Sustainable Solutions Working Group

Housing, Land and Property Rights in Somalia

Nairobi, 26 July 2013

UN@HABITAT
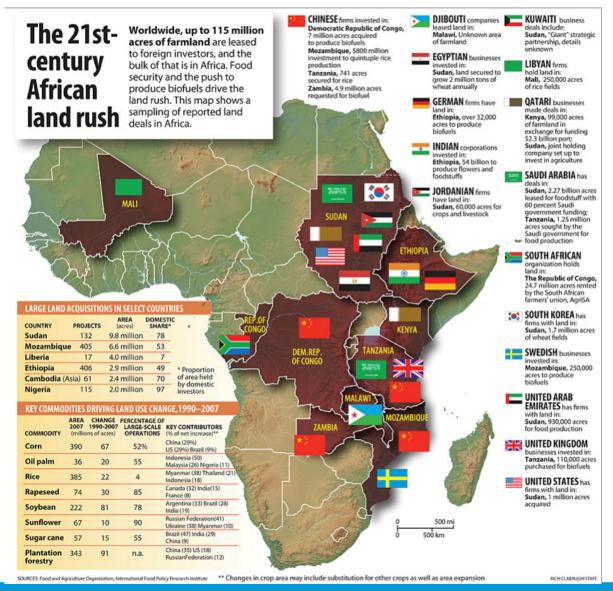FOR A BETTER URBAN FUTURE

Context in Africa

- Involuntary displacement figures (conflict, disaster, development);
- Losses of property, housing, livelihoods exacerbate conflict;
- Urbanization and voluntary migration;
- Overlapping of legal systems (statutory, customary, Islamic);

Land systems in African countries are antiquated, inefficient, and in need of reform; increasingly countries recognizing and making attempts to do so
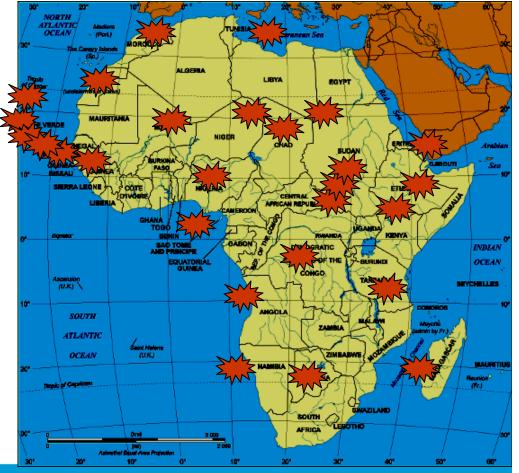
African Land Grab

- New sources of pressure on land and natural resources

- New source of tenure insecurity

- Limited transparency regarding the extent or impact

- Common in contexts of weak land governance

UN@HABITAT
FOR A BETTER URBAN FUTURE

Land and Natural Resource Based Conflict

- 54% of countries impacted by conflict since 1946 (28/54)

- 50% of conflicts have relapsed

- 60% of conflicts have a link to natural resources

- The great majority of conflicts in Africa are caused by competition over land or have a land dimension (e.g. displacement);

- 13 UN missions to address land & resource-related conflicts: cost USD 32 billion

- Conflicts linked to land and natural resources are more likely to relapse within 5 years

- (Source: UNEP)

Why is HLP important?

- **Competition:** over land generates conflict (often violent conflict) because land is closely tied to issues of natural resources, livelihoods, identity and power;

- **Stability:** HLP are recognized rights - crucial to stabilize transient populations and move on to early recovery/development /livelihood opportunities;

- **Land reform:** (good process as well as outcomes) is necessary for the empowerment of historically disadvantaged people and communities, reducing conflicts and creating stability and security in communities;

- **African Peer Review Mechanism (APRM):** 30 African countries participate in the APRM: land was raised as an issue to be addressed in all of them;

- **Impartiality**: Land is a sensitive issue. The UN, because of its neutrality and convening power can engage and address this;

- **Success:** Africa has a lot of experience that can be shared and built upon [e.g. South Africa, Kenya, Mozambique, Tanzania,...]

UN@HABITAT
FOR A BETTER URBAN FUTURE

State of legal systems in Africa

- Estimated coverage of formal land registration systems globally is 30%, in Africa it is estimated to be less.
- Coverage of formal land registration systems in specific countries and contexts as low as 3% (e.g. Nigeria, some central African countries, etc).
- Average time for land policy reform in Africa is 10-15 years.
- A very high number of cases in courts and other dispute resolution mechanisms are land related, as proven by the fact that many countries have dedicated tribunals for land disputes [e.g. Uganda, Tanzania, Kenya, Zambia, Botswana, Lesotho, Swaziland, Malawi, etc.]

UN@HABITAT
FOR A BETTER URBAN FUTURE

State of legal systems in the Somali region

- Statutory land law (divided areas influenced by British common law and Italian civil law).

- Somalia had a socialist period, under which all land was nationalised and a lease system was established (and customary tenure formally abolished).

- Customary tenure (and 'de facto federalism').

- Islamic principles (especially regarding family law, inheritance, access to land for women, but also waqf, mewat, etc), at times explicitly referred to in statutory law.

- Diverse dispute resolution systems (formal courts, elders, sharia courts, informal dispute resolution systems) > forum shopping

- Overall: patchy situation that requires land reform process and a closer **integration and improvement of the different systems.**

UN@HABITAT
FOR A BETTER URBAN FUTURE

Legal Basis for Addressing HLP Rights

- +70 international and human rights based instruments have been adopted related to land and property, including:
- Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949) + additional protocols
- UDHR, ICCPR, and ICESR - particularly the Right to Adequate Housing
- ICERD (1969), CEDAW (1981), Refugees (1954)
- African Charter on Human and Peoples' Rights (1981)
- Pinheiro Principles (2005)

UN@HABITAT
FOR A BETTER URBAN FUTURE

Pertinent AU Advocacy

- African Union convention on IDPs (Kampala Convention); Article 9.2.i

- ICGLR Protocol Property Rights for Returning Persons;

- **Declaration on Land Issues and Challenges in Africa** - Signed by African Heads of State in 2009, it states that heads of state *"resolve to: (1) ensure that land laws provide for equitable access to land and land related resources among all land users including the youth and other landless and vulnerable groups such as displaced persons; and (2) strengthen security of land tenure for women (…)"*.

Somali region

- The status of the Somali regions in terms of ratification of the major UN Human rights instruments is not encouraging (see detailed overview in 'Land, Property and Housing in Somalia' NRC, UNHCR and UN-Habitat.

- Limited impact, also because of the limited legitimacy of the Somalia national government, and – mostly – with the lack of knowledge, advocacy, and enforcement mechanisms.

- International conventions can be an entry point, the humanitarian / development community can build on these principles (as well as Islamic principles) in an integrated and pragmatic manner.

UN@HABITAT
FOR A BETTER URBAN FUTURE

Roles for humanitarian actors

- Protection of HLP rights (of further loss of rights)
- Risk analysis and early-stage data gathering (loss mapping, evidence gathering/verification)
- Legal-regulatory review (applicable law and administration systems)
- Stakeholder mapping and coordination.

Key message: the restoration of rights lost through involuntary displacement is in general a long term process, however it is longer when nothing that COULD be done during humanitarian crisis IS done. Objective is the stabilisation of population movement, and establishing a baseline for future action.

UN@HABITAT
FOR A BETTER URBAN FUTURE

What can We Do?

1. Recognize issue and engage in land and HLP;
2. Seek advice from organisations with expertise / experts.
3. Look at HLP rights in the broader framework of conflict resolution, economic recovery, livelihood, peace and reconciliation / social justice (rather than a technical issue alone).
4. Develop a common understanding and approach towards HLP and land (emergency, transition, early recovery and durable solutions)
5. Demand consistent approach from development & humanitarian actors.

What can We Do?

6. Land sector coordination with <u>all</u> stakeholders.

7. Include land / HLP issues in strategies and programming across the sectors (CHAP, peace-building, stabilisation, UNDAF)

5. Joint Programmes

6. Resource mobilisation via ERF, CERF, PBF, etc.

7. Joint advocacy.

UN@HABITAT
FOR A BETTER URBAN FUTURE

What can We Do? Technical

1. Establish common understanding on the main HLP principles (women, poor, minorities, displaced, migrants, discrimination, land management and administration, etc.)

2. Work with the legal pluralism: strenghtening and improving the different systems and their dialogue, rather than focusing on one only.

3. Work in an integrated manner with dispute resolution systems.

4. Look at rural and urban needs together (land admin and management, etc.).

5. Look at the emergency + early recovery + development perspecitive in an holistic manner.

6. Develop / adapt practical tools to tackle HLP needs (e.g. tenancy agreements, rights of occupancy, social pacts, etc.)