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Land-based Conflict Project:  
**WORKING NOTE**



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# Contents

- 1. INTRODUCTION .....3
- 2. BACKGROUND .....5
  - 2.1. SOCIO-ECONOMIC TRANSFORMATION.....5
  - 2.2. RURAL LAND MANAGEMENT .....5
    - 2.2.1. *State/Formal law* ..... 5
      - Agricultural Land.....6
      - Pastoral Land .....6
    - 2.2.2 *The Administrative Structure*..... 6
    - 2.2.3. *Customary / Traditional / Informal Law*..... 7
  - 2.3. LAND CONFLICT AND STATE POLITICS .....7
- 3. ISSUES AND PROBLEMS .....8
  - 3.1. ORIGINS AND DYNAMICS OF CONFLICT..... 8
    - 3.1.1. *Inequitable access to shrinking common pool resources* ..... 8
      - Proliferation of Water Resources.....8
      - Changing Movement Patterns and Sedentarization.....8
      - Deforestation as a Result of Charcoal Production .....9
      - Land Enclosures and the Breakdown of Common User Rights .....9
    - 3.1.2. *Legacy of War*..... 9
      - Displacement of People in Times of Conflict .....9
      - Privatisation of Formerly State-Owned Agricultural Land.....10
    - 3.1.3. *Public Greed on Land* ..... 10
      - Unclear Land Ownership and Illegal Documentation .....10
      - Degaan and the Politicisation of Land Conflicts .....10
  - 3.2. RESOURCE MANAGEMENT .....11
    - Gaps in the Legal Framework .....11
    - Poor Implementation.....11
    - Legal Reality .....12
  - 3.3. CONFLICT MANAGEMENT .....13
    - 3.3.1. *Poor Arbitration* ..... 13
      - Shortcomings of the Formal System .....13
      - Shortcomings of the Traditional System .....13
      - Institutional Overlap.....14
    - 3.3.2. *Weak Enforcement*..... 14
- 4. OBSERVATIONS ON OPPORTUNITIES AND POSSIBLE INTERVENTIONS. .... 15
- 5. BIBLIOGRAPHY ..... 17
- 6. ANNEX: OVERVIEW OF BASELINE DATA ON LAND-BASED CONFLICTS IN SOMALILAND ..... 18

# 1. Introduction

Disputes over land ownership and access are the most important contemporary source of violent conflicts in Somaliland. Early in 2007 this became particularly apparent when simultaneous clashes took place in Daroor in the adjacent region five of Ethiopia and in Yayle and Ceelgerde. The Daroor conflict alone claimed the lives of at least 67 people and resulted in a public outcry. The totals injured from the warring sides exceeded a hundred. The Habaryoonis dead and injured were taken to Burco where they concentrate as clan and the Idagale were taken to Hargeisa. The arrival of the dead and injured at Somaliland’s two main cities created tensions. For instance, in Hargeisa, where both clans reside, it raised sensitivity and brought fear that the conflict may outburst in the city as well. There was a worry that representatives of the clans could mobilize against each other. Cities with their concentrated population are particularly vulnerable to the escalations of violent conflicts.

A base line survey undertaken from the newspaper coverage of 2005 and 2006 alone revealed evidence of 23 land related conflicts in different parts of Somaliland (see Annex). These conflicts were mainly over:

	<b>Categorization</b>
Pastoral resources such as grazing land and water points.	Rural
Agricultural land (individual ownership and communal claims of belonging).	Rural
Customary communal land in new settlement areas adjacent to urban settings.	Between rural and urban
Customary communal land with in urban centres.	Urban
Private individual land ownership in urban centres.	Urban
Demarcations and maintenance of public land.	Urban
Allocation of land under administrative units.	General

Beyond the immediate casualties, land conflicts have a severe impact on society. Some of the main effects are:

- Reduced sharing of resources such as water and grazing land
- Clash among clans (escalation into inter-clan conflict)
- Escalation of land conflicts into inter-clan conflicts.
- Displacement of some clan groups from their settlements of origin.
- Clan institutions remain primary source of protection, and clans with power dominate others.
- More mistrust to the judiciary as a result of unresolved conflicts.
- Contested land remains unused ‘warran-bixi’, “grass grown by the spear”
- The government’s protracted inability to resolve conflicts undermines the public order. People take the law into their own hands.

Based on these observations, the stated core problem of this research note as well as the overall project is the fact that *‘land ownership and access are potential sources of violent conflict’*. The research focuses on land based conflicts that relate to the claiming of land ownership and the access to land. This refers to all land including resources available on it, e.g. water, infrastructure, etc. Because of its significance and its implications, the research particularly focuses on land based conflicts in the rural context which affect land around towns, small villages, free land for grazing in rural areas, range enclosures for commercial purposes (e.g. charcoal production), water sources such as dams, *berkads*, *gacan* (water drainages from rivers and/or waterfalls), and farming land.

The stated core problems translate into the following key research questions:

1. What are the structural origins of land conflicts? This is answered in chapter 3.1.
2. What are the short term accelerators that lead to the escalation into a violent conduct of conflicts? Chapter 3.1. deals with this question.
3. When it comes to the management of land resources, what are the deficiencies that facilitate violent conflict? These are described in chapter 3.2. .
4. Assuming that conflicts over land will always exist, what are the major obstacles to managing and resolving these conflicts effectively, without recourse to violence? This question is mainly answered in chapter 3.3. .
5. What good practices to address the issues/problems could be identified? Some ideas and already established approaches are presented in chapter 3.4. .

Related research on Natural Resource based Conflict was previously conducted by the Academy for Peace and Development (APD) between 2004 and 2006. A comprehensive research report (APD 2006) and a documentary film called “From Plunder and Profit to Prosperity and Peace” have been produced. These efforts focused on the establishment of policies and laws to tackle the underlying causes of these conflicts, such as the increasing prevalence of fenced enclosures in traditional pastureland and the growth of sedentary agriculture. Another documentary film by APD covers Somaliland’s Natural Resources. The effects of charcoal production received particular attention during this phase of the programme. The programme, which is run in collaboration with Interpeace Dialogue for Peace, continues with a focus on Somalilands Eastern Regions since 2007.

Vetaid and PENHA compiled documents on Land Resource Tenure and Agricultural Land Use. Xaqsoor and Candlelight, local NGOs also work on the issues of Natural Resources and Environment.

## 2. Background

### 2.1. Socio-economic Transformation

In the rural context, most land conflicts arise over pastoral and agricultural issues. Both sectors have been shaped by a number of socio-economic transformations since independence in 1991. These include:

- Economic upturn: Increased commercialisation and market integration of the livestock sector
- New modes of production: Multiplication of *berkads*, increasing numbers of livestock and changing movement patterns
- Economic backdrop: Saudi Arabian ban on Somali livestock
- Environmental problems: Increased land degradation
- Sedentarization and real estate speculation: Accelerated urbanization
- Heritage of War: Return of displaced people

The commercialisation of the livestock trade led to a shift of the pastoral economy from a subsistence one to a market based one. To water the increasing number of livestock, new *berkads* (water points) were constructed. These allow pastoralists to stay longer at certain pastures and consequently the danger of soil erosion and land degradation is increasing. The export of a million (average) heads from Somaliland temporarily acted as a safety valve against pressures on the environment. But the Saudi Arabian ban on Somali livestock eliminated the safety valve mechanism and aggravated the already deteriorating environmental crisis. By consequence, competition for scarce resources between communities increases, by tendency raising the risk of violent conflict. Additionally, the pastoral livelihood has been struck by cycles of drought that reduced the already shrinking natural resources. Traditional coping mechanisms mitigated the effects of these factors but the crisis in the livestock mode of production is causing a great deal of suffering and destitution among the rural population. Many herders have lost all their livestock and see themselves forced to move to the urban centres where they try to make their daily living. Cities and towns all over Somaliland are expanding rapidly. The booming real estate market, often driven by investments from the Diaspora, intensifies this tendency as real estate speculators urge to purchase property at the fringes of towns. War-displaced people continue to find their homes occupied by other groups or settle down on land that is also claimed by others<sup>1</sup>.

These processes and dynamics of economic and social transformation increase the potential of (violent) conflict all over the country. Since natural resources, such as land and water, are the basis of the pastoral and the agricultural economy, land tenure and rights over land are crucial elements of this socio-economic transformation process.

### 2.2. Rural Land Management

A multitude of laws and institutions regulate the management of land in Somaliland. Because of the weakness of state institutions and laws, traditional (or “customary”) institutions remain very important in dealing with land related issues.

#### 2.2.1. State/Formal law

Rural land, that is agricultural land and pastoral land, is supposed to be managed mainly by the Ministry of Agriculture and the Ministry of Pastoral Development & Environment. Based on Article 12,1 of the Somaliland Constitution, all land is common property of the nation, controlled and administered by the government. Urban land falls under the Urban Land Planning Law (Law

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<sup>1</sup> WSP International 2004: Rebuilding Somaliland. Issues and Possibilities

No. 17/2001) and the Agricultural Land Ownership Law (Law No. 8/99) regulates land in the agricultural context. There is no separate law concerning pastoral land and resource issues.

### ***Agricultural Land***

In the Agricultural Land Ownership Law (Law No. 8/99), agricultural land is defined as any land where farming is suitable (Article 1). The Ministry of Agriculture has the sole right to issue ownership titles for farms (Article 4). Individuals and families can acquire only one new title deed each and people who owned agricultural land before the enactment of this law are entitled to as many titles as their land amounts to (Article 6). The maximum plot size of new entitlement is restricted to eight hectares for rain-fed farms, while for irrigated farms the maximum plot size is four hectares. State owned farms and companies are independent agencies and do not fall under this law (Article 7).

If agricultural land is nationalized for public use, the state has to pay compensation to the previous owner within three months (Article 8). Only three years after the ownership title has been received, it is allowed to sell land with the approval of the Ministry of Agriculture. It is prohibited to enclose land (Article 9) or to turn grazing land into rain-fed farms. Nevertheless, it is allowed to establish irrigated cultivation farms wherever it does not block roads, the movement of livestock or wells and *berkads* for watering livestock (Article 17).

### ***Pastoral Land***

The current law fails to define what pastoral land is and how its ownership is to be regulated. The Law against Environmental Degradation and Deforestation endows the Ministry of Pastoral Development & Environment with the task of conserving the environment. In consultation with the Ministries of Water & Mineral Resources, Livestock and Agriculture it has the authority of allocating and confining grazing land for pastoralists and farming land (Article 9). Additionally, it is responsible for issuing permits for the construction of *berkads* and other water reserves in rural areas. The law prescribes that it is not allowed to build more than 35 *berkads* in an area after this law was signed and that illegal water installations shall be destroyed (Article 12).

## **2.2.2 The Administrative Structure**

Based on Articles 109, 111 and 112 of the of the Constitution of the Somaliland Republic, the Regions and Districts Law (Law No. 23/2002) subdivides the country into regions and districts. The Regional and District administrations are obliged to implement the laws or regulate affairs according to the laws that are passed by the parliament and the central government in Hargeisa.

Regional or district status is conferred according to the size of the area, population density, natural resources and production level, and the ability to provide important social services (Article 3). The Ministry of Interior is in charge of assessing these criteria.

The Regional Government is the link between the local level, the District Council, and the national level, the central government. It is headed by the Chairman of the Region, who is appointed by the central government and is responsible for the implementation and enforcement of national laws and policies in his region (Article 13). In cooperation with the Regional Council, which includes the District Mayors and other state Departments, he is supposed to regulate all affairs concerning the regional level. The Chairman is also meant to manage conflicts between districts and communities by establishing mediation committees (Article 12).

The District Council, which is elected by the people for a five years term, is the governing body at the local level. It is instructed to implement national and regional policies and to plan and regulate public affairs, including conflict and security issues and “the use of land for all purposes” (Article 32, 1; Article 22, 23). Its most important members are the Mayor, who heads the District

Council that also elects him (Article 17), and the Executive Secretary, who controls the budget and is appointed directly by the central government (Article 19). Village Councils are nominated by the elders but need to be approved by the District Council (Article 33). Their functions are not defined.

### **2.2.3. Customary / Traditional / Informal Law**

In most rural areas, but specially in pastoral areas where no state law concerning land tenure exists, informal law is still entitled to manage land. It is based on the following principles<sup>2</sup>:

- “*Degaan*” ownership: In traditional Somaliland society, private ownership of pastureland did not exist, and water sources could only be owned privately to a limited scale. Until today, access to natural resources is based on communal ownership and cooperation with other groups. Generally, the concept of *degaan* describes the traditional claim for land ownership by a certain clan-group.
- *Xeer* agreements: Affairs are regulated by contracts between clan groups. These contracts define rules for the management of land and other issues, and set up sanctions for the case that agreements are broken by one of the parties.
- Flexibility: In an insecure environment that is prone to drought, flexibility is necessary in order to be able to adapt quickly to changing conditions. Pastoralists need to move to where they find water and pasture for their livestock. Consequently, *xeer* agreements between groups need to be constantly renegotiated and redefined.
- Responsibility of clan authorities: Clan elders regulate clan affairs on behalf of their people.

### **2.3. Land Conflict and State Politics**

Clan structures continue to be the predominant organizing principle of society. The vast majority of communities, social and political groups, are constituted within this system. Since the end of the Barre regime, it has been a guarantor for peace, security and stability. Elders and politicians are able to mediate between different factions using their clan links and very often successfully resolve conflicts. But the Somaliland clan factor is also a steady source of political problems.

Because of strong clan solidarity, and facilitated by the link between private land ownership and the “*degaan*” principle, local land disputes between individuals or families over access to natural resources bear a high potential to escalate into wider inter-community conflicts that involve clan segments of both parties. Consequently, all conflicts in Somaliland contain a clan component. Such tendencies are forced by the fact that conflicts over natural resources often intermingle with other clan interests, including political and economic issues, as well as the collective memories of past events in clan relations. For instance, when it comes to the establishment of new administrative units or the positioning of polling stations, local conflicts over land ownership or the control over land are usually not primarily a livelihood issue of nomads and farmers, but an instrument of politicians to gain influence in politics. In the context of Somaliland’s decentralization and democratisation process, the occurrence of such “multi-dimensional conflicts” is likely to continue or increase.

Furthermore, the state can hardly remain outside of clan politics over land. To the contrary, its institutions, e.g. security forces, ministries, the judiciary, regional and local administrations, are composed of clan members who in the case of inter-clan conflict can hardly maintain neutrality. This is one of the reasons limiting the state’s ability to resolve such conflicts.

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<sup>2</sup> WSP International 2004: Rebuilding Somaliland. Issues and Possibilities. Asmara: pp. 99-200

### 3. Issues and Problems

In this chapter, we seek to capture the most important issues and problems concerning land based conflicts in Somaliland. In the first part, “Origins and Dynamics of Conflicts”, we do not intend to present “root causes” of the problem as we are convinced that it would be a simplification to reduce such a complex situation to a few “root causes”. Instead, we try to present some basic structures and conflict dynamics that mutually influence each other and lead to (an increased likelihood of) violent conflict. In the second part, problems in the current systems of land management are analysed. The last part of this section deals with conflict management institutions and their shortcomings. In both, we will cover state or formal institutions and laws as well as customary institutions and principles.

#### 3.1. Origins and Dynamics of Conflict

##### 3.1.1. Inequitable access to shrinking common pool resources

People who have extensive rights to land are generally more able to enjoy a sustainable livelihood than those who have only limited or no rights or access to land. Increasing ecological and economic uncertainties give impetus to the forceful exploitation of unequal power relationships within and between communities.

##### *Proliferation of Water Resources*

As in rural Somaliland rainwater catchments are essential to the survival of both, humans and livestock, households endeavour to have their own water source. Many international NGOs also include water projects in their development agenda with the intention to address a dire need in the population, but barely considering the environmental impact of such projects. As a result, water sources, such as *berkads*, have multiplied since the colonial time. Water has become a commercialised commodity. In areas with only few water sources it is sold at a high price. The changing socio-economic conditions have introduced the use of mechanized transport systems in the nomadic lifestyles. Trucks transport water over great distances to where it is needed. As a result, grazing areas which had to be abandoned in the dry seasons because of a lack of water are now used during the whole year. The new land using patterns increase the pressure on the environment as recovery phases for pasture are reduced.

##### *Changing Movement Patterns and Sedentarization*

The proliferation of water sources has changed the movement patterns of nomads. With the availability of the permanent water resources, nomads feel detached from the constant mobility and tend to be concentrated around few water points where grazing land seems to be abundant. The most common mode of sedentarization involves the creation of clusters of huts and rural villages that spring around water points. An inherent motive of sedentarization is to increase the control over common grazing lands with the aim to extend a clan’s territory (*degaan*), often leading to competing land claims.

Secondly, the uncontrolled proliferation of water sources and subsequent sedentarization puts sustained pressure on the environment. The permanent nature of the sedentary settlements spreading all over pastureland, even in places far-off from water points, denies the environment seasonal rest that are necessary for recovery. This increases land degradation and the potentiality of conflict over dwindling resources. Frequent droughts, increasing enclosures of diminishing grazing resources and the multiplication of settlements also restricts the mobility of pastoralists. Roaming pastoralists are denied the open-access to pastures they enjoyed in earlier days. In search for new grazing areas, nomads now risk armed conflict with other groups.



### ***Deforestation as a Result of Charcoal Production***

“The issue of deforestation from charcoal production is the most critical issue that might lead to a national environmental disaster which would be difficult to reverse or would take long time to recover.” (Charcoal Study, MoPD&E).

Since the Saudi Arabian ban on Somali livestock, the production of charcoal as an additional source of income has increased considerably and has imposed hardly reversible environmental damage in many parts of the country. The cutting of trees accelerates land degradation with the consequence that common pool resources are shrinking further.

### ***Land Enclosures and the Breakdown of Common User Rights***

The proliferation of enclosures has become one of the most serious problems in recent years. In the context of socio-economic transformation, contests over diminishing natural resources have also posed a challenge to the cultural norms and values of the Somaliland society. In the pastoral areas, individuals fence off communal land for their own exclusive use, thereby denying other members of the community access to shared grazing land. Although, according to Law No 8/99, Article 9, enclosures are officially banned, the state is by no means able to enforce this prohibition (see section 3.2.). As common pastures are enclosed for private use only, also trekking routes to water points and markets are blocked. Consequently, conflict potential is rising. Because of these processes the concept of *degaan* (as an intra-clan sharing mechanism) is declining. Common user rights within groups are undermined as more and more land is privatised. As a result of shrinking common pool resources, a general tendency is developing that pushes individuals to secure their own private land by fencing it off. Poor livestock herders that lack the power to defend their user rights on land are continually pushed into a disadvantaged position.

Not only are common user rights within groups endangered, but also between clan groups. The level of cooperation between different groups is declining and *xeer* agreements that regulated land management break down. Nowadays, herders are often denied access to pastures claimed by neighbouring groups. This is especially the case when ambitious clan groups try to enlarge their territory at the costs of other clan groups. Similar to inner-group processes, weaker clans are marginalized by pushing them away from common grazing land. These dynamics lead directly to inter-community disputes with a high potential to escalate to violent group conflicts.

### **3.1.2. Legacy of War**

#### ***Displacement of People in Times of Conflict***

Following the outbreak of civil war in the late 1980's, many people from both rural and urban areas fled to neighbouring countries. After the Barre Regime was ousted and the SNM had established its authority, refugees began to return to their home areas. But some of them found their plots and territories occupied by other people or were themselves settling down on other people's land. Tenure remains unclear, as many legal documents were lost during the war. As a result, the business of issuing forged property entitlements is booming (see section 3.1.3) and makes it even more difficult to identify the rightful owner of a property of land.

In the rural areas, the frontline between some clan communities has shifted because clans supporting the Somali National Movement abandoned their country to flee harassment by the army. When they returned, some of their farms and traditional grazing lands were already occupied by neighbouring communities. Most contentious issues about overlapping claims of agriculture have arisen in hotspots between sub clans of Gadubursi and Sa'ad Muuse-Jibril Abokor. Even many years after the war, these issues are a continuing source of dispute.

### *Privatisation of Formerly State-Owned Agricultural Land*

In the Togwachale plain, the regime of Barre had nationalized large swathes of agricultural prime land and designated it to labour intensive farming schemes. After the fall of the regime, the Somaliland government did not set up a privatisation plan for the formerly state owned areas. The vacated land was arbitrarily occupied by neighbouring clan communities. They legitimise their expansion into the former state farm by referring to ancestral claims and assertion to have owned the land before it was nationalized. There exist no documents that proof their legal claims.

Because of the lack of clear tenure, neighbouring groups are engaged in disputes on who is taking what of the formerly state-owned land. The issue raised inter-clan tensions and reached the verge of escalating into violent conflict. The issue is not fully resolved and it remains a potential for armed confrontation between the subclan of Reer Mohamed Nour (Samaroon/Gadabursi) and Adan Omer (Sa'ad Muuse-Jibril Abokor)

### **3.1.3. Public Greed on Land**

#### *Unclear Land Ownership and Illegal Documentation*

Land grabbing and speculation are also perceived as a primary source of wealth. In agricultural areas, the position of boundaries between rain-fed farms is often a cause of conflict. Because of the lack of records depicting the size of the farm and its boundaries in most areas, cultivators often expand their land into neighbouring farms, thus provoking conflict. In particular in the urban areas, grabbing land illegally and then selling it for cash proves to be a common practice. In the absence of reliable legal documents, title deeds for land are often forged to strengthen illegal ownership claims. Because of the difficulties for legal owners to prove their case, these conflicts are often solved outside the courts, where illegal claimants regularly receive pay-offs or some land. The perpetuation of false claims thereby becomes worthwhile and as a result, it is nowadays a common practice for personal enrichment. This is signified by the Somali motto “ku qabso ku qadi meyside”, meaning: “Make a claim, albeit unjust, and you shall end up gaining something”.

#### *Degaan and the Politicisation of Land Conflicts*

The revival of clan-based politics and reduced public confidence in the supremacy of the rule of law has emboldened the claiming of communal pastoral land as traditional homeland of a specific clan. The traditional clan homeland (*degaan*) is set to specify the clan's image and importance in the wider society. As some clans seek to expand their territory, others become marginalized. A striking example of this scenario is the fact that the water sources in the hinterland of Boroma were blown up with explosives in the course of a conflict over land a few years ago. It was part of an effort of a local clan group to claim ownership of this area which they say is their farmland on their traditional homeland.

Such dynamics often go together with a politicisation of administrative boundaries. As both are clan-based, the concept of *Degaan* is used to expand administrative boundaries or to create new districts. For instance, the regional allocation of some rural villages north of Hargeisa has been a hot issue between politicians of the Sa'ad Muuse sub clan and the Gadabursi. 21 Districts have been created by Presidential Decree since 1991, but only 19 of them have been approved by the Parliament in 2002. For lack of resources, many of these entities exist only on paper; their territories remain under the previous district administrations.

## 3.2. Resource Management

### *Gaps in the Legal Framework*

The legal framework of managing land and regulating land tenure has numerous shortcomings. Accordingly, there are only few laws concerning land ownership, in particular in rural areas.

Notably, pastoral grazing land as well as its ownership is not defined in any law. In the absence of a clear definition of grazing land, the right of the Ministry of Pastoral Development & Environment to allocate grazing land to pastoralists can be used rather arbitrarily. As a result, land ownership and user rights of pastoralists are not secured within the legal system, making them particularly vulnerable for land grabbing by farmers, town dwellers or others. Because there is no clear demarcation between agricultural, pastoral and urban land, the domains of the different ministries and state agencies overlap and may cause further land management problems.

The law also clearly gives advantages to irrigated-farming activities in comparison to both, rain-fed cultivation and livestock breeding in particular. While it is not allowed to turn grazing land into rain-fed farms, irrigated cultivation farms may be established wherever this does not block roads, the movement of livestock, or wells and *berkads* for watering livestock. But as these criteria can be handled in a very flexible manner, there is no effective legal protection for pastoral land. When expanding cities reach irrigated farmland, its owners are presented with the opportunity to keep it and convert it into a normal town plot. This urges people to grab grazing land at the fringes of cities as irrigated farming land to later convert it into urban housing land.

The insecure and incomplete legislation makes resource management in Somaliland problematic. Also an amendment bill to Law No.17, which is supposed to be approved in Fall 2007, only refers to the integration of farmland into urban areas, but neglects and does not improve the general legal basis for the management of rural land. Especially the legal framework of pastoral land remains undefined in any respect (Amendment to Law No. 17, Article 21).

### *Poor Implementation*

The responsibility for land administration is divided between different ministries, local and central governments, and several state agencies. Overlapping domains of state agencies and a lack of communication, weak human and financial capacity and endemic corruption strongly influences the effectiveness of state agencies. Undermined by clan interests, they become part of the conflicts instead of providing regulative guidelines. As a result, the implementation of government policies and state laws in rural areas remains very weak.

Contrasting orders from competing government bodies are part of the conflicts in many parts of the country. E.g. in the urban areas, dual allocation of one plot by two different institutions is a common problem. There are allegations that the Ministry of Agriculture issues farm certificates on grazing land on the fringes of the towns. It is likely that people who seek this land ultimately intend to speculate for residential purposes.

In the absence of a clear definition of district or even regional boundaries, the territorial domains of different administrations may overlap and cause conflict. This problem is becoming more concerning as in the context of decentralisation and democratisation conflicts over administrative boundaries intermingle with clan politics and clan land ownership (*degaan*, see sections 2.3 and 3.1.3.)

Only the local administration is allowed to raise taxes. The Regional Government relies on financial support from the central government. Thus, its capacity is very limited, constraining the ability to implement national policies and laws in the regions or to address regional problems. On the ground, most effective executive power is in the hands of the Mayors, who can act quite independently from the Regional level.

But also the local institutions are not able to fulfil their legal functions properly. Like the regional government, they are faced by a shortage of resources and therefore lack capacity to regulate local affairs. Especially in rural areas, their influence is very limited. Although Law No. 23 stipulates that the District Council is supposed to create a committee to deal with land issues, it is not clear whether such committees really exist and function in all districts. Land management plans often do not exist or are out of date.

Furthermore, in some instances, local officials have turned to selling off chunks of public land on the pretext of raising revenue. This has become a lucrative business for some of the local councils, leading to bitter debates over the control and ownership of public land. There now is a call to create public commissions to monitor and oversee the control and administration of public land and open spaces.

Internal quarrels also reduce the local administration's ability to work effectively. As most powers are centred around the Mayor, politics become very personalized. In some cases, the Council spends more time contesting the position of the Mayor than regulating local affairs.<sup>3</sup>

To sum up, the performance of state agencies on all administrative levels shows significant shortcomings because of a lack of resources and structural problems. They are neither able to implement state laws nor to regulate regional or local affairs effectively. State influence in managing rural land issues is therefore only very limited and in some areas even non-existent. Against this background it becomes obvious that the official legislation does not have much value in the rural context. Enclosures are set up in many parts of the country, the Ministry of Pastoral Development & Environment is not asked for the permission to construct *berkads*, and land management takes place outside the local administrations.

### *Legal Reality*

Despite the state's claim to superiority, its actual capacity to manage land is effectively restrained by a varying mix of weak rule of law, little enforcement capacity, and weak structures in rural areas. In the absence of strong and capable institutions to implement formal laws and manage land issues, traditional councils of elders by and large remain the most influential and effective bodies to address the problem. In cooperation with the Mayor and the District Council they manage land on the basis of customary law. As a result, ownership and access to natural resources is not regulated by a state law with overall validity, but instead by a number of different *xeer* agreements between clan communities, which vary from district to district. However, socio-economic transformation since colonisation has reduced the capacity of traditional institutions to effectively deal with land issues. The introduction of new modes of production has caused a decline of traditional common land user rights (*xeer* and *degaan*, in the sense of communal ownership) and traditional land use patterns. Additionally, customary law is unstable and unreliable especially in fragmented local settings. Very often, traditional elders can not prevent the proliferation of enclosures and *berkads* that are a major reason for environmental degradation and recurring conflicts in rural areas (see sections 2 and 3.1).

Only in the urban areas, land ownership and access are regulated by three different, sometimes competing, legal principles: Local customary law, universal religious law and universal state law. Because of the legal pluralism, contesting claims can be made, using whatever legal framework appears most favourable to one's claims. Buyers can correctly purchase a plot referring to state law, but come under attack because the plot is on another clan's *degaan*. Consequently, decision makers need to balance between the different legal systems. If family issues are involved, such as inheritance, Sharia law needs to be considered, too. Altogether, the legal pluralism poses an obstacle to the effective management of land and continues to be a source of conflict.

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<sup>3</sup> APD 2006: Local Solutions: Creating an Enabling Environment for Decentralisation in Somaliland. Hargeisa.

### **3.3. Conflict Management**

#### **3.3.1. Poor Arbitration**

##### ***Shortcomings of the Formal System***

“A problem in many countries is that formal conflict resolution mechanisms are weak or effectively non-existent. Many formal court systems are severely overburdened, with insufficient capacity in terms of personnel and expertise to handle a huge number of cases that come before them.” (*Land tenure and rural development FAO, 2002*).

In Somaliland, it is precisely land related disputes that make up the majority of the civil cases that come before courts. Overlapping individual claims are the most common nature of such cases. Due to bureaucratic hassles inherent in the system it is often difficult to resolve such land disputes quickly. Land cases can languish in courts for many years. The fact the property documents are easily forged and corruption is rampant in the system poses another challenge to the judiciary. For many ordinary people, the courts appear expensive, time-consuming, unpredictable and sometimes even corrupt themselves. The language of lawyers and judge appears alien and complex. As a result of this bad reputation of the formal system, people look for alternative conflict resolution mechanisms.

Apart from the judiciary, the local councils have a role to play in the resolution of land issues. According to the “Regions and Districts Law” (No.23/2002, Article 32), the local district councils shall have sub-committees for peace and conciliation (responsible for the resolution of disputes arising within the district and for the maintenance of the public order) and land (responsible for the use of land for all purposes). However, in practice, much of these tasks are actually not fulfilled properly, or concentrated in the hands of the mayors and executive secretaries. The ability of local councils to solve conflicts and manage land issues seems to be very limited.

##### ***Shortcomings of the Traditional System***

As a result of the inefficiency of formal courts, there is a continuing if not growing recognition of the importance of non-state mechanisms to resolve disputes. Exploring and enhancing such “civil society” alternatives could be a promising route to reduce the burden on court systems and to ensure the accessibility of effective dispute resolution mechanisms, synchronized with the norms, customs and language of the disputants. Traditional conflict management is used in all kinds of conflicts, mainly to resolve inter-clan issues. Thereby, conflict resolution committees, consisting of recognized elders and religious authorities, are set up to mediate between the conflicting parties. These councils are not formally established and only come together on an ad hoc basis. In principle, their effectiveness is based on traditional legitimacy and the mutual trust of the disputants. However, the drawbacks of traditional conflict resolution institution include:

- In practice, the members of the mediation committee often represent the interests of the opposing parties, leaving its integrity questionable and undermining their claim to neutrality.
- Traditional mediation is re-active rather than pro-active. Xeer is much better equipped to negotiate blood compensation than to build consensus over competing land claims.
- Traditional conflict resolution is slow and often late: Raising awareness of a conflict, mobilising the elders, and finding means of transport and communication over the distance from rural areas consumes a lot of valuable time during which conflicts often continue or escalate unnecessarily.

- The verdicts are not necessarily binding as there is no neutral institution to enforce them. To become effective, both parties need to accept the judgement and implement it.

### *Institutional Overlap*

Nowadays, conflict resolution committees also include state representatives. In the absence of a strong state, joint initiatives have been relatively successful in restoring peace, despite their shortcomings. Often, courts only announce decisions made by these councils and security forces come in to support their implementation. But in other cases, the formal judiciary and the out of court conflict resolution come up with different results and disputants can refer to the institution which serves their interests.

### **3.3.2. Weak Enforcement**

“Property disputes may continue because court orders and other eviction notices are not complemented. A court order may not be enough for someone to recover property, politicians and officials who wish to prevent minorities from returning may refuse to carry out orders to evict their supporters.” (FAO *Land Tenure Studies*, 2005)

In Somaliland, the enforcement of legal evictions remains very weak. State institutions lack financial and human capacity to effectively enact sanctions against culprits. Particularly in the periphery, security forces do not have the material means (vehicles, fuel) to restore security and maintain authority. Furthermore, they may be compromised by clan affiliation and involvement.

Military action needs careful consideration of its implications as it can cause wider armed confrontation, which could disrupt the public order. Somaliland’s police force and local authorities have not been very effective in resolving land-based conflicts. In some cases their forceful evictions resulted in confrontation with armed groups that were defending the disputed land. The lack of enforcement may take some weary plaintiffs to resort to armed confrontation to secure their rights and thereby capitalizing on clan mobilization.

Traditional institutions are only partially able to fill the vacuum. Their authority relies on the acceptance by the opposing parties. They normally do not have an armed force at their disposal to enact judgments, and given their ad hoc nature, follow up capacity is generally weak.

## 4. Observations on Opportunities and Possible Interventions

This section summarizes a number of approaches that have been identified in the early stages of the research. These interventions and opportunities appear to address some of the issues underlying land conflicts and their ineffective management and resolution. We provide them here as a first overview. Since the research project is aimed at identifying good practice and opportunities for action in the mitigation and resolution of land conflicts, this can serve as a basis to select particular case studies in the course of the dialogue.

1. *The emergence of non-state conflict resolution mechanisms:* Due to the inefficiency of the judiciary system; there is recognition for conflict management through non-state institutions such as customary laws and sharia. In the LTL, Religious authorities and traditional elders are included in the Tuulo Environment Xeerbeegti (TEX) and the District Environment Xeerbeegti (DEX). Both institutions are in charge of resolving communal conflicts in rural areas (§55).
2. *Community participation can be effective in conserving the environment:* Raising the awareness of the communities on the sense of ownership of the environment can be effective in making the communities understand that conservation of the environment demands the collective effort of the community, e.g. the dismantlement of the enclosures in Balligubadle area.
3. *Lack of coordination between the institutional stakeholders leads to institutions being part of the problem:* The land tenure law mandates the implementation of new water points to the ministry of Pastoral Development & Environment. Proposals for construction of new water points are to be endorsed by that ministry, but instead some proposals are endorsed by the Ministry of Mineral Resources & Water. New water points are constructed without the knowledge of the Ministry of Pastoral Development and Environment.
4. *Alternative development initiative can encourage communities to take care of the environment:* Candlelight, a local NGO, has provided grants for bee-keeping projects to Dhimbiryale community near Ga'an libah. With environment-based income generation; the community began policing the environment against new enclosures and charcoal burners.
5. *Cadastral Survey:* A UNDP-funded project called the “Somaliland Cadastral Survey” covered more than 10,500 rain-fed and irrigated farms in the Gebiley district, producing maps, certificates of registration, title deeds and boundary markings. The project also issued titles and computerized photo ID cards to farm owners. According to Abdihakim Mohamed of the project staff, “community elders are involved to settle disputes on the boundary between two neighbouring farms; if the dispute is beyond the capacity of the local elders it is referred to the Ministry of Agriculture”.
6. *Environmental conservation campaign in three districts:* In collaboration with the Ministry of Pastoral Development and Environment, Xaqsoor and DRC have launched an awareness raising campaign on the effects of illegal enclosures and charcoal burning on the pastoral environment in September 2006. The campaign involved the district and regional authorities and community elders. As an initial step of the campaign, village environment committees were established in 46 villages. During the course of the campaign about 70 donkey wagons and hundreds of axes used to collect woodstock for the charcoal kilns were collected and then handed to the Village Environment Committee with the consent of the owners. The illegal enclosure owners accepted to dismantle the enclosures.

7. *Legal Clinic:* UNDP in Somaliland implemented a legal clinic project. The intervention is intended to assist poor individuals by paying for their legal defence. The project is designed to cover all kinds of civil law cases. Land-based conflicts constitute the bulk of the cases for which assistance is sought from the project.
8. *Soil conservation initiatives:* Candlelight, a local NGO, has implemented soil conservation projects in Ga'an Libah and Dallo forests. In another intervention, Candlelight has closed a plain called Dul'ad (south of Burao Town) for livestock. According to deputy director of Candlelight, "the regeneration of the natural vegetation has been dramatic within a short time". However, when the grazing was re-open to the livestock, an influx of migrant pastoralists thrust too much pressure on the environment to a point that is worse than the pre-conservation period.



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## 6. Annex: Overview of Baseline Data on Land-based Conflicts in Somaliland<sup>4</sup>

No	Name	Region/District	Type of Resource	Actors	Period	Interventions	Resolved/Not
1	Harirad	Zeyla district	Group and urbanization of rural communal land	Ciisse and Gadabursi	1991-2007	Ministerial delegations	Not resolved
2	Daroor	Zone five in Ethiopia	Water sources and grazing land	Habaryoonis (Reer Sugule) and Idagale (Yoonis)	2006/2007	Guurti, Traditional elders, government, parliament, civil societies, Ethiopian troops, other communities.	Resolved
3	Dumbuluq Incident	Maroodi-jeex Region, Hargeisa city (Ahmed Dhagax Zone)	Communal land ownership (privatisation of state land)	Idagale and Arab	2006	Guurti, Traditional elders, religious leaders, police, military forces, the government, Hargeisa local council, Mayor of Hargeisa	Resolved
4	Tog-wajaale	Maroodi-jeex Region	Privatization of communal land	Samaroon (Reer Maxamed Nur) Jibril Abokor (Aadan Cumar)	1993 – 2006	Traditional Elders, Guurti, and Gabiley Local council	Partially resolved
5	Eegato	Zone five Ethiopia, (25 Km south of Wajaale)	Private land ownership (farm)	Yoonis (Jibril Abokor) and Akisho	2006	Traditional elders and Guurti	Resolved
6	Horufadhi	Tog-dheer region, Buuhoodle district	Water source (Berkad)	Clans that inhabit the area	2006	Regional governor, traditional Elders, police securities, mayor.	Resolved

<sup>4</sup> Based on a survey of the Somaliland newspaper coverage of 2005 and 2006 alone. This table merely serves qualitative and illustrative purposes as there is a strong urban bias and limited reliability in newspaper reporting.

7	Batalaale	Saahil Region, Berbera district, East of Berbera city	Land for settlement of clan inhabitant	Ciise Muuse and Habar-jeiclo	2006	Mayor of Berbera, regional governor, traditional Elders, the Guurti.	Resolved
8	Hargeisa City	Maroodi-jeex Region	Communal land (mainly ownership of the land)	The state( military army) and community	2006	Ministry of Interior, traditional elders, Local government	Resolved
9	Faro-dhidar	Sool Region, Boocane district, south-east of Laascaanood city	Land ownership (grazing area and water sources 'berkad')	Dhulbahante clan	2006	Traditional Elders	Resolve
10	Haleeya	Maroodi-jeex Region	Private land ownership	Sooyaal veterans and the Government (Ministry of Agriculture)	2006	?	?
11	Hargeisa city (New-Hargeisa village)	Maroodi-jeex Region	Private individual land ownership/communal	Member of House of Guurti and the local government	2006	Traditional Elders, local government administration and Ad hoc Committee for solving land conflict.	?
12	Sha'ab area (Hargeisa city)	Maroodi-jeex Region	Private/communal land ownership (privatization of state land)	Individuals: Sh. Muuse (Jibril Abokor) and Saxardiid (?)	2006	Ministry of Interior and the local government	Resolved
13	Garage Ali Dualeh area (Hargeisa city)	Maroodi-jeex Region	Land ownership	Mohamed Ismail Bullaale and the Local government	2006	Mayor of Hargeisa and Ministry of Interior	Resolved

14	Daarasalaam District	Maroodi-jeex Region	Grazing land	Vice mayor of Hargeisa and Inhabitants of Daarasalaam district	2006	?	?
15	New Hargeisa village (Hargeisa city)	Maroodi-jeex Region	Communal land	Community in New-Hargeisa city and Local government	2006	Local government, Mayor of Hargeisa	Resolved
16	Diinqal	Maroodi-jeex Region	Farming land	Ministry of Agriculture and business women	2006	Ministry of Agriculture	Resolved
17	Boorama	Awdal Region	Farming land	Reer Nuur (Makaahiil Dheere) and Reer Maxamed (Maxamed Case)	2006	Traditional Elders, Guurti, Local Government, Mayor, Security forces	Resolved
18	Sha'ab area (Hargiesa city)	Maroodi-jeex Region	Privatization of land	TOTAL company and individual	2006	Ministry of Interior, Local government of Hargeisa	Resolved
19	Boorama city	Awdal Region	Privatization of public land	Livestock brokers and Borama local government	2006	Traditional Elders, chiefs and suldans	Resolved
20	Balli-busley	Sanaag Region	Water sources and grazing land	Reer Maxamud (Warsangeli) and Sacad Yoonis (Habar Yoonis)	2006	Regional Authorities, Traditional Elders, and the APD outpost office in Burao	Resolved

21	Yayle	Sool region	Water sources	Dhulbahante and Habar-jeelo	2006	Traditional Elders, Las Aanod authorities, Burao authorities, the togdheer governor, APD outpost office in Burao	Resolved
22	Cali Xaydh, Garbo-dadar,, waraqa-dhigta, Fardo lagu xidh,Ceel-la-helay,, Cabdi Geedi, Ceelsheekh	Maroodi-jeex region and Awdal region	Distribution of districts under regional levels	Regions and District governments	2005	Regional Traditional Elders, Suldans, and Communities	Resolved
23	Naasa-hablood area (Hargeisa city)	Maroodi-jeex Region	Land for settlement	Communities inhabiting Naasa-hablood	2005	Local Government, police, Traditional Elders.	Resolved

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