societies like Somalia. Studies by Paul Collier and others suggest that investments in infrastructural development, particularly in urban areas, yield very high returns in post-conflict contexts as a result of the high level of demand for housing and infrastructure as internally displaced persons and members of the diaspora move to cities to begin reconstructing their lives.<sup>11&12</sup> In addition, urban construction has the added benefit of employing young, low-skilled men who might otherwise become engaged in violent and criminal activities.<sup>13</sup>

## HISTORICAL BACKGROUND ON SOMALI LAND TENURE PRACTICES

### The Colonial Period

Present-day Somalia was formed from two colonies - British Somaliland and Italian Somalia. During the colonial era, British and Italian power was concentrated in the cities, and it was here that the colonials exercised their greatest control over land tenure regimes, implementing European-style cadaster systems for recording property ownership in Mogadishu, Hargeisa, and elsewhere. The Italians also sought to extend their influence into the fertile areas along the Shebelle River, displacing locals and creating irrigated plantations in the region. Meanwhile, the Jubba River area remained remote and relatively underdeveloped.<sup>14</sup> The two colonial powers exercised minimal control over legal affairs between Somali parties.<sup>15</sup> Thus in the vast rangelands where there were few foreigners, customary *xeer* law administered through negotiations between clans determined most land-use decisions.

### Independence and The Era of Siad Barre

The British and Italian colonies both gained independence in 1960 and immediately joined together to form Somalia. The country's brief experiment with democracy ended after a military coup in 1969 which was led by the General Siad Barre. During the Barre regime, the value of land grew significantly. Somalia scholar Lee Cassanelli attributes this growing value to the generally increased level of wealth in the country "in the form of foreign aid, overseas remittances, livestock export earnings, and military subsidies" along with the expanding need for agricultural products to feed the country's growing population. Cassanelli suggests that the Barre regime sought to exert greater control over land to counter the growing power of others in the country who had become wealthy through their role in remittance transactions and foreign trade.<sup>16</sup>

The first major move by the Barre regime to assert greater control over property was the Land Law of 1975. This law made the state the owner of all land in the country and required cultivated agricultural land to be registered with the government in order for the occupant to obtain a 50-year leasehold. Few locals registered their land and instead the titling system became a means to reward a few loyal clans with valuable leases over land which had often been in use by others for generations.<sup>17</sup> In addition to the Land Law, the Barre regime also seized large tracts of land to create state farms.

The post-colonial period also brought many changes to Somali urban areas. Mogadishu, for example, went from having about 100,000 people spread over 800 hectares in 1960, to becoming a sprawling metropolis of over one million.<sup>18&19</sup> During this time, the city became what one analyst called an "historical center built to host a limited elite population in good conditions, surrounded by a series of less planned urban peripheries, with limited service installations."<sup>20</sup>

Among the many institutions which failed to keep pace with the rapid expansion of Mogadishu was a property registration system. The Barre regime appears to have passed an Urban Land Law in 1973, but there is little evidence of its implementation.<sup>21</sup> Other sources suggest that there was a land registry in the city, but it is not clear if this was different from the colonial Italian registry.<sup>22</sup>

## Government Collapse and Civil War

Somalia's descent into civil war and failed state status was the result of many factors. After a failed invasion of Ethiopia and loss of international support, internal opposition to Barre's rule grew. This opposition was met with growing repression including air raids in Somaliland which left thousands dead and forced many thousands more to flee.<sup>23</sup> After rebel groups gained control in the north, the violence shifted to the south where the Barre regime's favoritism for certain client clans had already had a destabilizing effect. Under increasing pressure, Barre fled the country in 1991, leading to the collapse of the central government. The vacuum was filled by warlords who began fighting for control of different areas of the country.



*Building Damaged By Bombing In Mogadishu (Photo By Lee Sorensen, Shuraako)*

Barre's manipulations of power relations between clans had lingering effects for Somalia's land tenure system. By choosing winners among clans through the flawed land titling process and other means, the government upset long-standing dynamics that had favored peaceful resolution of land-related disputes. When one clan was assured government support, it was less likely to submit to the customary negotiations between elders which had long kept violence to a minimum in rural areas.<sup>24</sup>

Once the regime fell, other, less-favored clans began to take an interest in the valuable riverine lands and started to move into these regions, sparking further tension and violence. In addition, the fighting of the civil war led to the looting of state-owned farms and the destruction of other infrastructure in these fertile regions, paradoxically making the remaining, functioning tracts of land even more valuable. One example of this phenomenon was the fighting in the 1990s over the right to sell bananas to foreign corporations from the dwindling number of banana plantations.<sup>25&26</sup>

The breakdown of central authority also had adverse effects in rangeland areas. For example, the unregulated installation of new water sources meant that land which would formerly have been used only seasonally and shared among clans was now sometimes occupied year round by the same group of people. In addition, individuals and groups in some areas have taken to enclosing pieces of rangeland with makeshift fences, upsetting long-held patterns of shared land use.<sup>27</sup>

The war has also had a devastating impact on urban areas and their established systems of property registration. Paper property records in both Hargeisa and Mogadishu were apparently destroyed during the fighting. The collapse of the central government and the violence of the conflict left many public buildings, private homes, and businesses abandoned. These lands were subsequently taken over by internally displaced people searching for shelter as well as others who saw a chance to profit. This situation has been a source of conflict as original owners have returned to reclaim their property and the government seeks to retake its former holdings.

## CROSS-CUTTING ISSUES IN THE WAKE OF CONFLICT

The past few years have seen hopeful movements towards peace in Somalia. In the north, Somaliland has long enjoyed a reasonable level of security and stability even though its self-declared independence has gone largely unrecognized. Meanwhile, pirate attacks, which often originated from the autonomous northeast region of Puntland, are down.<sup>28</sup> In the southern part of the country, UN-backed peacekeeping troops have managed, in recent years, to wrest increasing territory from rebel control and a new, more permanent federal government has taken power from the previous transitional one.

In the wake of this prolonged conflict, there are several cross-cutting issues which impact land tenure across the country. These include the enduring pluralistic nature of the legal system, the exclusion of Somali women from control over land, and the looming impacts of oil exploration. A review of these three issues is presented below and is followed in the next section by a closer look at the land tenure situation in each of Somalia's three main regions.

### Enduring Legal Pluralism

A key means for securing the gains toward peace of the last few years will be strengthening the ability of the Somali land tenure system to justly resolve on-going disputes and provide a stable and transparent framework for investment in both urban and rural areas. Critical to this effort will be finding means to smooth the interaction of the three legal systems which govern different aspects of land ownership and use today, namely the neglected formal legal system, the customary *xeer* system, and the Islamic system of *sharia* law.

What follows then is a brief overview of some of the more essential elements of these different systems. As John Livingstone of the group PENHA notes, “sharp distinctions” between the different systems “are not necessarily appropriate.” Just as the “common law” underlies the formal law in the Anglo-saxon tradition, so too will customary and religious law continue to color the formal law in Somalia.<sup>29</sup>

#### *Formal Statutes*

Since the collapse of the central government in 1991, Somalia's formal federal legal system has largely ceased to function, although the northern regions promulgate and enforce some formal laws. Today, as the federal government grows more powerful, the reach of its laws expands. The new provisional federal constitution, approved in 2012, is meant to provide a framework for this new legal order. In terms of land tenure, the constitution states that “(e)very person has the right to own, use, enjoy, sell, and transfer property” and that property will not be expropriated unreasonably.<sup>30</sup> Aside from this clause in the constitution, there is little formal legislation regarding land at the federal level. Detailed property rights statutes do exist at the regional level as discussed in the next section.

#### *Xeer Law*

Within the vacuum left by the fall of the central government, customary *xeer* law appears to have reasserted its importance as a means of governing relations between clans. *Xeer* is an unwritten system of laws which is administered through consultations among elders and focuses on the rights and obligations of one clan to another. One of the main principles of the *xeer* system is that clans are

responsible for the actions of individual members and are required to pay *diya*, or blood money, in the case of intra-clan crimes such as theft or murder.



*Goats Grazing In Somaliland (Photo By Abdikarim Gole - Shuraako)*

*Xeer* also addresses numerous aspects of land management with a focus on pastoral land use. Although *xeer* law can vary based on agreements between clans, *xeer* law tends to view rangelands as a collective clan asset. However, clans are expected to allow other clans to graze on the land, particularly in times of need. *Xeer* also contains prohibitions on building enclosures or permanent settlements on pastureland.<sup>31</sup>

Analyst Andre Le Sage notes that *xeer* can disadvantage certain groups and has not always kept up with changes in Somali society. For example, outcomes under *xeer* law depend on the negotiating power of clans and thus weaker clans are often not afforded the protections that would prevail between equally matched groups. The bi-lateral nature of *xeer* has also meant that it is not always well adapted to dispute resolution in urban areas where multiple clans find themselves living together. In general, respect for clan authority has declined among the various new social groups in Somali society from militia leaders to returned members of the diaspora.<sup>32</sup>

Other analysts such as John Livingstone are less pessimistic about the potential for *xeer* to bring stability and a sort of inter-clan equality. Commenting on the situation in Somaliland, he notes that the widespread ownership of guns, rather than sowing lawlessness, “has underpinned traditional resource management through local institutions.” In this region, guns have helped prevent the government and more numerically powerful clans from seizing communally controlled lands. He notes that clashes sometimes erupt but are usually settled quickly by elders. Livingstone also finds that negotiations between clan elders remain important even after people move into urban areas since they tend to settle in clan-based neighborhoods.<sup>33</sup>

## *Sharia Law*

In addition to formal law and customary *xeer* law, Islamic *sharia* law is a third component of the contemporary Somali legal context. *Sharia* law informs, to varying degrees, decisions made by religious leaders, tribal elders, and formal courts, particularly in civil law disputes and in family law cases. During a short period in the mid-2000s, the Islamic Courts Union controlled the south of the country and imposed a wide implementation of *sharia* law, but this experiment ended with the arrival of Ethiopian troops in 2006. Current applications of *sharia* law overlap with land tenure in the realm of inheritance, but the impact seems to be relatively limited.<sup>34</sup>

In the past, there were collective farms in the south of Somalia that were managed under religious rules of Sufi Islamic sects. Some commentators suggest that these structures from the pre-independence era may have some relevance today, especially given the legitimacy enjoyed by religious-based institutions in Somali society.<sup>35</sup>

### **Women's Lack of Access to Land**

The pluralistic legal, cultural, and historical influences that have shaped the overall structure of land tenure in Somalia can similarly be used to understand women's relation to the land. Traditionally, Somali society has had distinct gender roles with men overseeing livestock production while women controlled activities related to child rearing. In pastoral areas, women were largely excluded from clan meetings about resource use and had limited ownership rights in more settled agricultural settings. While the Barre regime attempted to bring formal equality for women, these initiatives had minimal impact. The long civil war has been particularly damaging for women, eroding some of the protections they enjoyed under the formal and traditional clan systems. Today there are signs that women are finding ways to assert their voice, creating roles for themselves in the business world and using Islam to claim their rights.

In a review of women's role in traditional Somali society, Michael Walls notes that women were excluded from owning camels and other 'productive' resources and thus did not participate in many of the formal socio-political decision making processes. Nevertheless, they were accorded protections and privileges under traditional law and exercised power in indirect ways through their choice of a husband and through their role in negotiating agreements, often between the clans of their father and their husband.<sup>36</sup>

Somalia scholar Catherine Besteman offers insight into the role of women in more settled farming communities. In a study of farmers in the middle Jubba valley in South-Central Somalia, she found that, although Islamic laws allow for women's inheritance of land, in practice, farmers only granted rights to men. In some cases, women were 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. Overall, she concludes that while women's land ownership was "structurally possible, if culturally condemned, actual areas controlled by women were relatively small."<sup>37</sup>

In terms of protection under the formal law, the 1979 Constitution of the Somali Democratic Republic outlined social and cultural rights, including gender equality, but the civil war deprived women of a central authority that could protect these rights. Dr. Safia Shire, a former diplomat with the Somali Ministry of Foreign Affairs notes, "when the slow disintegration of society and institutions as well

as the destruction and violence started, the rights of Somali women began eroding, and they became a voiceless group.”<sup>38</sup>

Today there are signs that women are beginning to demand a larger role within Somali society. In a profile of a Somaliland women’s group called Nagaad, Michael Walls explains how they have used progressive interpretations of the Quran to bolster the case for affording women greater say in politics and social life. While these advances have not directly addressed women’s role in controlling land, they point to a framework that women might use to assert their rights using the tools of local discourse like Islam rather than relying solely on changes in the formal legal system. The work of Landesa in Kenya to facilitate the recognition of women’s property rights by tribal elders offers another interesting case study of empowering women to gain control over land through customary legal structures.<sup>39</sup>

Walls also notes that women have begun increasing their role in the economy, becoming more involved in business affairs and often controlling remittance money sent from abroad.<sup>40</sup> In a review of recent interventions among pastoralists in East Africa, Livingstone reports that providing business training and limited funding can boost women’s incomes and improve the wellbeing of households since women spend more on child welfare.<sup>41</sup> Increasing economic power may eventually help women claim a larger role in decisions regarding land.

## **Oil Prospecting**

In recent years, international oil companies have begun prospecting for oil in the more secure regions of Puntland and Somaliland as well as offshore. While oil could bring much needed revenue for Somalia’s regional and national governments, the potential discovery of significant reserves could create conflict over natural resource revenues and threaten the country’s fragile land tenure arrangements. The possibility of major discoveries has already raised tensions and added strain on a land tenure system that struggles to deal with disputes over grazing where the financial stakes are tiny compared with the money at issue were oil production to begin.

***At Least 5: Foreign Oil Companies Having Signed Agreements with Somaliland and Puntland***

***At Least 6: Foreign Oil Companies Having Pre-Civil War Claims to Oil Exploration in Somalia<sup>44</sup>***

An on-going disagreement between Somaliland and Puntland over prospecting rights along the disputed border between the two regions serves as a good illustration of the perils of oil exploration. In this instance, the governments in the regional capitals of Hargeisa and Garowe have each granted rights to different foreign oil companies to prospect in blocs of territory which overlap.<sup>42</sup> Control over this border area has long been nebulous and there have been simmering tensions over land rights in the area that civil society groups have worked to moderate.<sup>43</sup> The potential for oil to be discovered only serves to elevate the stakes in these disputes.

Similar conflicts over prospecting rights could continue to emerge in other parts of the country unless existing contradictions within federal legislation are resolved. The interim constitution of 2012 grants wide powers to regional governments to enter into commercial contracts whereas a 2008 Petroleum Law states that petroleum is the property of the nation and should be distributed by the central government. This discrepancy needs to be resolved in order to avoid disputes between the federal and regional levels of governments over control of particular areas of land.<sup>45</sup>

Overall, oil exploration has the potential to highlight the many fault lines in the fragile state of Somalia's land tenure system.

## LAND TENURE IN SOMALIA'S THREE MAIN REGIONS

Because of the divergent political trajectories of Somalia's regions, it is best to look separately at each in order to understand the current state of land tenure in the country. While regions are distinct, there have been some national level endeavors such as the FAO's SWALIM (Somalia Water and Land Information Management) project which has sought to create detailed resource maps of the country, replacing knowledge that was lost during the war and building platforms for information sharing across the country.<sup>46</sup>

Generally, Somaliland has gone the furthest in creating a new formal legal framework for land and in developing hybrid institutions that blend aspects of customary and formal tenure. These advancements have been well-documented, particularly compared with Puntland and South-Central Somalia where insecurity has impeded the work of outside observers. The section of this paper devoted to Somaliland is comparatively longer in order to cover this literature and to provide examples of approaches that may be transferable to other parts of Somalia once the security situation improves.



*Sorghum Growing In Somaliland (Photo By Abdikarim Gole - Shurakko)*

### **Somaliland**

Following the violence inflicted on Somaliland by the collapsing Barre regime, the region embarked on what Somalia scholar Michael Walls has called “a home-grown process of ‘bottom-up’ reconciliation and state-building, largely escaping the pressures of foreign intervention.” In this way, Somaliland avoided, for the most part, the “endemic conflict, periodically interspersed with unsuccessful yet lavishly funded and internationally brokered ‘top-down’ peace conferences” that came to be the pattern in the southern part of the country.<sup>47</sup>

This political transformation in Somaliland has brought significant changes to the country's formal and customary land tenure regimes. In the formal realm, the new Somaliland constitution mirrors the federal constitution in its statement that anyone can own property and will be protected against unjustified expropriations.<sup>48</sup>

The constitution also states that the land is “public property, commonly owned by the nation,”<sup>49</sup> but the Somaliland government has created means of transferring some land into private hands. More specifically, laws regarding urban and cultivated agricultural land seem to allow the government to grant ownership to private citizens. There is no law governing rangeland specifically, but the law regarding agricultural land states that farmland should not be carved out of rangeland.<sup>50</sup>

On the ground, formal law and the related institutions have the greatest influence in urban areas. In Hargeisa, the steps for recording the transfer of a property are well documented in a recent World Bank report. Overall, Hargeisa’s system ranks 79<sup>th</sup> out of the 183 countries surveyed in terms of speed, cost, and complexity – better than many countries in Sub-Saharan Africa, but below the most internationally competitive developing countries. In addition, the transfer of the land is not fully secure as it is very difficult to ensure that there are no prior claims to a property. This is a function of the fact that the property registry is not necessarily updated when a new transfer is recorded.<sup>51</sup>

In Hargeisa, UN-Habitat has helped create a GIS database of over 60,000 properties for the purpose of collecting taxes from the current occupiers. However, the database does not presently include ownership information but could eventually be used to create a more formal system for recording rights over property.<sup>52</sup> Similar GIS databases for tax collection have been created in the towns of Baroma and Berbera.<sup>53</sup>

Some rural areas in Somaliland have also seen the implementation of formal land tenure systems. A project led by long-time Somaliland resident John Drysdale succeeded in surveying 10,800 rain-fed and irrigated farms and determining ownership in coordination with local elders. The project issued ownership documentation along with identity papers to local farmers and has reportedly “eased tensions significantly.”<sup>54</sup>

***SOMALILAND LAND TENURE OVERVIEW:***  
***Hargeisa, Baroma, & Berbera – Cities with GIS Tax Collection Databases***  
***60,000 – Properties in Hargeisa entered in GIS System***  
***10,800 – Farms Surveyed and Titled in Gabiley District***

In most other parts of the Somaliland countryside, elders using customary *xeer* law are the main means of resolving disputes over land. This strong role for elders lends legitimacy to local conflict resolution processes, but it is also a sign of the weakness of state institutions such as the courts and police which suffer from a lack of funding, corruption, and clan divisions among staff. As one recent report noted, police tend to only enforce decisions if they have been approved by elders.<sup>55</sup>

Overall, this mixed system of formal and customary practices appears to be functional, but could benefit from capacity building efforts to make it more efficient, robust, and equitable for women and other excluded persons. In ethnically Somali parts of Ethiopia, the central government has conferred a sort of legitimacy on traditional governance structures by giving salaries to elders who serve on clan councils. This move has been somewhat successful at reducing various social conflicts including disputes related to land, although some see it as a short-term solution or as an attempt to co-opt a local institution.<sup>56</sup>

In addition to harmonizing formal and customary power structures, others see a need to broaden the base of political participation in pastoral areas through participatory resource management exercises. The expectation is that expanded participation can help reduce conflict, empower marginalized groups, and give value to the inherent knowledge of pastoralists. In the spring of 2013, the FAO in Somaliland launched a Participatory and Negotiated Territorial Development (PNTD) process which seeks to re-establish dialogue between local social groups, civil society actors, and government institutions in order to arrive at a negotiated vision regarding land use in rural Somaliland.<sup>57</sup> In the disputed borderland between Somaliland and Puntland, civil society groups have worked to map the sources of dispute so as to better understand the nature of the conflict.<sup>58</sup>

Participatory mapping seems to be particularly promising in pastoral areas where, in the words of Michael Livingstone, it can empower people “through the process itself as well as with accurate information.” This is especially true as the geo-location abilities of mobile phones expand.<sup>59</sup> Participatory mapping of rangeland resources in other East African countries has helped create community consensus while also capturing pastoralists’ knowledge of the land in forms that can be easily used by policymakers who might otherwise ignore their input.<sup>60</sup>

## **Puntland**

The situation in the autonomous region of Puntland appears similar to that in Somaliland with a mix of formal and customary institutions governing rights over land. Overall, there seems to be less documentation, of the region’s formal legal framework for land tenure. There is mention that the larger urban areas such as Garowe and Bossaso have procedures at the municipal level for registering land transfers and ownership, but these systems do not seem to be very efficient.<sup>61</sup> UN-Habitat has recently implemented programs to map properties using GIS in Garowe and Gardo for the purpose of municipal property tax collection.<sup>62</sup> Given the apparent weakness of the formal aspects of the land tenure regime, councils of elders, drawing heavily on religious and customary law, seem to play a large role in resolving disputes over land rights in this part of Somalia.

## **South-Central Somalia**

While Somaliland and Puntland have begun to create formal legal frameworks and institutions that can function alongside customary systems for managing land rights, it is almost exclusively informal practices that govern land rights in South-Central Somalia. As Somalia scholar Ken Menkhaus has noted, the witnessing of property transfers and the guarantee of titles have been some of the few services offered within the local strongman-run polities that have sprung up across South-Central Somalia in the absence of a central state. These guarantees are generally offered by a committee of clan elders and have likely facilitated some private sector investments in land.<sup>63</sup> However, this system is far from ideal, with anecdotal evidence suggesting that obviously false papers can be used to seize land if a local leader backs the change.<sup>64</sup>

There are signs that the formal state is beginning to re-assert itself into the land tenure system of South-Central Somalia. This is particularly true in Mogadishu where security improvements have led to a return of Somalis from the diaspora and a subsequent spike in property values. Recent reports suggest that formal courts are operational and are hearing cases, particularly from returnees trying to reclaim their property.<sup>65</sup> The municipal government has also issued warnings against the taking of public property such as embassies and army barracks for private development.<sup>66</sup>

While these developments in the areas under central government control are encouraging, land-related violence remains a major threat in many rural areas of South-Central Somalia. In December 2013, the UN Special Representative of the Secretary-General for Somalia Nicholas Kay expressed concern about clan-based militias which are violently pushing farmers, often from smaller clans or minority groups, off their land in South-Central Somalia. Kay warned that these actions could “grow into a new and more severe round of local conflicts.”<sup>67</sup> In addition to the United Nations, groups like the Somalia-based Observatory of Violence and Conflict Prevention are working to monitor and map this type of conflict so that underlying land-related issues can be addressed once violence recedes.<sup>68</sup>

## THE WAY FORWARD

With recent improvements in the security situation, there is a chance for Somalis to strengthen their system of land tenure and make it a force for stability and economic growth. However, reaching this goal will require careful maneuvering.

### A “Mediated-State” Approach

In seeking a way forward, it seems important to examine the future role of the state. A growing group of scholars such as Lothar Brock *et al.* note that we have not always lived in a world of sovereign states and suggest that not all countries may be “on the path towards the Weberian model of a state.”<sup>69</sup> For these thinkers, the notion that all states will eventually have a modern central bureaucracy and, in the words of Max Weber, a “monopoly of the legitimate use of physical force”<sup>70</sup> poses an obstacle to thorough analysis.

Somalia-scholar Ken Menkhaus seems to be aware of limits of the modern nation state model in Somalia. He has suggested that Somalia will need to be a “mediated state” in which the central government accommodates and balances, within a national state, the interests of the sub-national polities that have sprung up during the decades when central control was absent.<sup>71</sup>

In an article on the Kenyan border region called Wajir which has a large ethnically Somali population, Menkhaus explores how such a mediated state might operate on the ground. In the 1990s, Wajir was a largely lawless and often violent region but it experienced a dramatic increase in security when various local civic groups began mediating conflicts and then gained the backing of the local and central governments. Disputes were handled “not according to the letter of Kenyan penal code,” but instead using traditional Somali legal methods such as collective confiscation of clan cows until cows stolen by members of the clan were returned. In essence, this “government civic-partnership” was executing “core state functions.”<sup>72</sup>

Menkhaus acknowledges that this approach may not prove to be durable in the long run, but he sees it as a new governance model which is “more than an ad hoc peace-building strategy, more than a post-colonial version of ‘indirect rule,’ and more than a convenient division of labor between local government, civic groups, and traditional authorities.” He notes that this approach may be particularly well suited for regions which central government leaders may now be rationally neglecting because “the cost of establishing rule of law is higher than whatever revenue can be earned from the area.”<sup>73</sup>

### Land Tenure and the Mediated State

While the mediated-state model relates to politics at a macro-level, its underlying principles seem to be equally appropriate to the endeavor of building a more transparent and uniform land tenure system. Just as service-providing civic groups can be mediated by a central government, so too can formal law serve as a mediator between various customary and religious sources of legal authority.

In rangelands, the challenge for the mediated state is finding a balance between having flexible land use rights that allow for optimal use of resources while avoiding the conflict that can arise in these complex and dynamic arrangements. In the Wajir region, the insecurity in the region had actually been contributing to environmental degradation because the communities were afraid to move their



*Somaliland farmer (Photo By Abdikarim Gole - Shurakko)*

herds around the rangeland and were keeping their animals in small areas where they caused damage. As security improved through the collaboration of civic groups and the state, the clans in the region began to use customary legal practices to coordinate the movements of their livestock.<sup>74</sup>

Within Somalia, the relatively peaceful region of Somaliland seems to be the most advanced in its use of the mediated state approach to land tenure. As noted above, local police defer to tribal elders in the resolution of land issues and the new Participatory and Negotiated Territorial Development (PNTD) program may help clarify roles for respective players and strengthen civic-government partnerships.

In other parts of Somalia where the central government has little influence, the mediated state approach can offer an important framework for taking first steps to reduce conflict and address the land tenure issues that are so closely related to the instability. Even in Somali

cities where central government control is strongest and formal statutes have the most sway, there may be a role for a mediated state approach to land tenure. As noted above, many neighborhoods in urban areas have a particular clan character and clan elders still play a role in governance.

Overall, it is probably best to think of the mediated-state approach as applying along a continuum with a much stronger role for the central state and formal law in cities while civic groups may take the lead in the vast areas where full government control is unlikely to ever be realized.

### **Limits of the Mediated State**

While the mediated state approach would seem to offer great potential for Somalia, it is important to recognize its limits. One major difference between the Wajir region in Kenya and the situation in Somalia, especially in areas outside of Somaliland, is the level of central state capacity. Although the formal Kenyan government was not very present in the Wajir region, the Kenyan government overall is relatively strong and capable and enjoys a level of legitimacy among the people. This contrasts sharply with the situation in Somalia where the central government is, despite recent internationally backed improvements, still quite weak and viewed with suspicion by many.

In addition, the mediated state approach may not be viable in areas where state borders are in dispute – such as the border region between Somaliland and Puntland. In these areas, the instability resulting from inter-governmental conflict over land may upset the fragile dynamics necessary for state-civic cooperation.

## RECOMMENDATIONS

### A Need for Prudence

When exploring ways forward, there is a definite need for prudence. Current Somali land tenure practices are the result of complex historical processes, and, while they are capable of change, failure to account for this legacy is likely to lead to interventions that either are ignored or exacerbate the instability of the current system. A recent comprehensive report on the land situation in Somalia issued by UN HABITAT, UNHCR and the Norwegian Refugee Council offered this advice about uniform solutions like land titling:

*While in the long run (and in a peaceful society with a prosperous, developed economy) registration certainly reduces the potential for land disputes, Somalia is a long way from being ready for such a process. Title registration would in effect require the adjudication of every single disputed boundary and land claim in the country.<sup>75</sup>*

This type of caution is certainly warranted, but there are certain guidelines which emerge from the preceding review of land tenure practices in Somalia. As discussed above, the level of central government control over a region – i.e. its potential place on the mediated-state spectrum – is critical to determining the appropriate types of land tenure intervention. With this in mind, the following are some general guidelines:

### Areas Where Central Control is Strongest

- Encourage formalization of land tenure but focus on small-scale projects linked to a particular region – The land formalization projects that have achieved relative success in Somaliland appear to have been those which focused on a well-defined geographical area such as a particular farming region or city. Because of their limited scope, these projects are relatively easy to implement and measure, making it simpler to reproduce them.
- Support the construction and urbanization that occur after conflict – Land tenure projects that facilitate these phenomena would seem to have a greater chances of success.

### Areas Likely to Remain Under Weak Central Control

- Build civic-government partnerships that can provide key services – When the central government is unlikely to take full control of a region, civic groups, with government backing, can provide important services like negotiating and enforcing land rights.

### Areas with On-Going Violence

- Focus on monitoring when land-related violence makes other interventions unfeasible - Documenting land related aspects of on-going conflict can help in the crafting of suitable and sustainable interventions once the violence subsides.

### Throughout Somalia

- Empower women to exercise control over land – Women’s exclusion from property ownership

and management disempowers them and impedes the creation of wealth that can help move Somalia out of the conflict trap.

- Interventions which seek to transform the position of women within existing structures, such as those of the group Nagaad discussed above, seem particularly promising.
- Leverage local knowledge – People who have in-depth understandings of local land tenure contexts are critical for facilitating interventions in post-conflict environments.<sup>76</sup>
  - Participatory mapping exercises, as discussed above, seem to offer significant promise for promoting broad local inputs into decision-making processes, especially with the spread of low-cost, geo-location technology.
- Build local capabilities - Scholarship points to skills as a critical limiting factor in post-conflict environments.<sup>77</sup> Thus training local actors in land tenure administration can be important for ensuring enduring project results.

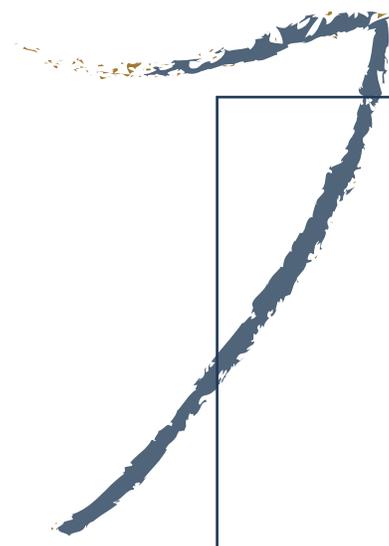
These are just some general guidelines that might inform undertakings in the realm of land tenure where risks are high but the potential to realize greater security and prosperity is great.

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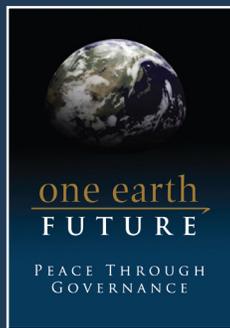
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