



Academy for Peace and Development  
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# LOCAL CAPACITIES FOR PEACE

## Land-Based Conflict Project



### Contested Urban Land

### Approaching Land Management and Land-based Conflicts in Urban Somaliland



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*Back Cover: Consultation Workshop in Burao (© APD)*

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# Executive Summary

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## Root Causes

The challenges and obstacles to effective land management, which are also the main sources of conflicts, are manifold and diverse. The roots can be found in the civil war and its aftermaths, when Somaliland towns and cities were destroyed, the state and its land management system disintegrated, ownership documentation were lost, and the returning population appropriated public as well as private land. Although most cities have nowadays been rebuilt, many people still live in poverty and lack access to basic social services and urban infrastructure. Moreover, rampant land grabbing prevails, since the diaspora driven real estate market has led to an increase in the value of urban land while landownership remains unclear.

Hence, the major challenges for urban land administration in Somaliland are to improve land planning; to provide social services and urban infrastructure, especially for the urban poor; to reclaim public land; to clarify landownership and to regulate the real estate market.

## Land Management

Land management is the prerogative of the state, since customary as well as *shari'a* law and respective institutions are not adaptable to the complex requirements of modern private landownership in the urban setting. Urban land administration in Somaliland has been slowly re-established since the mid 1990s, a process that is still ongoing. Thereby, the most important institution is the local administrations, which is headed by an elected Mayor and Deputy Mayor and an Executive Secretary appointed by the central government.

It includes a Land Department with several sub-units in charge of allocating plots and registering and issuing land ownership certificates and building permits. The elected Local Council, the legislative institution at the municipality level, is in charge of overseeing the administration and contributing to the planning and management of public affairs, including land. National institutions, in particular the Ministry of Public Works and the National Urban Planning Board (NUPB), are responsible to plan the use of land, to draw town master plans and to oversee the performance of local land administration.

However, national as well as local institutions and structures are so far often unable to manage land effectively and address the country's most urgent problems relating to land, a fact that can partially be attributed to the nature of the evolving state and its administrative system. Thus, the first land law, which was adopted by parliament in 2001 and amended in 2008, addresses many of the above-mentioned problems and challenges, such as the registration and legalization of landownership, the resettlement of returnees and urban planning. Nevertheless, the law remains unclear at many points and contains several gaps and shortcomings, leading to overlapping institutional responsibilities and duties.

Hence, competition between various state authorities complicates land management and planning in Somaliland towns and cities. Instead of cooperating and developing joint land management strategies, state institutions often rival among each other and with the public over control of- and access to land. As a result, long-term and strategic urban land planning seems to be absent and there is no town master plan to regulate and organizes the use and allocation of land.

The role of the Local Council in land management is controversial. In Burao, its involvement in the landownership registration process has led to a dispute with the Mayor, who argues that the Councillors

have taken over executive duties. Also in Hargeisa, the influence of Local Councillors in land management is sometimes rather negative, as they interfere in administrative procedures and often squabble among each other.

Improvements have already been achieved in the verification, legalization and registration of landownership, a complicated process that involves crosschecking by several institutions and officials in order to ensure that the ownership claim of the applicant is legal and uncontested. The data obtained and the documents created during that process are used as a basic information system to better manage land and to clarify landownership. However, the registration of landownership is made difficult by the contested nature of landownership.

Also the weakness of the state and corrupt officials hamper effective urban land management in Somaliland. On the one hand, the authorities often participate in land grabbing and make their own business by selling land to businesspersons and investors or issuing dual ownership documents. On the other hand, state institutions often lack the capacities to enforce the law and prevent land grabbing. Fearing public unrest, they tend to abstain from dismantling illegal structures.

Even if supported by NGOs, which provide housing and other facilities, the administration is thus often unable to evict returnees and urban migrants from public land. Moreover, the provision of resources has raised expectations among the illegal occupants that they will receive substantial benefits in return for leaving public plots.

In order to improve land management, the legal and institutional framework has to be overhauled. Existing gaps, shortcomings and ambiguities in the law have to be clarified and institutional duties and relations need to be regulated. The central government should strengthen cooperation between all institutional stakeholders and put pressure on the agencies involved in the NUPB to fulfil their duties and to draw town master plans. The local governments, including the Local Councillors, have to participate in this process in order to guarantee democratic decision-making. Moreover, their land management capacities have to be increased and effective anti-corruption systems and measures have to be implemented.

Generally, all policies and decisions relating to land should be taken in a participative manner and in cooperation with elders and community representatives. The Local Councillors can play a key role and act as links between communities and the state, seeking to draw support among their constituencies for land management policies and presenting people's needs and concerns to relevant decision makers.

## **Land Conflicts and Conflict Management**

Because of the weakness of the state and the dominance of clan structures in Somaliland society, land disputes between individuals can escalate into clan conflicts and, against the background of the wide spread circulation of small arms, turn violent. Thereby, land-based conflicts and weak land management are interrelated problems. Administrative shortcomings, for instance corruption and the dual allocation of real estates, often lead to conflicts, which in turn are an obstacle to effective land management. In Burao, where clan tensions prevail, land management is thus more complicated than in Hargeisa, where relations between the clans are more peaceful. Moreover, state institutions in the capital of Somaliland enjoy more autonomy from the clans and are thus able to manage land without being drawn into clan struggles.

In urban Somaliland, three different legal institutions and respective laws are involved in conflict management: *shari'a* courts applying Islamic law, state courts applying official law and traditional councils of elders ruling according to customary or informal law. Clan elders are the most important institution, as state courts are

perceived as corrupt and inefficient while *shari'a* courts are predominantly called upon to solve conflicts related to family matters or inheritance issues. Most complicated cases, however, are addressed by 'hybrid' or 'combined' conflict resolution institutions, which include state officials as well as clan elders. The resolution process is rather traditional, based on meditation and reconciliation between the disputing parties, but modern ownership documents, laws and land institutions are equally important to reach a decision.

The state, in particular Local Councillors, can play a key role in conflict resolution. State officials can facilitate mediation, create an arena where the conflicting parties are reconciled and, based on the agreements of the clans, implement the decision reached by elders. Such institutions could be formalised and regulated, as already attempted in Article 28 of Law No. 17, and become a standing committee. Thus, the Land Subcommittee and the Peace and Conciliation Subcommittee of the Local Council could be strengthened by a secretariat to make them more efficient and capable of addressing conflicts in the community.

## **Land Tenure Security and Women Accessing Land**

Land tenure is closely tied to clans and Somali cultures and traditions. Since the state is weak, mistrusted and based on the clan system, it is the lineage and not the constitution that guarantees landownership rights in Somaliland. Hence, being traditionally discriminated in Somali society, and neither being represented in the courts nor in the law enforcing institutions, landownership of marginalized groups and minorities such as the *Gabooye* is rather insecure.

Also women face a series of challenges when it comes to land tenure in Somaliland. Cultural, economic and institutional barriers are serious obstacles for women who attempt to purchase or inherit land. The reality of plural legal systems causes a lot of confusion for women, who often do not have the knowledge of the procedural steps to be taken and/or the financial means to fight for their rights, which are enshrined within the constitution. Additionally, the weakness of government institutions disadvantages women to a great deal.

The government and local communities thus have to take urgent action in order to improve land tenure security, particularly for women and *Gabooye*. The government has to adapt strong laws and policies that protect their rights, and state institutions have to be supervised to guarantee effective implementation. Elders need to eliminate traditional rules and cultural prejudices, which discriminate women and *Gabooye* in land tenure. NGOs should raise awareness among state officials and communities about the magnitude of the problem and thus support a change of thinking in Somaliland society.

# I. Introduction

## 1. The Land-based Conflict Project

In collaboration with the Institute for Development and Peace (INEF) at the University of Duisburg-Essen, Germany, the Academy for Peace and Development (APD) conducted an eight months research project on land-based conflicts in Somaliland between May and December 2009. It was the third phase of a project that had started in 2007 and was funded by the German Institute of Foreign Relations (IFA). It aimed to strengthen local dialogue NGOs, i.e. the Academy in Somaliland, to enhance conflict resolution mechanisms in the course of integrated capacity building, dialogue, and action research processes, promoting awareness, analysis and good practices relating to land conflicts. In 2007 and 2008, the project also took place in Afghanistan in cooperation with the Tribal Liaison Office (TLO).

In 2009, the APD project team consisted of Mohamed Abdi (Team Leader), Nassir Osman and Safia Tani (Research Assistants), and Jan Stockbrügger from INEF. Rita Glavitzka, from the University of Vienna (Austria) supported the gender component of the project.

## 2. Focusing on Urban Land Conflicts and Conflict Management

Disputes over landownership and access to land are the most important sources of conflict in contemporary Somaliland. Against the background of fragile statehood, they are a serious threat to peace and stability in the country.

In 2007, the project had focused on rural land conflicts, especially on the problems arising from the proliferation of enclosures and the privatisation of communal land in the pastoral context in Western Somaliland. In the second phase, which took place in 2008, the main focus of the research had shifted towards conflicts relating to water sources in Eastern Somaliland; additionally, the project team started working on urban land conflicts. The results, published in a report in 2009, suggest that conflicts over land in cities and towns are a very serious issue and a major concern for many Somaliland citizens. In 2009, the project team therefore decided to concentrate exclusively on urban areas.

Based on suggestions from the working group, however, the project opted for a broader approach than in the previous two years and focused more generally on land management issues. This reflects the fact that Somaliland has experienced more than a decade of peace and stability and that many land conflicts have already been resolved. Therefore, the research team not only aimed at revealing the root causes, dynamics and management of land-based conflicts, but to investigate current land administration systems and practices, examining its strengths and weaknesses. Effective land administration, the team assumes, will contribute to peace and development and further stabilize the country.

The research team also focused on two interrelated and cross-cutting land management issues which came-up in the course of the project: land tenure security and women's access to land. By studying land tenure security, the project sought to understand how people secure landownership in the absence of a strong state, and to shed light particularly on the situation of groups facing land tenure insecurity due to their marginalized role and status in Somaliland society.

**Part II** of this research report, 'Land Conflicts and Management in Urban Somaliland', provides an overview of the challenges, strengths and weaknesses of current land management in urban Somaliland. It also provides information on dynamics of land-based conflict and on conflict resolution institutions and mechanisms.



In **Part III**, the ‘Land Tenure Security’ in Somaliland is analysed. This includes sections on Ethiopian immigrants, refugees from Southern Somalia and the Gabooye communities.

**Part VI**, ‘Women Accessing Land’, is an in-depth study of women’s relations to land in Somaliland society. It describes the changing socio-economic role of women in the urban context, their position under different legal system regarding landownership and their role in land conflicts.

### 3. Research Methodology and Process

#### 3.1 Research Methodology

Research methodology was an important aspect of the project over the past three years. The project applied Participatory Action Research (PAR) methods, which combine applied research and dialogue in a highly integrative and participatory way. This enables the researchers to grasp the knowledge, views and opinions of different actors, which are encouraged to actively participate in the project process and to identify research priorities according to their own needs. Moreover, by creating local dialogue, communities are empowered to reach common ground and develop joint solutions for their problems.

The overall objective of the use of PAR methodology in the project is thus to contribute to the peace building process in Somaliland by strengthening the civil conflict resolution abilities of local actors.

**Participatory Action Research**

- ⇒ **Enabling Communities to participate in the research process**
  - To put people in a position where they can articulate and define their problems and needs
- ⇒ **Initiating local dialogue**
  - To bring together different stakeholders and actors in a joint group
- ⇒ **Creating local solutions**
  - To encourage people to analyse their problems and seek solutions
- ⇒ **Empowering Local Communities**
  - To enable people to implement decisions and solutions

Supported by INEF consultants, the project continuously sought to improve its PAR capacities. In 2007, the basic concepts and ideas of Participatory Action Research methodology were introduced and the team learnt how to design and apply specific research and dialogue techniques (e.g. Participatory Mapping, Semi Structured Interviews and Focused Group Discussion). In the following year, these tools were revised in order to adapt them to the urban context, and a workshop on research ethics was held. Moreover, the team started to apply Participatory Video (PV) as an innovative research tool. Thereby, local communities in cooperation with the researchers produced a film that represents and visualizes their needs, problems, and shows how they solve land-based conflicts. The experiences with the PAR methodology and tools, including its strengths and weaknesses, are described in detail in the project report published in 2009<sup>1</sup>.

<sup>1</sup> Academy for Peace and Development/Tribal Liaison Office/ Institute For Development and Peace 2009

In the third phase of the project, the research team drew upon its PAR capacities acquired during the previous two years and further developed the gender component of the project, whereby a female consultant supported the team's female researcher in a study on women's access to land and their role in land-based conflicts.

### **3.2 Research Process**

As in previous years, the APD team ran a full cycle of desk research, consultations, field research, dialogue and dissemination on land conflicts. The first part of the project was designed to get a general overview of land-based conflicts in urban Somaliland and to identify the most urgent issues and problems related to the topic. Accordingly, the team conducted an extensive literature review and conducted several interviews with representatives from different state institutions and civil society organisations. A working group, comprising officials of state agencies and NGOs, provided further information and guidance to the team.

One member of the team accompanied an APD mission that travelled throughout the country in order to generate an overview of the general level of peace and development in Somaliland. Thereby, the research carried out for the land-based conflict project resulted in a paper identifying and summarising Somaliland's most urgent land administration problems and challenges on a national scale. Moreover, with the support of Rita Glavitz, the team's female researcher started working on women and gender issues in relation to land conflicts, the findings of which resulted in a paper on Women's Access to land.

Subsequently, in the second phase of the project, the team conducted extensive field research in Burao and Hargeisa to gather more in-depth information and knowledge on the dynamics related to the core problems, challenges and objectives identified in the first phase. The selection of Burao and Hargeisa as field research sites had two reasons.

First, they are the biggest cities in the country and its major commercial centres. Second, they have a different social setting and conflict history. While Hargeisa is inhabited by people from all Somaliland clans and has largely been peaceful since the end of the civil war, Burao is dominated by only two clans and has experienced fierce fighting until the mid 1990s. Hence, clan tensions in the Eastern city are much higher than in Hargeisa, where a rather harmonious multi-clan setting has emerged.

In both cities, the team held Focus Group Discussions with specific social groups, such as women, Local Councillors, elders and returnees, as well as Semi-Structured Interviews with state officials and civil society representatives. Furthermore, it organized consultation workshops with mixed groups in order to present and consolidate research results and to encourage discussions on solutions to land management problems and land-based conflicts. In Burao, it also applied Participatory Video to document a land dispute within a local community.

In this context, the team also investigated land tenure security of marginalized social groups in Somaliland. The findings of this phase were compiled in a study on "Land Management and Land Conflicts in Urban Somaliland" and in a working Paper on "Land Tenure Security in Somaliland". In the third phase, the results and findings were disseminated and discussed during consultation workshops in Burao and Hargeisa. The participants provided important feedback and suggestions that were subsequently incorporated into the final research report.

## II. Urban Land Management and Land Conflicts in Somaliland

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### 1. Introduction

Since its declaration of independence in 1991, Somaliland has achieved a remarkable degree of peace and stability. This allowed the country and its population to recover from the civil war, to rebuild basic but functioning state structures and to promote its economy. However, many people continue to live in poverty, local disputes over natural resources persist and state institutions are weak and often unable to maintain order. Additionally, the current political crisis relating to the postponed presidential elections has raised serious concerns that a fighting may break out again. Hence, peace remains fragile.

Against this background, ineffective land management and land based conflicts are a growing problem in urban Somaliland. The country's cities grow and expand rapidly, as the urban economy is booming and urbanisation increases. Thus, unclear landownership and the rising real estate market lead to rampant land grabbing and overlapping ownership claims. Moreover, many conflicts over urban property resulting from the civil war remain unresolved and returnees still occupy large patches of public land.

The nascent state institutions are overwhelmed by these problems. Evolving land administration systems and agencies are hampered by corruption, low enforcement capacities, inefficiency, and clan pressure. The implementation of land policies is thus at best sporadic. Consequently, disputes relating to land are behind most violent incidents in towns and cities.

Nevertheless, despite the magnitude of the problem, information on urban land conflicts and management in Somaliland are very scarce. Most reports published by local and international NGOs and agencies deal more generally with land issues and resource conflicts in rural and urban areas. Focusing exclusively on urban areas, Bruyas wrote an extensive report for UN-Habitat about the 'Land legal framework' in Puntland and Somaliland. In cooperation with Barry, he also produced an article on 'Formation of land management administration in post-conflict Somaliland'<sup>2</sup>. Furthermore, UN-Habitat commissioned some unpublished consultancy reports aimed at improving land management in urban Somaliland<sup>3</sup>.

The land based conflict project aims at contributing to a better understanding of land-based conflicts in urban Somaliland. Based on the assumption that effective land management will reduce conflicts and improve the conditions for economic and social development, the researchers focus on the relations between land administration and land conflicts.

In this report, the team analyses the root causes of current urban land management problems and challenges (section 4) and reveals the strengths and weaknesses of the existing land administration systems and practices (section 5). Moreover, the dynamics and issues of urban land-based conflicts and conflict resolution practices will be investigated (section 6). It starts, however, with a short historical background of Burao and Hargeisa (section 2) and a brief description of the legal framework in respect to land management (section 3).

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<sup>2</sup> See Academy for Peace and Development 2006b; NRC/UN-Habitat/UNHCR 2008; Bruyas 2006; and Barry and Bruyas 2009

<sup>3</sup> e.g. McAuslan 2003

## **2. Historical Background**

### **2.1 Hargeisa**

#### **2.1.1 Colonialism and Independence (until 1969)**

Hargeisa, the capital of Somaliland, is located in the country's Northwest (latitude 9A \* 18 'N Longitude 44A \* 03'E), in an enclosed valley of the Galgodon (Ogo) highlands, an elevation of 1,334 metres (4,377 ft.) above sea level. The city has a mild climate with temperature ranging between 13 and 32 °C (55 and 89 °F).

In the beginning, Hargeisa was a watering place for livestock, consisting of hand-dug wells in the dry riverbed (*Marodi-jeeh*). The first settlement in the area was a Koran learning centre at Jama'a Weyn on the Southern bank of the dry valley. Later on, due to a conflict between two *Sa'ad Musa* sub clans, traders relocated their activities from Bullahar at the coast to the emerging settlement. From then on, the village served as a small market outpost where pastoralists traded their livestock products for grain and rice.

In 1941, the British colonial authorities shifted the central administration from the port of Berbera to Hargeisa; roads were built connecting Hargeisa with the coast and the hinterland and the urban infrastructure was established. Meanwhile, trade in the protectorate was expanding and the village grew into a bigger and more important market centre for imported commodities destined for Eastern Ethiopia and Somali livestock exported to Yemen and Saudi Arabia. Apart from commercial premises and some administrative buildings at the centre of the town, however, most residential houses at that time were still thatch-roofed huts or nomadic tents. But as more people moved to the expanding town, schools, medical services and water systems were established and new shops, restaurants, and other service oriented businesses sprung up. Hargeisa thus became the Protectorate's administrative capital and an important regional trading centre.

The main quarters of the town were in the *Sha'ab*<sup>4</sup> precinct to the North of the river, where the colonial officials dwelled and the administrative offices and most businesses were located. South of the riverbed were the airport and the main army and police garrisons.

From the very beginning, clan patterns of settlement were an important aspect of Hargeisa's social geography. *Garhagis* (*Habar Yonis and Eidagalle*) and Arab sub-clans predominantly inhabited the South of the valley, while the *Habar Awal* sub-clans and *Gabooye* minority communities lived predominantly to the North of the valley. In the following years, however, as Hargeisa grew and dwellers from all over the country moved to the town, the clan landscape became more diversified.

After independence and unification with the Italian ruled South, Hargeisa was reduced to the status of a provincial capital and Mogadishu became the country's new national capital where the government and the central administration were based. As many traders and business people also shifted their commercial activities to the South, the former centre of the British Protectorate declined.

#### **2.1.2 Military Dictatorship (1969-1991)**

Nevertheless, due to the rising livestock trade to Saudi Arabia, which was based almost exclusively in the North of the country, Hargeisa remained a bustling regional market town. Since the beginning of the 1960s, livestock had even replaced bananas as Somalia's most important export product and thus fuelled the Northern economy. In the 1970's, the economy of Hargeisa was given fresh impetus by money sent from

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<sup>4</sup> *Sha'ab* is the Somali term given to government or public land.

the growing diaspora communities in the Gulf States and the city continued to grow and expanded to all sides. Furthermore, as the capital of *Marodix-jeex* region<sup>5</sup>, which at that time also encompassed Awdal region as well as Sahil region, including the Port of Berbera, Hargeisa remained the most important city in the former Protectorate. This did not change in the 1980s, when Awdal was carved out from the region.

In the aftermath of the Ogaden war (1977-1978), the influx of refugees (mainly from the Ogaden clan) and foreign aid to support them turned Hargeisa into an even bigger commercial town. Consequently, the proportion of non-*Isaaq* dwellers lured by the economic opportunities increased and the city continued to expand. But the presence of so many foreigners and the economic marginalization of the host *Isaaq* community later fuelled opposition against the regime of Siad Barre. Military opposition started in 1981, when the Somali National Movement (SNM) was founded. The regime then turned against the civilian population for its perceived support of the opposition<sup>6</sup>.

Hargeisa was almost completely destroyed during the civil war. Most of its residents sought refuge in neighbouring Ethiopia, while the city was turned into an army garrison occupied by the regime's military forces. As Hargeisa remained a conflict zone, many refugees migrated to Western Europe and Northern America, where they enlarged the Somaliland diaspora communities.

## **2.2 Burao**

### **2.2.1 Colonialism and Independence (until 1969)**

Burao is the regional capital of Togdheer region, named after the river Togdheer that bisects the town<sup>7</sup>. The river is usually dry but is often flooded during the rainy season. The climate of Burao is warm and dry throughout the year. The average daytime temperatures in the summer months from June to August is around 35 °C (95 °F), while during the rest of the year the average is 27 °C (80 °F). The city's limited rainfall comes in September and May.

The origins of Burao are similar to those of Hargeisa. Due to the availability of water along the dry valley, Burao became a small inland market centre that connected the port of Berbera with the hinterland and provided trading facilities for the nomadic population in the region. After the murder of a colonial army commander in 1910, the British razed the place to the ground and destroyed its emerging village structures. However, Burao was quickly revived when the Colonial administration established a garrison headquarter in the area to fight the Derwish rebellion in the Eastern part of the Protectorate (1910 - 1920).

The village became a district capital and a number of public buildings were established in the following years. After Hargeisa was made the Protectorate's capital in 1941, the administrative importance of Burao declined and its urban infrastructure remained underdeveloped. Nevertheless, with the expansion of livestock trade in the 1950s, the city began to grow again. Serving as the most important regional market centre, where livestock from the Eastern and South-western hinterlands was assembled and traded for export to Saudi Arabia, Burao grew considerably and replaced Berbera as the second largest city of the British Protectorate.

This trend continued after independence. With the opening of a branch of the Somali Commercial Bank, livestock traders got access to credits and further expanded their activities. They invested their profits in

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<sup>5</sup> The region is also called *Woqooyi Galbeed*

<sup>6</sup> For a more detailed background see Bradbury 2008.

<sup>7</sup> In Somali 'tog' means riverbed and 'dheere' means long. 'Togdheer' thus means 'long riverbed'.

the real estate market, building residential stone houses and thus contributed to the development and expansion of the city. Moreover, as the regional capital of Togdheer region, the newly created North-eastern region that encompassed what is nowadays Togdheer, Sool and Sanaag, Burao again became an important administrative centre.

Due to its status as a regional capital, the clan composition of Burao was quite diverse. Nevertheless, the rival clans of the *Habar Yonis* and the *Habar Jecllo* always dominated its economy and politics. The *Ise Musa*, a sub-clan of the *Habar Awal*, was seen as third in the clan hierarchy of the city, followed by the *Harti* sub-clans (*Dulbahante* and *Warsangeli*). This clan diversity has a long history in *Burao* and as early as in 1910, elders from four different clans had funded a public building<sup>8</sup>. In general, the city is characterized by an East-West partition, with the *Habar Yonis* together with the *Ise Musa* settling in its Western part while the *Habar Jecllo* along with the *Gabooye* living in its Eastern part. The *Harti*, in particular the *Dulbahante*, settle on both sides of the city.

### **2.2.2 Dictatorship**

Under military dictatorship Burao was reorganized and restructured massively. Governor Bile Rafleh relocated most shanty villages within the town to its outskirts and later assigned the free space in the centre for public purposes, such as sports amenities or village orientation centres<sup>9</sup>. During the 1970s, many people from the region migrated to the Gulf States, where the oil boom had opened up new job opportunities. Their savings were often invested in real estates, thus stimulating a vibrant local land market. Thereby, a construction competition emerged between Burao's two dominant clans, the *Habar Yonis* and *Habar Jecllo*, with both clans seeking to expand their clan territories within the town and to control its commercial activities.

During that time, the military government granted the Eastern districts of Sool and Sanaag the status of a region. As a result, the *Dulbahante* and *Warsangeli* sub-clans of the *Darood* were detached from Burao, since they were preoccupied with the development of their own regional capitals (Las Anod and Erigavo). This, in turn, fuelled the competition between the *Habar Yonis* and the *Habar Jecllo*, which was only overshadowed by their common opposition against the military regime. The *Isaaq* sub-clans felt more and more marginalized, as outsiders from the *Darood* dominated the political establishment of Burao. For example, most governors in that time came from the South and belonged to *Darood* clans. Violent incidents against the *Isaaq* civilian population increased in the 1980s, resulting in the destruction of Burao in 1988. In parallel to developments in Hargeisa, its *Isaaq* citizen fled to refugee camps in Eastern Ethiopia, from where they supported the rebellion of the SNM. As the war continued, many of them migrated to foreign countries.

## **2.3 Developments since 1991**

### **2.3.1 Background: Peace- and State-building in Somaliland**

On a clan conference in Burao in May 1991, after the fall of the Barre regime, the former British Protectorate reinstated its independence and established the Republic of Somaliland. The SNM was mandated to run the two-year transitional administration under the leadership of its Chairman Abdirahman Ahmed Ali 'Tuur', a former high-ranking civil servant from the *Habar Yonis*. During this period, the SNM splintered and disintegrated into clan and political factions, leading to conflicts in Burao and Berbera. It took another clan conference in Boroma in 1993 to restore peace and provide the ground for the rebuilding of state institutions.

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<sup>8</sup> The Welfare House known locally as "kheyriyadda".

<sup>9</sup> These Soviet-Style Village Orientation Centres, created under military rule, were in fact used for propaganda purposes and to control the population.

Nevertheless, the *Habar Yonis* resented the election of Egal, a politician from the *Habar Awal* clan and the last Prime Minister before military rule, as President and thus they turned into opposition against the newly installed administration. In 1994, fighting started again in Hargeisa and quickly spread to Burao. Since the conclusion of the conflict in 1997, Somaliland has remained peaceful.

Moreover, with a constitutional referendum in 2001, followed by local elections in 2002, presidential elections in 2003 and parliamentary elections in 2005, the country launched an unprecedented democratisation process in the Horn of Africa<sup>10</sup>. However, peace, stability and democracy are currently in jeopardy. The presidential elections, originally scheduled for April 2008, have been delayed several times and tensions are rising again. Furthermore, also local elections, which were supposed to take place in December 2007, have yet to come<sup>11</sup>. As described in the next sections, the two inner-Somaliland conflicts in the 1990s have had different impacts and implications in Hargeisa and Burao concerning peace-, state building and reconstruction.

### 2.3.2 Hargeisa

Since the end of the civil war, Hargeisa has largely remained peaceful. Only in 1994, when the government took over the airport from an *Eidagalle* (part of the *Garhagis*) militia, had conflict flared up again. However, it did not escalate into a full-scale clan conflict, as some sub-clans of the *Garhagis* remained neutral or even supported the government. Consequently, clan relations in Hargeisa remained less strained than in Burao, where fighting between the *Habar Yonis* and the *Habar Jeclo* continued until 1997<sup>12</sup>.

Accordingly, state-building in Hargeisa started soon after the Boroma conference in 1993. The new government under President Egal achieved to disarm and reintegrate militias into the national armed forces, reopened the Port of Berbera and established functioning government structures at the national and local level. In 1994, it also introduced a new national currency. The local government has shown remarkable continuity and the Mayor only changed in 2002, after the countries first district elections.

Peace and stability have resulted in steady economic growth, based on livestock trade<sup>13</sup> and remittances from the large Somaliland diaspora. The city has largely been rebuilt and water, electricity and telecommunication infrastructures as well as social services such as education and medical care were (re-)established. However, due to the weakness of the state most of these development initiatives were organised and financed by private individuals, communities and the growing Somaliland business class<sup>14</sup>. Moreover, as the capital of Somaliland, Hargeisa became again a regional administrative and political centre. Today, the city is host of numerous international and national NGOs that have also contributed to its recovery.

The emerging economic opportunities have led to a considerable influx of people to Hargeisa. Urbanisation is increasing rapidly and approximately 34% of the Somaliland population is already living in towns, especially in Hargeisa. As there are no accurate statistics and no census has been carried out since the 1970s, the population number of Hargeisa is very unclear, with varying estimations from different organizations and agencies. Based on the number of permanent, temporary and illegal houses, the local administration estimates the population number at around 445,000. However, “the UN uses a planning figure of only 300,000, while the Ministry of Planning works with a figure of 375,000 and the Water Development Authority estimates the population at around 600,000-700,000”<sup>15</sup>.

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<sup>10</sup> See Bradbury 2008

<sup>11</sup> See ICG 2009

<sup>12</sup> Bryden and Farah 1996

<sup>13</sup> In 2000, the Saudi Arabia, the main export destination for Somaliland livestock, imposed a ban on Somali livestock. The ban was only lifted in November 2009. See IRIN, 10.11.2009.

<sup>14</sup> Nenova 2004: 1; for more information on the social and economic recovery see Bradbury 2008: 137ff.

<sup>15</sup> King 2003: 14

Many of the newcomers are returnees, rural migrants or people from other areas of Somalia and Ethiopia. While some of them have been displaced by the civil war in Southern Somalia, others came to seek employment and benefit from Hargeisa's economic boom. There is also a rising number of rural migrants who moved to the city to escape drought and poverty. According to a survey carried out by the local NGO Dareen, Hargeisa hosts about 60% of the returnee population, most of whom are spontaneous returnees arriving between 1991 and 1997<sup>16</sup>. Reportedly, there is also a growing number of Ethiopians passing through the city on their way to Puntland and Yemen.

The distribution of clans within the town is largely the same since its origin during colonial times. Thus, *Garhagais* and *Arab* sub-clans inhabit the South of the valley, while the North of the valley is predominantly dwelled by *Habar Awal* sub-clans and *Gabooye* minority communities. However, since relations between the clans in Hargeisa are generally very good and free of tensions, the clear-cut separation of their settlements has become porous. People from different clans intermingle more frequently and some areas, especially at the city centre, have developed into more or less multi-clan settlements. Additionally, many non-Isaaq from the *Dulbahante*, *Warsangeli*, *Gadarbursi* and *Hawiye* clans have come back to Hargeisa.

### **2.3.3 Burao**

Unlike Hargeisa, which benefited from almost continued peace and stability since 1991, the recent history of Burao is very conflict ridden, whereby local dynamics between the two rival clans, the *Habar Jeclo* and the *Habar Yonis*, were influenced by conflicts at the national level. Clashes first broke out in January 1992, when *Habar Yonis* militias affiliated to the government of Abdirahman Ahmed Ali "Tuur" sought to disarm rival *Habar Jeclo* militias supporting the opposition.

The second large-scale clan confrontation started in 1994. The *Habar Yonis*, who resented the dismissal of 'Tuur' and felt marginalized in the new configuration of powers after the Boroma conference, fought *Habar Jeclo* militias aligned to the new administration headed by President Egal. The conflict caused heavy destruction and the displacement of the civilian population on both sides. At the local level, a reconciliation process was initiated in 1996, while at the national level the Hargeisa conference in 1997 addressed some of the political grievances of the *Habar Yonis*. However, tensions between the competing clans in the city remain high. Accordingly, the city is strictly separated into clan territories, with the *Habar Jeclo* living in the East and the *Habar Yonis* in the West. The two clans merely intermingle.

The local administration in Burao was slowly re-established in the aftermath of the conflict. Since most state resources are spent in Hargeisa, the administrative, political and economic centre of Somaliland, the capacities of state institutions in the Eastern city remain limited and clan structures continue to be very persistent. Moreover, its performance is hampered by the contest between the two dominant clans. Thus, if the Mayor is from the *Habar Yonis*, the regional Governor of Toghdheer region has to be from the *Habar Jeclo*. Politics in the city has remained unstable and since the first local elections in 2002, Burao has had four different Mayors, all of them from the *Habar Yonis* clan.

Nevertheless, despite these problems the city has been rebuilt after the war and is again the most important administrative and commercial centre in the Eastern Region. When the conflict had ended in 1997 and the political situation in the town became more stable, people returned and started to invest in the rebuilding of their livelihoods. Key infrastructure, such as roads, electricity, water and sanitation systems were reconstructed and many social services, for example hospitals and schools, have been rehabilitated. For instance, Burao University is again one of the most important educational institutions in the country and

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<sup>16</sup> Dareen 2005



attracts young people from all over the region. Like everywhere else in Somaliland, in the absence of public funds, these initiatives were largely organized and financed by the private sector, wealthy individuals and communities. As for Hargeisa, the population number of Burao is unknown, but was estimated to be at around 80.000 or more. Also the economy of Burao has been revived, even though most businesses are based in the national capital. An impressive example is the soap factory outside the city, which produces different types of soaps for the Somaliland and the wider regional market. However, the town's economy was hit very hard by the Saudi ban on Somali livestock in 2000 and only the steady flow of remittances prevented its economic decline. Currently, remittances are the largest source of income for the population.

Because of (perceived) insecurity and clan tensions, international NGOs and UN agencies find it difficult to implement projects in the Eastern region. In 2000, the assassination of a German working for GTZ had set a blow on the hope of extending development activities to the Eastern regions. The successive events in 2003 and 2004, when an Italian was shot in Boroma in the west, two aid workers were killed in Sheikh, a small town between Burao and Berbera, and a Kenyan women was shot on the road between Hargeisa and Burao had further aggravated the security situation in the East. In 2006, surveyors working for a UN-Habitat Geographical Information Project were attacked and their equipment destroyed. The increased threat of terrorism after the bombings in Hargeisa in 2008 and the weakness of state institutions in the region have further contributed to the concerns of international organizations. Accordingly, while there are several NGOs working in the Eastern regions, only one international NGO is currently based in Burao. Most organisations have their headquarters in Hargeisa, where it is deemed more secure and where they have direct access to important ministries. Moreover, Hargeisa is not as remote as Burao and has an airport. The absence of the international community is a common complain among the residents of Burao and has fostered their ethos of self-reliance.

### **3. Urban Land Management in Somaliland: Laws and Institutions**

#### **3.1 Background: Urban Land Management in Somaliland**

As explained elsewhere, the legal system in Somaliland is characterized by the parallel existence of three, sometimes overlapping, laws and legal institutions: the official courts based on state law, *shari'a* courts applying religious law and traditional councils of elders ruling according to customary law. This legal pluralism, however, concerns mainly the field of conflict resolution. For pro-active land management in the urban context, state institutions and laws, combined to a certain degree with religious *shari'a* principles, provide the most common legal framework.

Traditional law, called *xeer* in Somali, "is remarkably well adapted for administering, managing and regulating common property"<sup>17</sup>, but it is weak and underdeveloped with regard to private land property. Thus, while *xeer* has always been the dominant law for land management in rural Somaliland, especially in the pastoral context, urban areas have mainly been administered by state institutions using official state law.

The British colonial authorities introduced modern urban land administration in Hargeisa and Burao, as they started to issue entitlements for residence, commercial and farming properties in the emerging towns. With the first constitution of the Somali Republic, issued in June 1960, all land became nationalized to be managed by the administration. Under the democratic government, which in general had a liberal economic agenda, land transactions in urban areas increased, and in Hargeisa and Burao a small real estate market developed. This trend continued during military rule. Urban land could be leased for an unlimited period,

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<sup>17</sup> PDRC 2003: 9, see also NRC et al.: 160

but the state held several legal options to revoke these agreements. Due to corruption and nepotism, those with close ties to the ruling elite were often able to get access to valuable plots in the countries main urban centres. The decline of proper land management, especially after the lost Ogaden War in 1978, indicated the erosion of state authority and the privatisation and disintegration of its institutions, until it finally collapsed in 1991.

Since the Somaliland state still remains weak, clan affiliation is important to secure access to land and to guarantee tenure security, at least unofficially<sup>18</sup>. Customary clan rights therefore have to be considered in the planning and management of Somaliland's town and cities<sup>19</sup>. Furthermore, traditional elders have also become important in conflict management in the urban context. Nevertheless, in the absence of customary laws and regulations regarding land in the urban context, elders take official land laws and ownership certificates into account in order to find solutions for land conflicts<sup>20</sup>. State institutions and laws are thus crucial for the management of land in urban contexts.

Shari'a law has gained importance since the fall of the Barre regime and is thus to some degree integrated into the official state law. The Somaliland constitution says, "The laws of the nation shall be grounded on and shall not be contrary to Islamic shari'a"<sup>21</sup>. Regarding land, the shari'a specifies the following tenureships<sup>22</sup>:

- *Mulk*: full ownership
- *Miri*: state land.
- *Waqf*: similar to a trust, used to create charitable endowments in perpetuity (e.g. hospitals/schools)
- *Mewat*: "dead land", which may be claimed by another for development

These principles, especially *Mulk*, *Mirit* and *Mewat*, are reflected in the Somaliland Urban Land Management Law. It has also been suggested that in the rural context the concept of *Mulk* has recently been used to claim land<sup>23</sup>. Furthermore, independent *shari'a* courts are increasingly gaining importance in the settlement of land disputes.

### 3.2 The Official Legal System and Institutional Set-up

According to Land Management Law No. 17, passed in 2001 and slightly amended in 2008, all land belongs to the state. Land management in Somaliland is divided between the national and the local administrative level. The National Urban Planning Institute (NUPI) under the Ministry of Public Works is assigned to draft urban land use plans. Subsequently, these plans have to be approved by the national government, represented by the National Urban Planning Board (NUPB)<sup>24</sup> and activated by Presidential decree. The municipalities, in collaboration with the Ministry of Public Works, are authorised to allocate, issue and register land and landownership certificates according to the master plan<sup>25</sup>. Concerning land conflict management, Law No. 17 stipulates that a technical committee is to be established that includes national as well as local institutions<sup>26</sup>.

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<sup>18</sup> See part III, section 2.

<sup>19</sup> Barry and Bruyas 2009: 45

<sup>20</sup> See section 6.1.2

<sup>21</sup> Somaliland Constitution, Article 4

<sup>22</sup> See Sait and Lim 2006.

<sup>23</sup> NRC et al. 2008: 157

<sup>24</sup> The NUPB consists of the Ministers of Health, Agriculture, Water and Mines, Interior Affairs, Environment and Rural Development, Communication and Postal Service, and is chaired by the Minister of Public Works

<sup>25</sup> National Urban Land Planning/ Proclamation ( Law No. 17, 2001): Articles 1 - 4

<sup>26</sup> Ministry of Public Works and Housing, Municipality, Local Council, Ministry of Interior, Ministry of Agriculture, Ministry of Religion and Endowments, Ministry of Environ and Pastoral Development. (Ibid.: Article 28)

### 3.2.1 The National Urban Planning Institute and the Town Master Plan

Law No. 17 stipulates that an urban land use plan is to be drawn by the National Urban Planning Institute (NUPI), an independent institution headed by the Ministry of Public Works and divided into different administrative levels (national, zonal, district). Thereby, it has to demarcate residential, industrial, commercial and public zones. Public zones are meant for administrative buildings, education-, health-, electricity- and water facilities as well as roads (etc.). 30 Percent of residential zones are to be allocated for such public purposes. Furthermore, the law states that the plan has to ensure that “urban land for city expansion shall not exceed 5 km catchments radius from the city corporate build up area”<sup>27</sup>.

Nevertheless, legally recognized farms, rain fed as well as irrigated ones, may be “converted into urban plots due to city expansion while land tenure remains constant”, whereas, “mountains, sloppy hill sides and streams within the expansion areas of a city are not to be considered as a farm”. According to amendments in 2008, the Master Plan can be amended upon the request of a Mayor<sup>28</sup>.

### 3.2.2 The Role of the Local Administration

The local government is authorised to allocate, issue and register land and landownership certificates based on the land use plan (town master plan) drawn by the NUPI and approved by the NUPB<sup>29</sup>. Thereby, however, they have to collaborate with the Ministry of Public Works, which issues construction permits and heads the NUPI and the NUPB. The duties and regulations of the municipalities are stipulated as follows:

According to Law No. 17, “Registration of land is to be based on the availability of the plot tenure certificate or judgment from the court that witnesses its ownership. It must be listed in both the local governments and Ministry of Public Works registrations”<sup>30</sup>. Generally, there exist two types of land plots: ‘temporary’ structures (e.g. with huts and traditional materials) and permanent structures (with stone-, cement- buildings etc.), both of which must be approved by the municipality authorities. In accordance with the Master Plan, it is also in charge of approving the conversion of ‘temporary’ plots into ‘permanent’ plots<sup>31</sup>.

Moreover, it is authorised to allocate land to individuals, national- or international organisations, and to “specific projects that will enhance the national welfare”<sup>32</sup>. However, a person who already owns a plot in the town is not eligible to be allocated another plot by the local government<sup>33</sup>. Land allocations have to be published and opposing claims have to be brought in within 60 days. The Ministry of Public Works and the NUPI have to record the number of allocated plots. Legally recognized landowners may sell or otherwise transfer their plot<sup>34</sup>.

Ownership titles must be requested and taxes have to be paid before construction permission is to be granted from the Ministry of Public Works. The construction has to fit in into the overall land use plan and needs to take place within one year after receiving the ownership title (for permanent structures). If, after two years, a person has failed to pay tax and develop the plot, the ownership title is to be revoked. For temporary structures, the period is three months<sup>35</sup>.

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<sup>27</sup> National Urban Land Planning/ Proclamation (Law No. 17, 2001), Article 5.

<sup>28</sup> Ibid, Article 7, see also the amendments to the law (2008)

<sup>29</sup> Ibid, Article 1 and 2

<sup>30</sup> Ibid., Article 27

<sup>31</sup> Ibid., Article 10, 11, 12

<sup>32</sup> Ibid., Article 16

<sup>33</sup> Ibid., Article 15

<sup>34</sup> Ibid., Article 26

<sup>35</sup> Ibid., Articles 12, 13, and 14

Generally, “all permanent and temporary structures that are developed without passing the legal process commissioned herein this law are to be recognized as illegal structures”<sup>36</sup>, giving the municipality authorities the legal power to demolish them without granting compensation. However, in case entire neighbourhoods have to be relocated, the authorities will cover the costs for this undertaking. Moreover, the Mayor in consultation with the ULPB has the authority to confiscate any legally recognized private plots for public use. Thereby, however, the owner has to be fully compensated and given an alternative plot of a similar size<sup>37</sup>.

Regarding conflict management, Law No 17 says that a technical committee, consisting of representatives of local and national institutions who are nominated by their respective institutions for a term of one year, is to be established. The decisions of the committee are to be used by the court as a witness. Complaints against its verdicts can be brought in within 15 days, otherwise the decision is to be implemented by the law enforcing authorities<sup>38</sup>.

### **3.2.3 The Role of the Local Council in Land and Conflict Management**

As seen above, the local administration is the most important institution when it comes to land management in urban areas. It is therefore necessary to briefly describe how, according to the law, it is regulated and controlled, and to analyse the responsibilities and duties of the Local Council.

Under the Regions and District Law (Law No. 23/2002)<sup>39</sup>, Somaliland has a decentralised structure of governance. The Local Council, which is the governing body at the local level, is instructed to implement national and regional policies and to plan and regulate a wide range of public affairs<sup>40</sup>. It has a Land Subcommittee, which is “responsible for the use of land for all purposes”<sup>41</sup> and has “to propose the appropriation of privately vacant land for public purposes”<sup>42</sup>. Furthermore, it also has a Peace and Conciliation Subcommittee, which is “responsible for the resolution of disputes arising within the District and for the maintenance of the public order”<sup>43</sup>.

The Local Council is subordinate to the Executive Committee, which consists of the Mayor, who heads the Local Council, the Deputy Mayor and the Executive Secretary, who controls the budget and is appointed directly by the central government<sup>44</sup>. However, the Council has the authority to oversee the local administration and the Mayor in order to guarantee that they carry out their activities and duties according to the law<sup>45</sup>. It also makes resolutions that need to be implemented by the Mayor, who is also elected by the Local Council. All by-laws and resolutions need to be approved by the Ministry of Internal Affairs.

## **3.3 Administrative Structures in Hargeisa and Burao**

Hargeisa municipality has five districts, each of which is sub divided into several sections/ wards. Land issues, for example the registration of ownership titles, are referred to the District authorities, but records are kept at the central office in the municipality.

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<sup>36</sup> Ibid., Article 20

<sup>37</sup> Ibid., Articles 21, 22 and 23

<sup>38</sup> Ibid., Article 28

<sup>39</sup> The Law was amended and extended in 2007. It now runs to more than 100 Articles, but many of them remain unchanged. In this section, the researchers refer to the 2002 English language translation of the 2002 Law, as there is no translation of the Amendments available yet.

<sup>40</sup> See *ibid.*, Article 20, 1-24

<sup>41</sup> *Ibid.*, Article 32

<sup>42</sup> *Ibid.*, Article 24

<sup>43</sup> *Ibid.*, Article 32

<sup>44</sup> *Ibid.*, Articles 17, 19, 22, 23 and 32

<sup>45</sup> *Ibid.*, Article 24

**Figure 1: Urban divisions in Hargeisa**

District	Geographical location	Sections/Wards
Ga'an Libah	Northeast	Sheikh Yussuf, Sheikh Madar, Mohamed Harbi, Sheikh Nour, Warabe Salan
26 June	North-Central	Durya, Almis, Aingal, Gol-jano
Ibrahim Kodbour	Northwest	Hero-Awr, Lihle, Gul-allah, Jigjiga Yar
Mohamoud Haibeh	Southeast	Jame'oweyn, Burao-Duray, Sheikh Shukri, Qudha-dheer, Mohamed Moge
Ahmed Dhege	Southwest	Mohamed Ali, Farah Nour, 18 May, Sheikh Muse Du'aleh, Abdi Idan (Ayaha)

Hargeisa municipality has a Land Department that regulates and allocates land and issues building permits. An independent section is in charge of land transfers and building permit registration. A third section, the Department for Physical Assets and Land Tenure, issues title deeds for buildings. In Burao, the administrative institutions regarding land are similar (see Figure 2). The role of the Local Council regarding land issues is different between the two cities. While in Hargeisa, the Local Council is only responsible for mediating in land conflicts, in Burao it is also involved in land planning and landownership verification processes. It thus seems to be more influential than its counterpart in the national capital. However, attempts are underway to reduce the powers of the Burao Council, indicating the unclear role of the Local Council in land management affairs and its relation to the Mayor and the local administration<sup>46</sup>. The Local Council has 25 members in Hargeisa and 21 in Burao, including the Mayor<sup>47</sup>, and is elected for a five-year term. Because of the electoral crisis over the presidential elections, however, the local elections originally scheduled for 2005 have been delayed several times and are yet to take place.

**Figure 2: Administrative structure of Burao municipality**



<sup>46</sup> See section 5.4

<sup>47</sup> Regions and District Law, Article 25

## **4. Root Causes and Problems**

### **4.1 Disorganized Resettlement**

After the end of the civil war at the beginning of the 1990s, returnees and migrants simply settled wherever they found space, including public land, vacated plots or in destroyed buildings. Thus, in the absence of town planning and effective land administration, new settlements have emerged spontaneously, often lacking adequate urban infrastructure and social services. Additionally, there is no distinction between commercial and residential zones, which in some cases puts considerable risks on the population. For instance fuel stations, which were previously restricted and had to fulfil certain security requirements, are nowadays established all over the towns without any regulations and safety prescriptions. In addition, roads are often too small or in a very bad shape and in some districts there are no roads at all. Households are not linked to electricity, sanitation and water systems, and some districts do not have enough schools.

These problems are affecting poorer as well as wealthier households, since they are generally living in the same neighbourhoods. However, while wealthier households can at least afford to purchase essential services on the free market (e.g. electricity, water), low-income households often lack resources to do so. The urban poor, especially returnees and other recent migrants, thus suffer most from the absence of urban planning and the worsening condition of public urban infrastructure in Hargeisa and Burao.

A Socio-Economic Survey of Somalia provides some insights into the living conditions of many people in urban areas in Somalia and Somaliland<sup>48</sup>. According to its findings, unemployment is around 60%, while 60.7% live on less than \$US 2 a day and 43.2% living in extreme poverty. Many of them live in makeshift houses and huts, which are not suitable for urban conditions. Sanitation infrastructure is very poor and grey water is often disposed of on the streets and in the environment. Companies and individuals collect waste, but there exist no final disposal site. Furthermore, many households lack access to water systems and thus rely on water from shallow wells delivered by street vendors. But this water is often unclean, leading to frequent outbreaks of cholera. Electricity as well as telecommunication and other services are provided by private enterprises and are thus often too expensive for the urban poor<sup>49</sup>.

Obviously, although Hargeisa and Burao have largely been rebuilt since the end of the war, many people still live in poverty. Urban planning, including the provision of social services and infrastructure for the urban poor, is therefore serious challenges for the municipality authorities.

### **4.2 Land Grabbing**

After the Barre Regime was ousted and the SNM had established its authority, people moved back to Hargeisa and Burao rebuilding their homes and beginning a new life. Thereby, they made use of the absence of a strong state and an effective government and grabbed away large patches of private and public land.

#### **4.2.1 Private Land**

In Hargeisa, land grabbers primarily targeted the land of former officials of the Barre regime, often claiming that it had previously been obtained by illegal means. Land grabbing also had a clan dimension. The land of many non-*Isaaq*, who had fled the country for their own security, was grabbed away by the returning *Isaaq* population, often on the false pretext that they were associated with the military regime. *Ahmed Dhegah* district in Hargeisa is a case in point. A large number of *Gadabursi* previously lived in this area, but most of their properties were taken over by individuals from the Arab sub-clan of the *Isaaq*, which is the dominant clan in the area.

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<sup>48</sup> UNDP and The World Bank 2003

<sup>49</sup> Atkinson and Couté 2003: 5-11

In Mogadishu, conflicts related to land grabbing during the civil war are named as a major obstacle to peace<sup>50</sup>. In Somaliland, however, most of these conflicts seem to have already been resolved and those who had their land grabbed away were paid small compensations. Despite the fact that payments were considerably lower than the market value of the plots, it helped to diffuse tensions between the clans. Nevertheless, some of these conflicts are still lingering on and have not been resolved yet, especially in Erigavo.

Erigavo is inhabited by *Isaaq* clans (*Habar Yonis* and *Habar Jeclo*) and *Harti* clans (*Dulbahante* and *Warsangeli*). In the aftermath of the war the *Isaaq* took over land and houses belonging to the *Harti*, since they were seen as supporters of the former military regime. During peace conferences between the clans in the early 1990s, elders agreed that all property stolen during the war, including land, has to be returned to its original owners. However, many *Isaaq* claimed that they were indeed the original owners but had their land confiscated by the military regime. As it proved impossible to settle these disputes, the clans decided to postpone the resolution process for the time being and to wait until a strong administration has been re-established. Such conflicts are called “*Taagan*”, meaning “the case is still open and will be solved later on”. *Taagan* is one of the main root cause for land-based conflicts in Erigavo. In Burao, however, where less non-*Isaaq* and regime officials lived, land grabbing was more confined to public land.

#### **4.2.2 Public Land**

Shortly after the civil war, returnees used the power vacuum that the disintegration of the Somali state had left to take over every available piece of land. Spearheaded by armed militias, they forced their way to occupy public land and buildings, such as government offices, schools and parks. Later on, a growing number of urban migrants joined them. Even today, almost two decades after the end of the civil war, large patches of public land are still under their control. A case in point is the State House area in Hargeisa, which has become a preferred settlement for the urban poor.

Wealthier land grabbers constructed houses on government plots in order to strengthen their ownership claims. Because clan pressure obliges the authorities to pay compensation not only for the land, but also for the houses built on it, illegally constructed houses thus serve as a de facto insurance against eviction. Re-claiming public land, especially those areas occupied by returnees, is one of the top priorities of the municipalities in Hargeisa and Burao.

### **4.3 Unclear Landownership and the Booming Real Estate Market**

Nowadays, land grabbing is related to the thriving real estate market and the rising value of land. The economic boom that has taken place since 1991, based on the inflow of money and resources from the Diaspora, the growth of regional trade and the influx of people from all over the region, has made Hargeisa a commercial hub in the Horn of Africa. Investments in land property have increased considerably over the last years, leading to a steady expansion of the city and its real estate market<sup>51</sup>.

The Somaliland diaspora community and their remittances are the driving force behind this development. Overall, they transfer between \$700 million–1 billion annually to their country of origin<sup>52</sup>. It is estimated that Hargeisa alone receives around \$5 Million per month in remittances, of which one third is used to fund investment in the construction business<sup>53</sup>. In Burao, interviewees even suggested that up to 90 percent

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<sup>50</sup> De Waal 2007

<sup>51</sup> Barry and Bruyas 2009: 44

<sup>52</sup> Nenova 2004: 5

<sup>53</sup> King 2003: 26. For further information on the economic and social impact of the diaspora in Somaliland see Bradbury 2008: 174-179, Lindley 2007 and Maimbo 2006.

of land transactions are financed with remittances. As a result, the value of land is increasing. According to Bradbury<sup>54</sup>, between 1992 and 2003 a plot of land of 18 by 24 metres in *Sha'ab* area near the Mansur Hotel had risen from US\$300 to \$9,000. In other areas, values were going up by at least 10 times over the same period. In summertime rents usually increase considerably due to the visits of Somalilanders from the diaspora. Consequently, public greed for land is increasing.

Today, even small patches of land between plots as well as open spaces beside roads are grabbed away for personal use. Sometimes this land is then sold to another person, creating conflicts between the new and the original owner of that plot. The problem is further aggravated by unclear landownership circumstances. As many legal documents were lost during the war, it is often very "difficult to identify the rightful owner of a property of land"<sup>55</sup>. Consequently, "In the absence of reliable legal documents, title deeds for land are often forged to strengthen illegal ownership claims"<sup>56</sup>. "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"<sup>57</sup>.

Property brokers add to the confusing situation, since they often agree to sell a plot without having checked if its ownership is disputed. Thus, it even happened that public land was sold on this way. As there are no laws regulating the land market and the business of property brokers, these problems are likely to continue<sup>58</sup>.

Land grabbing and unclear landownership are a source of many conflicts in Hargeisa and Burao and are therefore often perceived to be the most serious problems facing urban land management in Somaliland.

#### **Urban Land Management Challenges in Somaliland**

- Improving land planning
- Providing social services and urban infrastructure, especially to the poor
- Resettling returnees and reclaiming public land
- Clarifying landownership and preventing land grabbing
- Regulating the real estate market

### **5. Land Management: Strengths, Weaknesses and Challenges**

Urban land management in Somaliland is still evolving. In Hargeisa, land administration was re-established after the Borama conference in 1993, while in Burao local land management structures have only been functioning since 1997/98, when the conflict between the *Habar Yonis* and the *Habar Jecllo* had been settled. Since then the municipality authorities have improved land administration, tackled the problems of land grabbing, implemented a more effective system of landownership registration and a Cadastral Survey and sought to better plan the development and expansion of the two cities. This section describes and analyses current land management systems, practises and efforts in relation to the problems named before. It also points out the weaknesses and problems that have so far hampered the administration of urban land.

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<sup>54</sup> Bradbury 2008: 161

<sup>56</sup> Academy for Peace Development/Institute for Development and Peace 2008: 16

<sup>57</sup> Ibid.: 17

<sup>58</sup> Ibid.: 17

<sup>59</sup> Academy for Peace and Development et al 2009: 49-50



## 5.1 Legal Gaps and Shortcomings

With the Land Law No. 17, the Somaliland authorities have obviously taken a first step to regulate urban land management, especially considering that it is the first land law since the disintegration of the Barre regime in 1991. The law has created a legal framework for local and national institutions that, though imperfect, regulates its practices and defines its duties with regard to the most urgent problems in urban Somaliland: town planning, land grabbing, returnees and the problem of resettlement, the legalization and registration of landownership and the resolution of land-based conflict. Law No. 17, thus includes stipulations that were created in order to prevent land grabbing and avoid land speculation. For instance, town expansion and the allocation of urban land are limited to a “5 km catchments radius from the city corporate build up area”<sup>59</sup>, as to prevent land grabbing at the fringes of towns. Nevertheless, despite being a first step into the right direction, Law No. 17 still has many gaps and shortcomings.

First, the process of drafting the land management plan is highly centralized in the national government and offers no options for other actors to participate. Especially the local governments, which are the institutions that are most involved in land management affairs, are neither represented in the NUPB, nor in the NUPI. In fact, the NUPI is to be organized at different administrative levels, but no stipulations are made about the integration of the local government into its bodies. Instead, the law suggests that incorporation is not even envisioned, since the NUPI is supposed to “oversee the local government”<sup>60</sup>. The law also lacks provisions on what to do if there is no Master Plan, as it is still the case in Somaliland.

Second, many of the institutions and sub-institutions, including their respective powers and regulations, which are needed for effective urban land administration, are not mentioned in the law at all. Instead, they are only very generally referred to as “local authorities” or the “Ministry of Public Works”. This leads to overlapping institutional responsibility and authorities. Furthermore, these institutions may have different interests, which could further complicate land management.

Third, the process of land registration remains unclear. There are vague regulations concerning the administrative procedures, but no statements on what information an ownership certificate contains or “what document should be brought or which form should be filled in”<sup>61</sup> to obtain it.

Fourth, the function of the Land Conflict Management Committee and its relations to the judicial structure are not obvious. For instance, it is not clear when the committee is to be called upon and how its decisions are to be considered by the courts. It is said that the committee is only a witness in the court, but its decisions are nevertheless binding.

Obviously, Law No. 17 is more like a legal outline that remains unclear at many points. While this provides the institutions involved with a certain degree of flexibility to adopt their practices to specific local settings, it also sets the ground for arbitrariness, corruption and institutional competition.

## 5.2 Institutional Competition and Poor Planning

Institutional competition over land ownership between various state authorities complicates land management and planning in Somaliland towns and cities. As explained in section 5.1, the law is rather unclear about the relations between state agencies, thus resulting in overlapping responsibilities and authorities. Moreover, control over land is an important source of income for state institutions and corrupt officials, as plots can be

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<sup>59</sup> Urban Land Proclamation (Law No. 17): Article 5

<sup>60</sup> National Urban Land Planning/ Proclamation (Law No. 17, 2001), Article 2

<sup>61</sup> Bruyas 2006: 31

sold and rented out. Hence, instead of cooperating and developing joint land management strategies, state institutions often rival among each other and with the public over control of- and access to land.

For example, the local government and the Ministry of Agriculture claim control of land at the fringes of towns and it happens that both institutions issue ownership titles for the same parcel of land to different individuals. Additionally, control over public land in the *Sha'ab* area in Hargeisa, is contested between the local authorities and the Ministry of Public Works, which owns many properties in that area.

The city master plan, which is to be drawn by the NUPB, is thought to regulate, structure and organize land use in order to facilitate the provision of urban and social services. Nevertheless, due to the institutional competition mentioned above, there currently exists no Land Master Plan, neither for Hargeisa nor for Burao. Consequently, since Law No. 17 does not clarify how to plan and regulate urban land in the absence of that plan, the expansion and development of the two cities continues to be rather disorganized and spontaneous. Long term strategic planning seems to be missing.

Under such conditions, it is up to the municipalities to demarcate land for specific purposes. But as there are no regulations regarding the process and the institutions involved, land demarcation is currently merely transparent. In Hargeisa, it seems that the municipality Executive Committee primarily manages most public land without the participations of the district Councillors. In Burao, however, the Local Council seems to be more involved in land planning.

Nevertheless, according to Local Councillors interviewed in Hargeisa and Burao, the biggest challenge to effective land planning is the fact that state institutions lack the capacities to implement and enforce existing laws and regulations and prevent land grabbing. As a result, the state does not have any land to plan with and can neither resettle returnees, nor establish new roads or sanitation facilities. The only source of land currently available to the municipality is the 30 percent it demands from newly allocated or registered properties, which are mostly located at the outskirts of the cities. In Burao and Hargeisa, the local governments were able to use some of this land as a resettlement site for returnees, but this is still insufficient to solve the problem of scarce public land in the town.

## **5.3 Clarifying Landownership**

### **5.3.1 Improved Land Ownership Registration**

In both Burao and Hargeisa, local authorities were able to reinstall regulations for the issuing and registration of ownership titles for land and buildings. These regulations are probably “adaptations of procedures introduced under the former British administration and continued while Somaliland was part of Somalia”<sup>62</sup>. Officials at the municipality confirmed that most current land management procedures and systems had already been in place during the rule of Siad Barre and were simply re-enacted after the civil war. While it was previously very easy to obtain title deeds, resulting in rampant land grabbing and land conflicts, the current system is much more complicated and involves a lot of cross checking by different departments and officials. According to interviewees, this has certainly reduced land grabbing by individuals and groups. Consequently, as demonstrated in figure 4, the number of new title deeds issued by the municipality has been reduced considerably since 2001.

The legalization and registration of landownership is a complicated process that involves different departments at the municipality and the Ministry of Public Works and Transportation. “A series of inspections to examine,

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<sup>62</sup> Barry and Bruyas 2009: 45

*inter alia*, whether claims to the parcel are uncontested and/or if disputes have been resolved; whether the boundaries are uncontested or boundary disputes have been resolved; whether boundary dimensions conform to plan dimensions; whether taxes have been paid, and the property does not fall in a planned development, such as a roadway or school<sup>63</sup>. Thereby, pre-existing ownership titles have to be confirmed by municipality officials and neighbours to prevent the forging of documents. Figure 5 documents this process in Burao. In Hargeisa, the system is similar, except that the Local Council is not involved in the verification process and does not sign the title deed. Instead, the document is only signed by the Mayor and the Executive Secretary.

As soon as the verification examinations are concluded successfully, a simple legalization certificate is issued, including the compulsory construction permit from the Ministry of Public Works. The information is registered in a computerized data set at the municipality, which also keeps a copy of the preliminary ownership certificate<sup>64</sup>. When the building has been erected, an ownership document can be registered against the building, not the land. To obtain this document, which contains far more information than the basic certificate issued before, is not compulsory and in Hargeisa in 2006, only 3000 of such documents had been issued, out of approximately 59.000 buildings. However, with the registration of the more rudimentary ownership certificate the administration has re-established a cadastral system that serves as a basic information system for the management and regulation of landownership.

Obviously, local authorities in Hargeisa and Burao have shown willingness and great efforts to improve land management, especially by seeking to clarify landownership and re-establishing a system of land registration. Nevertheless, there are still a lot of remaining problems and challenges that hamper effective land administration in urban areas. Not all of these problems seem to be solvable in the near future.

**Figure 3: Number of new title deeds issued for buildings in Hargeisa**

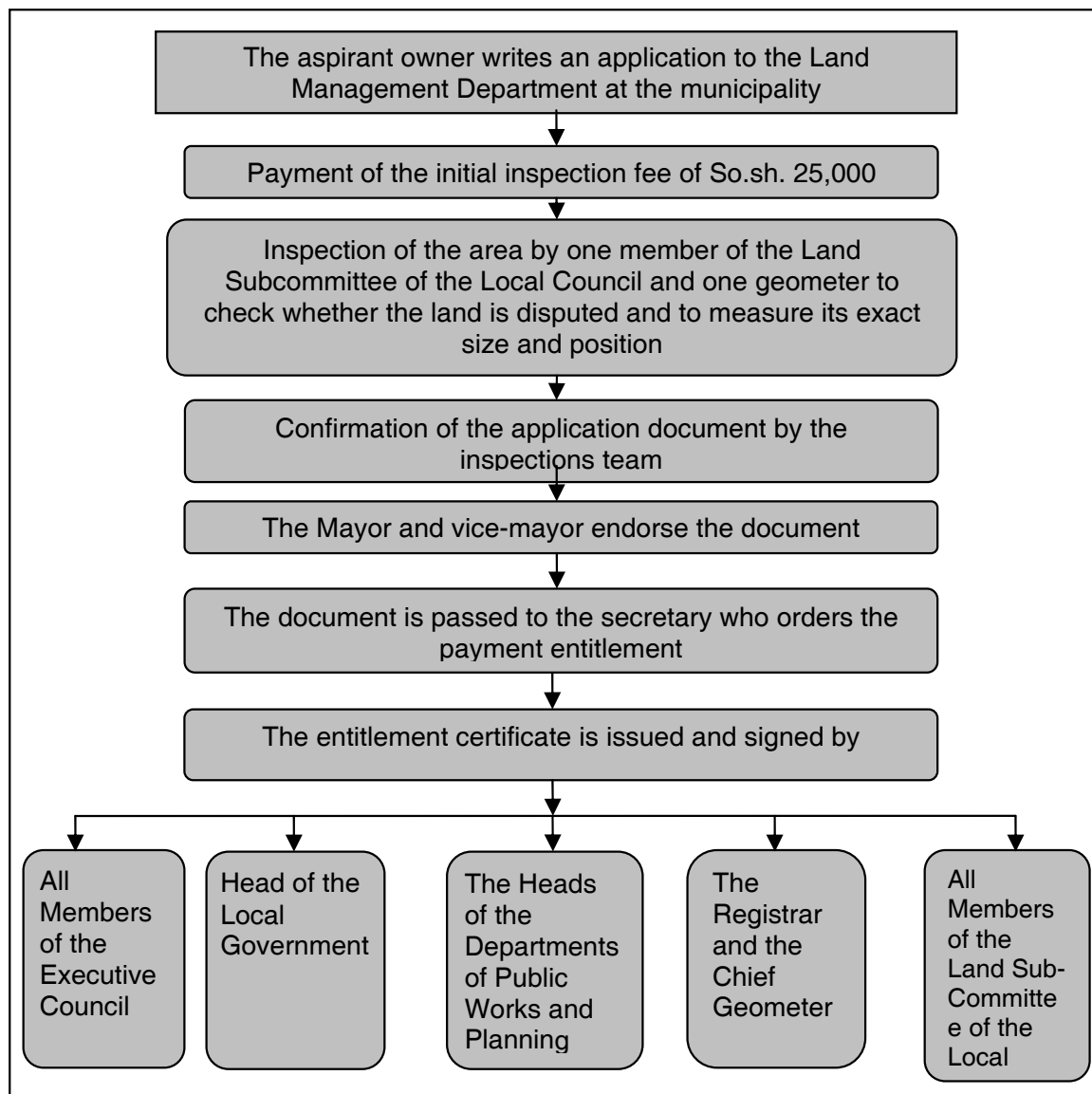
District	1999	2000	2001	2002
26 June	124	94	131	48
Ga'an Libah	91	188	43	18
Ibrahim Kodbour	102	188	64	18
Mohamoud Haibeh	43	51	16	17
Ahmed Dhege	31	48	11	11
Total	391	562	265	132

(Source: Hargeisa municipality Statistical Abstract 2003: 24)

<sup>63</sup> Ibid.: 46, see also Bruyas 2006: 39ff.

<sup>64</sup> See also Bruyas 2006: 41

Figure 4: The landownership verification process in Burao



### 5.3.2 Remaining Problems: the Contested Nature of Landownership

Any system of land registration and land management is hampered by the fact that land, and in particular land tenure, are still very sensitive and contested issues in urban Somaliland. As many plots in Hargeisa and Burao are still disputed, a compulsory registration and therewith a final clarification of landownership could trigger new conflicts. This is especially the case in Burao, where peace between the *Habar Jeclo* and *Habar Yonis* is still fragile. Early in the 1990s, the Mayor of Hargeisa had reportedly announced that all landowners need to register their property, but very few actually seemed to have followed his order. Also the urban land management law stipulates that only new buildings or properties have to be registered properly, while old buildings, constructed before the war, are not to be registered again. It is also not compulsory to register land transactions such as sale or the inheritance of property. Accordingly, many buildings and plots have not been registered yet.

In 2004 Hargeisa municipality, supported by UN-Habitat as part of the UNDP governance and financial services programme, set up a GIS (Geographic Information System) aimed at increasing the tax revenues of the local government. Thereby, building footprints taken from satellite images were digitalized and its dimensions subsequently checked on the ground. The system could therefore also improve land registration and provide tenure security, but due to the difficult situation regarding landownership, it is currently only used for taxation. Consequently, not the owner or the holder of the title is taxed but the inhabitants of a building.

In Burao, GIS had to be cancelled, since it increased tensions and led to an attack on one of the surveyors<sup>65</sup>. Starting in 2005, about 30% of the buildings had already been recorded when rumours spread that the data would be transferred to foreign secret service agencies. An Islamic group then prevented the surveying of one of their houses and thereby destroyed the equipment of the GIS team. Obviously, the problems with the implementation of GIS in Burao are not caused by prevailing clan tensions, but are related to the suspicion against foreigners, in particular Western NGOs and agencies. This suggests that also future attempts to improve the registration of land and clarify land ownership will remain very complicated.

### 5.4 The Controversial Role of the Local Councils

Generally, the Local Councils can play an important role in land- and conflict management. Since the Councillors are elected democratically, they appear to be accountable to the population and its work is generally respected. In Hargeisa and Burao, interviewees and participants in Focus Group Discussions generally emphasized that although Local Councillors often lack technical expertise in land management affairs, they tend to benefit from their involvement in local affairs and are thus often able to solve problems related to landownership. Additionally, it was noted that the current Councillors are gaining experience in land issues, since they have been in office since 2002.

In Burao, the Land Subcommittee has been active in efforts to safeguard public land from land grabbing and has succeeded to dismantle some illegal structures. It is also drawn into consultations with the Executive Committee of the municipality when it comes to land planning at the fringes of the town and the resettlement of returnees. Thereby, the Councillors act as links between the administration and the people, participating in the negotiations between them and ensuring that decisions are acceptable to all stakeholders. Furthermore, the committee often carries out the verification of landownership in the registration and legalization process.

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<sup>65</sup> Barry and Bruyas 2009: 48

This, however, has led to the current dispute with the Land Department of the municipality and the Mayor, who complain that the Councillors have taken over their executive responsibilities and that their involvement complicates the verification and registration process. Following Article 43 of the amended Regions and District Law, which stipulates that the Local Council is not allowed to sign any document related to the verification of landownership entitlements, the Mayor banned these practices.

**Article 43 of the Regions and District Law (Law No 23/2002, as amended in 2007)**

It is stipulated under Article 43 of the above-mentioned law that the Local Council is not allowed to carry out the following activities:

1. To resume fully the responsibilities and duties of the municipal departments.
2. To sign any documents relating to:
  - a) Land allocation.
  - b) Landownership entitlements.
  - c) Verification of landownership inspection.
  - d) Revenue collection and disbursements.
3. To give orders directed to local government departments, operation sites and employees.
4. To promulgate by-laws.
5. To authorise tax exemption.

(See: *Xeerka Gobollada Iyo Degmooyinka: Xeer LR. 23/2002 & 2007*). Translated from Somali into English by the Land-based Conflict team)

However, the Local Councillors refuse to obey to the orders of the Mayor. Referring to Article 36 of the same law, they argue that the Local Council can draw its own by-laws in order **to uphold peace and stability and raise the efficiency of the local governments**. The Chairmen of the Land Subcommittee thus justifies their involvement in the verification process as a pre-emptive measure to prevent illegal land grabbing and to maintain peace and stability. Furthermore, he says that the by-laws of Burao municipality, which were endorsed by the Mayor, had legalized this practice. The dispute has not been resolved yet and the Local Council continues to sign title deeds.

In Hargeisa, the Local Council is not so much involved in land management or the landownership verification process and hence there is no dispute between the Councillors and the administration. Nevertheless, also in Hargeisa, concerns were raised about their role in land management. According to a participant in a working group meeting, the Local Councillors attempt to wield executive powers and “*behave like Mayors*”. Seeking to influence decision-making process, they interfere in administrative procedures and often squabble among each other. So far, they have not drawn any by-laws regarding land or conflict management. Their impact on land management, the Working Group concluded, is thus sometimes rather negative.

On the other hand, however, the Councillors suggested that the Somaliland people are not accustomed to democracy and that they have wrong expectations of what a Councillor can do. Since the Councillors were elected democratically, the parties choose candidates that were popular with and responsive to their clans. As a result, the current representatives face pressure from their particular constituencies and their parties, and therefore, they are often unable to work for the benefit of the whole community. Moreover, they are sometimes overwhelmed by their tasks, especially when it comes to conflict management.

## 5.5 Weak State Authority and Incompetent Officials

There have been some successful attempts by the local governments in Hargeisa and Burao to claim back public land grabbed away by individuals. For instance, in Hargeisa, the municipality dismantled illegal structures set up by war veterans of the Somali National Movement (SNM), and in a case in Burao, it was decided to convert a land illegally grabbed away into a religious endowment and to build a mosque on it. Nevertheless, the weakness of the state, its low institutional capacities and incompetent officials so far hamper effective land management in the two cities.

The legal process for obtaining an ownership certificate is continuously disregarded, with the administration either unwilling or unable to uphold the law. For instance, instead of first applying for an ownership certificate and then developing the plot, as stipulated in the law, people first grab the land and seek to legalize ownership afterwards. During the night, they demarcate plots with stones and shrubs or they even set up stone walls to fence it off. This contradicts Article 21 of Law No. 17, which clearly states “illegal structures are not to be used as mechanisms to obtain a land from the local governments and their relocation have no compensation”.

Instead of preventing such practices, the authorities often participate and make their own business with land grabbing. Public land is an important source of income for state authorities and is therefore often sold to businesspersons and investors. Sometimes even public facilities such as roads or land reserved for schools are not spared. Speculation on land through the proliferation of farms and enclosures on the periphery of the city is partly facilitated by corrupt individuals in the Ministry of Agriculture, who allocate land for agricultural purpose at the fringes of the city. Later on, the farms are converted into urban real estates. Thus, at the outskirts of Hargeisa and Burao, large areas have already been divided into plots and allocated to individuals and business people<sup>66</sup>.

Furthermore, state institutions often lack the capacities to enforce the law and prevent land grabbing. Fearing public unrest, they tend to abstain from dismantling illegal structures. The problem of low state capacities is even more apparent in Burao, where its institutions are generally weaker than in the capital. The Departments of Public Works and Land in both cities are understaffed, untrained and lack modern equipment. As a result, they have difficulties performing their tasks.

These administrative shortcomings undermine public trust in state institutions and regulations. People thus tend to keep state officials at distance and instead of following due administrative procedures, which are commonly neither understood nor trusted, they, seek to manage affairs among themselves. This attitude is strengthened by a general mistrust against the state, which stems from the negative experiences made during the time of dictatorship, when the state was privatized by officials and degenerated into an instrument of personal enrichment and suppression.

Moreover, poor land management and corruption are often a source of conflicts, for example when “employees of the municipalities issue dual ownership entitlements for a single plot of land”<sup>67</sup>, which can cause conflict between the two owners who both hold legal entitlement documents.

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<sup>66</sup> Academy for Peace and Development 2006b: 12; Academy for Peace and Development/Institute for Development and Peace 2008: 18; Academy for Peace and Development et al. 2009: 51; Bruyas 2006: 14

<sup>67</sup> Academy for Peace and Development et al. 2009: 51

## 5.6 Resettling Returnees: Problems and Challenges

As said in section 4.2 and 5.2, resettling returnees is one of the most important challenges for the municipalities in order to reclaim public land to be used for social and administrative purposes. This, however, is a very difficult task. Being protected by their clans, illegal settlers enjoy a rather high degree of tenure security. Hence, when the army sought to evict returnees from a military zone, the settlers overran the barracks and destroyed some military equipment. The authorities therefore try to avoid confrontations with them, as this could easily become a clan issue, fuelling (clan) tensions and threatening the fragile peace.

### The Influence of Clans in Land Management

Due to the weakness of the state, clans have a lot of influence on decision-making process within the local and national administration. In Burao, land management is therefore negatively affected by the prevailing tensions between the Habar Jeclo and the Habar Yonis. The administration is divided between the two clans, with officials only working in their respective clan territory of the city. Also the security forces are divided in that way. The police have two separate divisions, one Habar Yonis and one Habar Jeclo, with the overall commander coming from the Ise Musa sub-clan of the Habar Awal in order to ensure impartiality. Since the administration always has to balance the competing interests of the Habar Jeclo and the Habar Yonis, land management within each clan settlement is easier than between them. Also in Hargeisa, clan competition is hampering effective land management. Members of the Local Council admitted that they see themselves as clan representatives and therefore tend to give priority to the demands of their constituencies instead of working for the benefit of the whole community.

Accordingly, illegal squatters do have the power to bargaining with the authorities, who need to provide land and adequate housing for resettlement in order to convince them to vacate the land. Their tenure security is also included in Law No. 17, which says that if an “entire neighbourhood”<sup>68</sup> is to be evicted, the state has to allocate an alternative plot and cover the costs for resettlement.

Since the administration has neither land to provide instead nor financial resources to cover the costs, the resettlement of returnees is very complicated and rarely takes place. One such case is the settlement in Freedom Park. As it was only a small village with few people, the municipality was able to provide land and clear the place from illegal structures. In Burao, the municipality authorities carved out land from enclosure owners as resettlement sites for returnees. Housing and sanitation facilities were financed by NGOs, and the United Nations World Food Programme (WFP) currently hands out food rations. The two resettlement sites, Ali Hussein and Kosar neighbourhoods, are named after SNM veterans and are mainly inhabited by people from the *Habar Yonis* and the *Ise Musa*.

In other cases, however, such resettlement efforts have not been successful. In 2005/2006, the municipality of Hargeisa tried to resettle some returnees from the State House area to a new settlement in Ayaha, at the outskirts of Hargeisa. This was supported by a housing project implemented by UN-HABITAT and the Norwegian Refugee Council (NRC). However, despite offering adequate housing and infrastructure, the project failed to clear the targeted area from illegal settlers.

First, the new settlements were too small to host all returnees. Second, its environmental and economic setting proved to be very unattractive. Being located at the fringes of the city in a rocky and rather uncomfortable area, Ayaha is too far away from job opportunities and the pleasant life of Hargeisa's vibrant

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<sup>68</sup> National Urban Land Planning/ Proclamation, Article 22



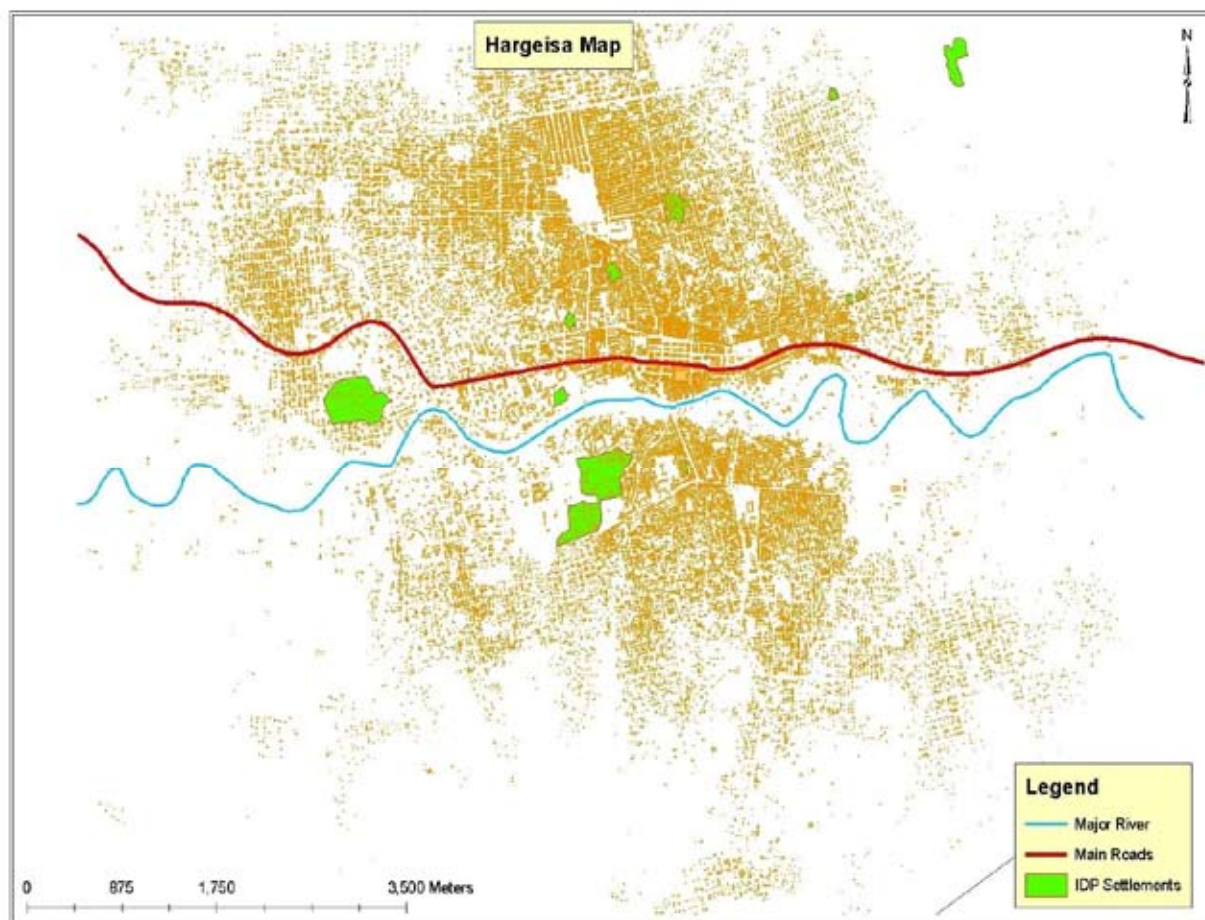
centre. Among locals, the village is thus also known as “Kandahar” or “Torabora”, a remote region in the mountains of Afghanistan where Osama Bin Laden and the Taliban were hiding from the coalition forces. Third, newcomers, especially urban migrants from other parts of Somaliland, quickly replaced those who actually left the State House area.

In other cases, the authorities reportedly even handed out cash to persuade people to vacate public land and government buildings. Sometimes these deals are rather obscure, involving business people who buy public land from the authorities and later pay its illegal occupants to leave it. Also private individuals, who had granted returnees a certain land for temporary use, often had to pay money in order to get their plots back.

The handouts and the provision of new land have raised expectations among many illegal settlers. In Semi-Structured Interviews and Focus Group Discussions with the research team, they often indicated that they expect to receive cash or an alternative plot in return for abandoning the land. Informants also suggest that some returnees have already found land in other parts of the city but would keep their plot on public land to benefit from the expected pay-offs. It is also well known that they even rent out their *Buuls* (traditional Somali hut) there, especially to refugees from the South. Nevertheless, the majority of illegal squatters are simply too poor and can thus not afford to move away and rent or buy another plot.

Consequently, even almost two decades after the establishment of the Somaliland state, returnees and urban migrants still settle on public lands such as the State House, the Stadium, Independence Garden, Hargeisa water storage area, Dami and Pepsi Cola (see map of Hargeisa in Figure 5). With the authorities unable and unwilling to evict them forcefully, they are likely to stay, lured by lucrative deals offered by business people, the Central government and NGOs. The problem of illegal occupation of public land will therefore continue to be a challenge for effective land administration in Hargeisa.

Figure 5: Map of major settlements of returnees, refugees and other migrants in Hargeisa<sup>69</sup>



## 6. Urban Land-based Conflicts and Conflict Management

### 6.1 Land Conflicts

#### 6.1.1 Actors and Issues

##### Land-based Conflicts and Land Management

Land-based conflicts and weak land management are interrelated problems in urban Somaliland. Administrative shortcomings, such as Legal gaps, poor planning, institutional competition, corruption, low enforcement capacities and the inability to clarify landownership, are often sources of conflict. However, as the contested nature of land ownership and the administrative clan divisions in Burao have demonstrated, prevailing tensions and conflicts are also an obstacle to effective land management.

Land conflicts involve many different actors: the diaspora, which is increasingly investing in urban property, state institutions (the municipality authorities, the Ministry of Public Works and Transportation, and the Ministry of Agriculture), which issue multiple and conflicting ownership certificates, business people and property brokers who engage in shadow deals with the state<sup>70</sup>, officials of the Barre regime and non-Isaaq seeking their land back as well as security forces and clan militias, which influence conflict dynamics and

<sup>69</sup> Source: The map was provided by SWALIM, Hargeisa 2009. Please note that the international community does not recognize Somaliland and thus refers to people from Southern Somalia as 'Internally Displaced Persons' (IDPs). As a Somaliland institution, however, which recognizes the independence of Somaliland, the project team refers to them as 'refugees'.

<sup>70</sup> Academy for Peace and Development/Institute for Development and Peace 2008: 50

outcomes. The origins and drivers, however, are very similar: unclear landownership, public greed for land, weak state authority and poor land administration.

Conflicts over public as well as private land are often a result of the civil war and displacement between 1988 and 1991. In a report published in 2008, the research team says that 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”<sup>71</sup>. Furthermore, another APD report explains that, “Plots owned by senior figures in the Siad Barre regime became the prize in a long contest of loud claims and counter-claims to ownership made both in court and on property sites”<sup>72</sup>.

According to local officials, however, most of these conflicts stemming from the civil war have nowadays been resolved and the number of land-based conflicts has generally declined since the early 2000s. Nowadays, against the background of the rising real estate market and weak land management, land disputes are related to the grabbing of public land, disputes between neighbours, the issuing of dual ownership certificates by the municipalities, and inheritance issues.

The grabbing of public land is a common source of conflict between the state and illegal occupants, especially returnees and urban migrants. For instance, at an army garrison in Birjeex in Southwest Hargeisa, makeshift settlements expand beyond a previously restricted military zone close to the army barracks. The problem is even more complicated since many families of the soldiers themselves have settled there. Conflict broke out when the army sought to demolish the houses and huts to keep the settlers away from the garrison. The squatters fought back, raided the military barracks, burned some dysfunctional military equipment and almost took over the whole area. The situation was only cooled down under the mediation of local elders from the *Arab* clan. As a result, the illegal settlers are still occupying the restricted zone and the army has resented from further attempts to evict them.

Also others contest the supremacy of the state and seek to grab public land illegally, for example by expanding their plot into state land that had originally been reserved for public facilities. At the fringes of towns, the municipality often has to dispute with property owners to get their share of 30 percent to which it is entitled.

Inheritance of land is another source of many land conflicts in urban Somaliland. Children may dispute over the land of their deceased father or someone puts a parcel of inherited land for sale without the consent of other family members. These conflicts can be complicated due to the existence of parallel laws (state law, customary law and *shari’a* law), with different regulations regarding inheritance. Especially women are often disadvantaged in such disputes<sup>73</sup>. Additionally, neighbours may dispute over the boundaries or the land between their plots as demarcation is often very poor<sup>74</sup>.

Land conflicts can turn violent, since small arms circulate all over the country and the state is too weak to stop the use of force by private individuals and to protect its citizens. In addition to that, its institutions are often seen as corrupt and enjoy little legitimacy.

### **6.1.2 Clan Dynamics and Violent Land Conflicts in Burao and Hargeisa**

Because of the weakness of the state and the dominance of clan structures in Somaliland society, land disputes between individuals can escalate into clan conflicts and, against the background of the wide

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<sup>71</sup> Academy for Peace and Development/Institute for Development and Peace 2008: 16

<sup>72</sup> Academy for Peace and Development 2006b: 12

<sup>73</sup> See part IV on ‘Women Accessing Land’

<sup>74</sup> Bruyas 2006: 16

spread circulation of small arms, turn violent. This happens when, due to the limited capacity of state institutions, disputants see themselves forced to call upon their family and kin to support their ownership claims over land. They benefit from the fact that clans tend to defend their settlements from incursion by other clans and that clan elders can easily be manipulated. Historical animosities and grievances between kinship groups may further fuel tensions. Especially businessmen are said to be often involved in conflicts over land, since they want to buy or sell the disputed land for profit. Having the necessary resources at their disposal, they can influence elders to rally the clan behind their endeavour and may even finance militias. Accordingly, informants suggested that disputes over land are behind most violent incidents in both Hargeisa and Burao.

Again, the scope and nature of land conflicts differs between the two cities. First, as mentioned before, in Burao clan relations seem to be more persistent and the state weaker than in Hargeisa. Second, the city continues to experience a high degree of clan tension, especially between the *Habar Yonis* and the *Habar Jeclo*, while in Hargeisa relations between the different clans are very relaxed. Third, since in Hargeisa public land (*Sha'ab* area) is primarily located in the territory dominated by only one clan, the *Habar Awal/ Saad Muse*, conflicts over public land are more easily contained than in Burao, where state properties are located between the settlements of the city's two dominant clans, the *Habar Jeclo* and the *Habar Yonis*.

As the capital of the British Protectorate and later of the Republic of Somaliland, Hargeisa has a rather cosmopolitan and multi clan tradition, where people from all Somaliland regions settle. This setting allows for a more flexible handling of clan structures, with people from different clans intermingling and establishing cross clan relations. Furthermore, since relations between the different clans are generally peaceful, land disputes between individuals are not so likely to escalate into clan disputes. This has enabled state institutions to become more independent from clans and act as supra-clan institutions. They are thus more respected and enjoy a higher degree of freedom to act and manage land without being drawn into clan struggles.

In Burao, however, the process of state building has effectively only started in 1997, after the conclusion of the conflict between the *Habar Jeclo* and the *Habar Yonis*. It is therefore less institutionalized, enjoys less legitimacy and is much more dependent on the local clans. When the authorities sought to prevent the construction of a fuel station on public property, the land grabber, an individual from the *Habar Jeclo*, mobilized support from his clan and confronted the police. The shootout resulted in the death of six people and could only be stopped after mediation efforts by elders. The perpetrators fled from the city and the municipality was able to claim back the land, but it also had to pay the blood compensation to the families of the dead persons.

Moreover, in the Eastern city tensions between the two major clans, the *Habar Jeclo* and the *Habar Yonis*, are still high. Although their relations have improved in recent years, clan animosities and grievances persist and peace and stability are much more fragile than in central Somaliland around Hargeisa. As a result, compared to the capital of the country, there is a higher chance that minor land disputes between individuals escalate into violent clan conflict. A case in point is a conflict that erupted in Southeast Burao over the memorial of Sheikh Bashir, an anti colonial hero of the *Habar Jeclo* clan. The close family of the deceased sought to grab away that land on the premise that it belonged or was at least associated with their family. However, they were confronted by a *Habar Yonis* group, who claimed that the former regime had previously confiscated the land illegally from a local merchant of their clan. The conflict turned violent, and six people were killed on both sides. After the elders and security forces had intervened, both parties retreated from the area and the government took over the disputed land. In the end, a fence was constructed around the site in order to prevent either side of reclaiming it.

However, the population of Burao is well aware of the destructive potential of renewed clan conflict and therefore seek to avoid provocation and abstain from incursion into each other's territory. As a result, most land conflicts in the city happen within each clan. Nevertheless, land remains a sensitive issue between the two clans that can possibly lead to full-scale clan conflict, especially when land issues intermingle with political disputes at the national level.

## **6.2 Conflict Management: Institutions and Mechanisms**

### **6.2.1 The Performance of State Courts, Shari'a Courts and Clan Elders**

Due to the general weakness of the state and its institutions, Somaliland has a de facto plural legal and institutional system whereby official-, customary- and *shari'a* law and institutions coexist and in practice are often combined to solve conflicts<sup>75</sup>. This allows for "forum shopping" and people can choose that institution and law which they expect to rule in favour for them.

The formal judicial system is in fact an adaptation of Decree No. 3 of 1962. It had been adapted in 1993 as Law No. 41 and was amended in 2003 and 2006. In 2008, the amendments were finally endorsed by the President<sup>76</sup>. The system consists of three levels: the Supreme Court, the Regional Courts and the District Courts. Furthermore, appeals can be made in the Court of Appeals. Land related conflicts are referred to the District Court<sup>77</sup>.

However, courts are inefficient, work slowly and are highly corrupt. According to a Human Rights Watch Report, some courts do not receive any funding beyond salaries, lack printed copies of the laws and many judges reportedly do not hold law degrees<sup>78</sup>. Furthermore, because of their negative experience with the judicial system under military dictatorship, Somalilanders generally do not seem to trust the courts and avoid getting involved with them.

People therefore rather prefer to solve their conflicts through customary institutions or *shari'a* courts and many cases are never transferred to the official judicial system. In fact, the official courts often formalize the outcomes of traditional conflict resolution processes. Islamic *shari'a* courts, it seems, are also becoming more important in recent years. Several *shari'a* courts operate in Hargeisa and Burao and are registered at the Ministry of Justice. Representing the universal truth of Islam, they enjoy more legitimacy than state courts. Most judges have received training in *shari'a* law in the Middle East. Especially family and inheritance issues, but also other cases are brought before them. However, due to the complexity of the issue, *shari'a* courts are not so much involved in land conflict management.

As a result, most conflicts, including those related to land, are still solved by councils of clan elders, which are mainly created on an ad hoc basis in order to settle disputes within and between communities. Based on Somali traditions and being carried out by respected community members, this institution enjoys much more acceptance than state courts. Interviewees thus estimated that traditional elders currently solve 80 percent of all land conflicts. This reflects the weakness of state courts, people's mistrust against them, and the strong influence of clans in providing (tenure) security<sup>79</sup>. The council of clan elders considers official ownership documents and hear witnesses in order to be able to make a fair judgement and, if possible, identify a culprit. However, in addition to that, they also seek to mediate and find solutions that are acceptable to both parties. Peace and Reconciliation, but not punishment and the maintenance of strict laws, are their primary objective.

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<sup>75</sup> Academy for Peace and Development/Institute for Development and Peace 2008: 12; Academy for Peace and Development et al. 2009: 44

<sup>76</sup> Somaliland Law.com, Somaliland Judicial System

<sup>77</sup> Battera and Campo 2001

<sup>78</sup> HRW 2009: 24

<sup>79</sup> See part III, section 2

Despite the fact that customary methods of conflict resolution are well adapted to the Somaliland context, they also contain many shortcomings, especially in urban areas where traditional authorities and values are not as strong and uncontested as in rural areas. In previous times, clan elders applied *xeer*, the traditional Somali law. Regulating relations between nomadic clan groups regarding access to water and pasture, it is still the most important law in the pastoral context. However, *xeer* has failed to adapt to modern transformations in Somaliland society and is “especially weak in urban contexts, where the new social mix of clans and subclans generates problems where no bilateral *xeer* exists between the opposed groups”<sup>80</sup>.

Furthermore, “elders who used to make decisions based on detailed knowledge of local events now do not know many of the individuals that sit before them or what activities those individuals have been involved in across the city”<sup>81</sup>. Customary processes can also become corrupted, especially since verdicts and decisions are not solely based on whether claims and counter claims are correct and legitimate but on the potential of elders to maintain peace and stability. Thereby, strong and powerful parties often either influence the resolution process to obtain favourable outcomes or simply refuse to accept a non-favourable result. Since elders usually do not command security forces, they are not able to enforce their judgement.

### **6.2.2 The Performance of ‘Hybrid’ Conflict Management Institutions**

With traditional authority and laws eroding and the state unable to fill the gap, combined efforts supported by the moral authority of Islamic *shari’a* law are usually applied to solve more complicated land conflicts in urban areas<sup>82</sup>. Until recently, land conflicts in Hargeisa were addressed by a council which is headed by the district Vice Chairman and further made up of a member of the sub-district committee and three community elders. A very similar ‘hybrid’ institution exists in Burao, where the Chairman of the Local Council’s Land Subcommittee assigns some of the committee’s members to address land conflicts in cooperation with clan elders. The resolution process is clearly traditional, aimed at reconciling the parties involved and avoiding an outbreak of violence. Thereby, elders verify the conflicting claims and make sure that the verdicts are acceptable to the communities as well as to the disputing parties. They thus give the resolution process and its outcome legitimacy, a precondition for its success.

The involvement of state authorities is also essential. First, state authorities have knowledge of land administration in the urban context, especially when it comes to landownership registration. For example, only municipality officials can check if ownership documents are forged or if property boundaries are correct. Second, the state can act as neutral institution between the clans and, as it commands security forces, is able to enforce decisions mediated by clan elders, at least in case they are accepted by the communities. Thus, when *Habar Yonis* and *Habar Jecllo* militias fought over a piece of land in Burao, the conflict was solved with the state taking over the contested plot and erecting a fence to prevent it being again grabbed away.

This suggests that although the process of conflict resolution is indeed traditional, the expertise and role of the state is equally important, especially in urban settings where clan elders enjoy less authority and traditional laws cannot be applied. The Councillors are placed perfectly to chair these combined conflict management institution, since they represent their people in the local government and act as a link between the population and the municipality authorities. Usually, the resolution procedure starts at the district level, followed by a meeting of the Municipal Land Committee in case of serious conflict or violent dispute.

The Municipality Land Committee, an ad hoc institution comprising the Mayor and members of the municipality authorities (e.g. District Police Officer, Land Department Officials) as well as traditional clan

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<sup>80</sup> NRC et al. 160

<sup>81</sup> NRC et al. 160

<sup>82</sup> Academy for Peace and Development et al. 2009: 13

elders, solves issues and disputes that are more serious, in particular conflicts over public land. According to Buryias<sup>83</sup>, the Municipality Committee of Hargeisa works as follows: “Under the supervision of the Mayor and the Governor and in the presence of a police officer and a district officer, an investigation is carried out after an inspection visit to the field. Witness statements are heard. A conciliation procedure starts with separate statements made by the claimants and proofs of the ownership are examined. Elders are also represented and heard during the procedure. At the end of the hearings, all the necessary security precautions are decided upon in order to avoid provocation and violent conflict”.

Applying traditional methods of conflict resolution, these combined institutions were able to solve many land-based conflicts, especially between 1997 and the beginning of the new millennium, when urban land conflicts resulting from the civil war were rampant. Cases were only transferred to the district court if these councils proved to be unable to solve a conflict. But very often, the court then decided to transfer the case back to the elders and only announced the outcome of their deliberations.

Nevertheless, despite its success, in Hargeisa the combined system of conflict resolution was officially abolished in 2005, since the district Councillors were overloaded by the task. Furthermore, informants in Hargeisa suggest that since the number of land conflicts is declining in recent years, a separate system is not needed anymore and the official judiciary system or clan elders should handle the task. On the other hand, it is still acknowledged that there needs to be a special institution to handle more complicated land conflicts. Hence, under article 28 of the amended Law No. 17, a permanent technical committee, consisting of representatives from several national and local institutions, has replaced the municipality land committee. However, as pointed out before, its relation to the official courts remains unclear<sup>84</sup>. As the amendment was only introduced in 2008, it is not yet clear how far the new committee has been involved in the settling of land conflicts.

## **7. Conclusion and Recommendations**

The root causes of many current land management challenges are to be found in the aftermaths of the civil war, when, due to the absence of a central administration, public and private land was occupied and taken over by the returning population. Landownership is still unclear and contested, as many title deeds and land registers were lost during the war. Today, the booming and unregulated real estate market has increased public greed for land. The remaining parcels of land are thus grabbed away and competition between state institutions, individuals and clan groups is rising. Disputes over land are behind most violent confrontations in Somaliland towns and cities.

The absence of a strong state and poor land administration and regulation contribute considerably to the complicated situation. Despite the fact that some progress has been achieved, in particular in landownership registration and legalization, effective land management is still hampered by incompetence, the unclear legal framework, a lack of planning, institutional competition and low capacities of the administration. Moreover, state institutions are weak and often unable to enforce the law and implement land policies. Also the role of the Local Councils is rather controversial, since their internal quarrels and disputes with the administration add to poor land management.

Hence, the state and the government have so far failed to address the major tasks of urban land administration in Somaliland: to plan the use of land; to provide social services and urban infrastructure, especially for the urban poor; to reclaim public land; to clarify landownership and to regulate the real estate market.

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<sup>83</sup> Bruyas 2006: 37

<sup>84</sup> See section 4.1

Land-based conflicts and weak land management are interrelated problems in urban Somaliland. Administrative shortcomings are often a source for land conflict, which are in turn an obstacle to effective land management. Because of the weakness of the state and the dominance of clan structures in Somaliland society, land disputes between individuals can escalate into clan conflicts and, against the background of the wide spread circulation of small arms, turn violent. This is especially the case in Burao, where clan tensions remain much higher than in Hargeisa.

Most conflicts are managed through traditional conflict resolution mechanisms and involve state authorities as well as traditional clan elders. These 'combined' or 'hybrid' institutions have been very successful in addressing land-based conflicts. The Local Councillors play a key role in conflict resolution processes, but they are often overwhelmed by their task.

Many shortcomings in land and conflict management explained in this report can be ascribed to the evolving nature of the Somaliland state, its administrative structures and political institutions. Accordingly, attempts to administer land and manage conflicts have to be based on the limited capacities of the state and its relations to the population. Land and conflict management are the prerogative of the state, in particular that of the local administration, but its policies and activities have to be supported or at least accepted by the public in order to become effective. Democratic institutions and practices are necessary to facilitate the participation of clan elders, the business community and civil society. Consequently, effective land and conflict management need to include long-term and sustainable strategies that shape administrative systems and decision-making processes.

Therefore, the land-based conflict project recommends to

- a) **Improve the Legal Framework:** The legal and institutional framework for land and conflict management has to be overhauled. Existing gaps, shortcomings and ambiguities in and between the Urban Land Management Law (Law No. 17) and the Regions and District Law (Law No. 23) have to be clarified, adapted and institutional duties and relations need to be regulated.
- b) **Enhance Institutional Cooperation and Urban Planning:** The central government should strengthen cooperation between all institutional stakeholders and put pressure on the agencies involved in the NUPB to fulfil their duties and draw town master plans. Land use planning should be participatory, transparent and based on consensus between all stakeholders. The local governments, including the Land Subcommittee of the Local Councils, should therefore participate in this process, especially since they are most involved in land management at the local level. Moreover, community representatives from the business community, elders and civil society should be consulted in order to guarantee community support for the town master plan.
- c) **Increase Land Administration Capacities:** UN-Habitat and other NGOs should continue their efforts to increase the land management capacities of local and national institution through education, training and the provision of technical assistance and know how. For instance, international institutions could support the land surveying education program at Hargeisa University or provide technical assistance to extended and improve the Land Information System. Furthermore, the central government and the local administration have to fight corruption. This will make land management more efficient, reduce the number of land-based conflicts and increase public trust in state institutions.
- d) **Strengthen the Role of the Local Council:** Generally, all policies and decisions relating to land should be taken in a participatory process and in cooperation with elders and community representatives. The elected Local Councils can play a key role in this process and act as links between communities and the state, seeking to draw support among their constituencies for land management policies and



# III. Land Tenure Security in Somaliland

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## 1. Introduction

According to the constitution of the Republic of Somaliland “All citizens of Somaliland shall enjoy equal rights and obligations before the law, and shall not be accorded precedence on grounds of colour, clan, birth, language, gender, property, status, opinion etc.”<sup>85</sup>. Furthermore, Article 31 states “Every person shall have the right to own private property, provided that it is acquired lawfully”. Thus, in Somaliland every individual enjoys the right to own land, a right that is inscribed in the Constitution.

However, given the fact that the Somaliland state is weak and its capacities very limited, land tenure still depends more on clans than on official laws, also in urban areas. Hence, for those affiliated to the Somaliland clans, landownership is generally very secure, despite the prevalence of land conflicts. This, however, is different for marginalized groups and outsiders who lack the protection of strong clans. This section analyses the status of particular social groups with regard to tenure (in-)security. On the one hand, it will describe the status of immigrants (refugees and immigrants from Southern Somalia and Ethiopia (*Amhara and Oromos*)), and on the other hand that of discriminated groups within Somaliland society (*Gabooye*). As indicated before, the degree of tenure insecurity as well as its nature differs between these groups, depending on their economic and social status as well as on their specific relation to- and integration in the Somaliland society.

## 2. Clan and Land Tenure Security

As stated in the introduction, land tenure in Somaliland is based on clans. This tendency has its origin in the lawlessness and chaos of the immediate post-war period, when there was no state and clan tensions prevailed. In search for security and protection, people returning from the refugee camps in Ethiopia thus moved to their respective clan territories. The social geography in some cities changed tremendously during that time, as people sold their land and houses in quarters dominated by other clans and resettled in areas under the control of their own clan. Despite the fact that since then peace and basic administration have been re-established, they generally still prefer to stay in their clan strongholds in the town, where they feel that their land is safe from incursions by other clans.

First, the state is weak and thus often unable to enforce the law. Second, due to historical reasons, people mistrust state officials, who are seen as corrupt and selfish. Third, because the state relies on clan consensus, clan affiliation is essential to gain access to its institutions, to influence its policies and decision-making processes and, of course, to secure land tenure rights. Official title deeds are important to clarify individual landownership, but enforcement by state and society is a matter of clan relations and politics. Consequently, the clan is the final resort that guarantees land tenure rights.

Public land, however, is not protected by particular clans and can thus be grabbed away more easily. Returnees and urban migrants who have grabbed away large patches of land after the civil war are a case in point. Belonging to the dominant Somaliland clans, they have so far faced little resistance from the state. They do not seem to be forced to leave the public land, even if alternative land and housing are provided <sup>86</sup>.

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<sup>85</sup> Somaliland Constitution: Article 8.

<sup>86</sup> See part II, section 5.4

Despite the fact that land-based conflicts still occur and ownership of some plots remains contested, interviewees and participants in Focus Group Discussions thus did not mention land tenure insecurity as a major problem in urban Somaliland, despite the prevalence of land-based conflicts. Nowadays, it was said, most land-based disputes resulting from the civil war have been resolved. The reestablishment of a Land Information System and an effective landownership legalization process have further secured land tenure. Most disputes are thus more related to public land, boundary expansions and undeveloped properties at the fringes of towns.

### **3. Land Tenure Insecurity of Immigrants and Marginalized Groups**

#### **3.1 Refugee and Immigrants from Southern Somalia**

Peoples from Southern Somalia, mainly from the *Hawiye* clans in Mogadishu, came to Somaliland in search for peace and economic opportunities. Most of them see Somaliland as a temporary safe heaven and plan to move back to Mogadishu once the security situation has improved. Accordingly, they usually abstain from buying land and rather rent plots and houses.

Their socioeconomic background varies enormously. Some of them belong to the urban poor and live in desperate conditions. Without jobs, they can neither afford to pay high rents nor to purchase essential social services. They often live in congested camps and settlements at the fringes of Hargeisa, especially in Dami area. Other people from Southern Somalia, on the other hand, are rather well off. Having their own businesses, working for companies and NGOs or having access to remittances they are able to rent or even buy houses. Furthermore, as most of them are in some ways related to the local community, either by intermarriage or business links, they are also protected by its clan system. Their land rights are therefore very secure and they do not face eviction.

This is different for those poor refugees from Southern Somalia not related to the local population and who lack resources to establish business links. Seeking to avoid legal or social problems, they do not occupy land illegally and prefer to rent rather than buy plots and houses. Protected neither by the authorities nor by local clans, land tenure security for the urban poor from the South is rather fragile. At any time neighbours, property owners or government authorities could evict them from the land. However, as long as they pay their rents they are left undisturbed.

#### **3.2 *Gabooye* Communities**

Historically, the members of the *Gabooye* have formed an endogamous and marginalized community within Somali society and lived as clients of the dominant clans. They perform tasks and jobs considered menial by other “noble” (*Aji*) Somalis, such as leatherworking, metalworking, hairdressing, shoemaking, and pottery. Some communities were also reputed to be practitioners of sorcery. *Gabooye* may not intermarry with other Somalis and conventional paths to social mobility are not open to them<sup>87</sup>.

The *Gabooye* were among the first clans to settle in Hargeisa. However, while they originally lived in central villages of the town, such as Sheik Madar and Jame’o Weyn near the police station, they were soon pushed away by the *Aji* clans and are nowadays confined to the more remote outskirts of the city, especially to Dami. In Burao, the *Gabooye* initially settled in the Eastern part of the town, but later on, as the value of real estates increased, they often sold their plots and went to more remote areas. As a result, they are no longer concentrated in a single neighbourhood but small clusters of *Gabooye* can be found on both sides of the town.

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<sup>87</sup> Somaliland Centre for Peace and Development 1999: 67

During the civil war, the *Gabooye* supported the military regime, hoping that this would help them to overcome their marginalized status and improve their livelihoods. They were assigned to a special unit to fight the SNM, which brought them into conflict with the *Isaaq* clan that supported the rebels. Other clan militias from the *Gadabursi* and the *Harti* had also fought alongside the disintegrating Barre regime, but they were later reconciled with the *Isaaq* clan; According to a popular viewpoint of SNM supporting clans, no peace agreement was made with the *Gabooye*. Consequently, they are still distrusted and hold responsible for sufferings and losses during the civil war.

Being inferior to the politically and economically dominant clans in the Republic of Somaliland, the *Gabooye* remain marginalized and disadvantaged. At the clan conference in Boroma in 1993, they were given only a single seat in the lower and upper house of parliament. In the 2005 parliamentary elections, they lost their seat in the lower house as no party nominated one of them to run as a candidate<sup>88</sup>. Furthermore, they are denied employment in the state, where jobs are reserved for the *Isaaq*, *Dir* and *Harti* clans, and when land for resettlement is distributed to returnees, they never receive their fair share. Their children are mobbed and often fall out from school at a very young age, thus lacking the opportunity to improve their livelihoods through education. It is also more difficult for them to access lucrative business opportunities controlled by the *Aji* clans.

In the context of the overall peace and reconciliation processes throughout Somaliland since 1991, the returning *Gabooye* were able to reclaim about 80 percent of their properties grabbed away from them in Hargeisa during the war<sup>89</sup>. Nevertheless, due to their marginalized status within the country's clan society, their landownership rights remain insecure. Not protected by the dominant *Aji* clans, land owned by a *Gabooye* is an easy target for land grabbers, despite the fact that most *Gabooye* even have registered title deeds. Especially in Hargeisa, the properties of the *Gabooye* are increasingly grabbed away by neighbouring communities, leading to a proliferation of land-based conflicts. In Burao, where the real estate market is not as contested as in Hargeisa, they face less incursion from other clans. Thus, according to informants, there are currently only three or four pending land-based conflicts with other clans.

In Focus Group Discussions in Hargeisa and Burao, their representatives explained that since the *Aji* clans control administrative institutions, state courts and the police, they are unlikely to secure a fair trial for a member of the *Gabooye* community. Traditional councils of elders also normally side with their competitors and thus fail to protect their land rights. Given their association with the former regime, disputes relating to events from before the war are even more unlikely to end positively for a *Gabooye*. For example, during the time of Siad Barre the Somali Commercial Bank auctioned two houses of a merchant because he was unable to pay back his credits. One was sold to an *Isaaq* and the other to a *Gabooye*. After the fall of the Barre regime, the merchant seized the house bought by the *Gabooye* and refused to give it back to its rightful owner. The *Gabooye* sought help from the state as well as from clan elders, but was unable to get his house back or at least some compensation<sup>90</sup>.

Without clan protection and leverage over courts and law enforcing institutions, official and legally recognized ownership titles obviously seem to be rather useless. Thus, land tenure for the *Gabooye* remains insecure, a situation that is likely to continue as long as they are marginalized and discriminated in the Somaliland clan-dominated society.

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<sup>88</sup> Academy for Peace and Development 2006a: 36

<sup>89</sup> SCRD 1999: 68

<sup>90</sup> Academy for Peace and Development et al. 2009: 50

### 3.3 Oromo and Amhara Immigrants from Ethiopia

*Amhara* from Ethiopia come to Somaliland as political refugees, fleeing prosecution in their home country, while most *Oromos* are economic migrants in search of jobs and a better life. Others reportedly pass through Somaliland on their way to Bossaso, from where they intend to migrate to Yemen and the Gulf states. While most of them settle in Hargeisa, some Oromo can also be found in Burao.

The *Amhara* are a very cohesive community with their own schools, shops and open-air coffee places along the main roads in the Northern part of Hargeisa. They do not mix much with the Somaliland society and mainly stay among themselves. Some of them are registered as refugees in the UNHCR office in Hargeisa and wait to be resettled in a third country. Occasionally Amhara are discriminated, but Somalilanders generally accept them.

*Oromos* from the Eastern part of Ethiopia informally cross the border to Somaliland<sup>91</sup>. Having knowledge of the Somali language and being followers of the Islam religion, they are able to mix with the host community. Nevertheless, they have the lowest social status and therefore take over jobs Somalilanders consider as impure and disreputable, such as garbage collection and donkey cart driving. Young women also work as cleaners in local households. However, there is also a growing number of Oromo, especially women and children, who live on the streets and make their living from begging.

Despite the fact that they constitute an important labour force for the urban economy and have the same religion and a similar cultural background as the Somalis, they are merely integrated into its society. Somalilanders generally accept their presence and labour services, but in other respects seek to avoid contact with them. A striking example is the fact you will probably never find a Somalilander having an *Oromo* wife or husband. In Burao, *Oromo* interviewees even complained that they are sometimes not paid for their work and that their meagre earnings are stolen.

Consequently, the *Oromo* cannot expect any justice, neither from the state, nor from clan institutions. This suggests that their land tenure rights remain insecure, although the research team has not found any examples supporting this thesis. Like most refugees from Southern Somalia, the *Amahara* and *Oromo* do not intend to stay permanently in Somaliland and thus do not have the ambition to own land. In Hargeisa, most *Oromos* reside in makeshift shacks in Daami neighbourhood, the domain of the *Gabooy* communities - the most marginalized community in Somaliland - and pay small rents equivalent to US\$5 for a single room traditional house (*Buul*).

## 4. Conclusion and Recommendations

The research results have revealed and demonstrated three important facts. First, it showed that land tenure security is closely tied to clan protection. Since the state is weak, mistrusted and based on the clan system, it is the lineage and not the constitution that guarantees landownership rights in Somaliland. This certainly reduces land tenure rights for those who are not affiliated to the dominant clans of the country.

Second, land tenure security is linked to power relations, social status and Somali culture. Weak, marginalized and discriminated groups, such as the *Gabooye*, are not protected by the dominant clans and are neither represented in the courts, nor in the law enforcing institutions. Thus, their properties are a rather easy target for land grabbers. Also women, who are the object of analysis in the next part, have often difficulties securing their ownership rights.

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<sup>91</sup> See IRIN, 23.10.2009. According to officials, illegal immigration to Somaliland is rising. While in 2008 50 people were arriving daily, in 2009 the number has increased to 90.

Third, currently land tenure insecurity does not seem to be a major problem in Somaliland, since it is mitigated by three tendencies: first, many outsiders, in particular wealthy individuals and families from Southern Somalia, are linked to the Somaliland clans through either business relations or intermarriage. Second, most immigrants from Ethiopia and poor refugees from the South do not want to own property in Somaliland as they intend to return to their countries of origins. They therefore rather rent than buy real estates. Third, in the context of the overall peace and reconciliation process in the 1990s, even most *Gabooye* had their land and properties returned.

Nevertheless, the problem of land tenure insecurity should not be underestimated, since it still means a lot of suffering for those affected. Moreover, as landownership depends on clans, it is also a matter of clan relations and politics. Hence, conflicts and shifts in the power balance between clans could have a direct impact on land tenure security for individuals.

Accordingly, the research team recommends:

- for the government, political parties and civil society, to strengthen the capacities of the state and increase its law enforcing capabilities;
- for the government, to adopt policies that protect particularly the rights of *Gabooye* and the *Oromo* communities;
- for the government, to improve land tenure security for *Gabooye*, refugees from the South and immigrants from Ethiopia through effective implementation and supervision;
- for the government, to increase *Gabooye* representation within state and government agencies, especially in the judiciary and the security forces;
- for the government and the civil society, to raise awareness to the needs of the *Gabooye*, especially regarding land tenure, both on the institutional as well as the community level.

# IV. Women Accessing Land in Somaliland

## 1. Introduction

This chapter seeks to explore the role of Somaliland's women regarding land tenure, possibilities, constraints and obstacles they are facing when accessing land as well as their role in land-based conflicts. Understanding women's needs requires looking at existing constraints at the macro-level (legislation and policies), institutional mechanisms and procedures for land-administration, and local dynamics such as cultural beliefs and customary practices<sup>92</sup>.

First, it is necessary to give an overview of traditional Somali gender roles and changing patterns. It has to be noted, however, that there is no such category as The Somali Women. There are substantial regional differences, between the urban centre and rural peripheries, there are differences between and within the clans, regarding economic and social status (widows, divorcees, single parents, the elderly, the youth, etc.), and there are particular vulnerable groups such as outcasts, refugees and immigrants from Southern Somalia and Ethiopia.

## 2. Female Researching: Methodology

Based on previous experiences when researching on women's issues, the team continued to follow a gender-sensitive approach. Thus, the research on women's access to land and their role in land-based conflicts was mainly carried out by the team's female researcher, supported by a female consultant.

Between July and August 2009, the team conducted 5 Semi-Structured Interviews (SSI) with previously identified female stakeholders of relevant government institutions and civil society:

- Ministry of Family Affairs and Social Development
- Somaliland Women Lawyers Association (SWLA)
- NAGAAD (Women Umbrella Organization)
- HAVOYOCO (Horn of Africa Voluntary Youth Committee)

Following the understanding that women are likely to be targeted and harassed, and that matters of land tenure, particularly regarding to land-based conflicts, are sensitive issues, the team decided to keep the names of the interview respondents anonymous.

## 3. Somali Gender Roles: Tradition and Social Change

### 3.1 Women within the Kinship-System

Even though it is unquestioned that there are of course other forms of identity-groups in Somali society such as age groups, friendships, religious and working affiliations, kinship continues to be the pivotal organizing principle, pervading various facets of social, economic and political daily life. Within the Somali kinship-system, identity relations, obligatory rights and even personal security are collectively defined.

Somali society is organized in patriarchal clans<sup>93</sup> and their sub-clan-divisions, which extend all the way down to the family unit. Commonly, six major clan-families and their subdivisions are distinguished: *Dir*, *Isaaq*, *Darood*, *Hawiye*, *Rahanweyn* and *Digil*. In Somaliland, the traditional inhabiting clans are of *Dir*, *Isaaq*

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<sup>92</sup> FAO 2002: 17

<sup>93</sup> Following Lewis (1961), the Somali kinship-system can be broken down into clan-family, clan, sub-clan, sub-sub-clan, primary lineage and diya-paying group. The level of segmentation a person identifies himself/herself with depends on the prevailing context as alliances and divisions are constantly shifting. To avoid any confusion, we will continue to refer to any segment simply as clan.

and *Darood*. Descent is traced through the male line of a common ancestor. For example, the lineage that started with the founding ancestor of Sheikh Isaaq will continue descending patrilineally, ending with a father as the head of a family unit and his children.

Within the kinship system **Somali women are perceived of having a dual clan-identity**, because intermarriage between different clans (exogamy) is frequent. Although patrilineal descent is clearly the decisive factor within the Somali kinship-system, marriage is an important instrument to establish economic and political cooperation between different clan segments. For women, this means that they marry into some other clan group than their father's lineage, leaving the home of their relatives at the time of marriage. Hence, a woman's clan-membership both to her father's clan and to her husband's and children's clan is limited. This has two main implications for married women<sup>94</sup>:

- a) Through marriage women are able to establish and strengthen cross-clan ties, being the key link between their father's clan and their husband's and children's clan. They retain contact with their natal families throughout their lives, thus creating matrilineal links (*xidid*), which are considered as an important source of social and economic ties of support. Moreover, in times of crisis these matrilineal ties can be a crucial linkage of solidarity, reciprocal aid and peace.
- b) On the other hand, during times of conflict a woman's loyalty towards the family may be questioned on both sides by her male relatives. The lack of full integration into the clan system disadvantages women, who run the risk of falling out of the collective support-system in times of crisis and need, for example after the loss of the husband or other close family members.

In general, male newborns are more appreciated and welcomed to the family than girls, because they will contribute to the numerical strength of the clan when it comes to socio-political relations of power. Equally, boys are believed to increase the economic wealth of the clan as they are expected to be the future providers of their father's family. On the other hand, girls are believed to take away whatever they get to their husband's family. A related issue is **the preference of boys over girls in terms of opportunities to education**. While boys are educated through schooling early, girls are trained to help their mothers in the household collecting firewood, looking after the sheep and goats, and carrying containers of water over long distances. In general, women and girls are traditionally assigned to domestic tasks that do not require school education, as it is widely argued. A Somali proverb says "*Haween aad waxbartay hawsheed ku dhaaftay*", which translates into "*To educate a woman is to lose her labour*". Moreover, women are considered less intelligent than men as the following Somali proverb suggests "*Kal caano galeen kas magalo*", which means literally "*Intelligence cannot reside in a chest that produces milk*"<sup>95</sup>.

There is also a common fear among Somali men, that the empowerment of women is a potential danger for male dominance. Schooling young girls could increase their confidence, so that they might start talking back or even develop promiscuous behavior and bring shame on their families. Since girls are about to leave their father's family at the time of marriage, any investment in a girl's education is likely considered as a waste of resources, especially among poor families, who cannot afford having all children equally educated.

Taking a look at Somaliland's school system, a survey of the women's umbrella organization NAGAAD states that the gender gap among students and teaching staff is alarmingly wide. Boys' enrolment in primary school is 65% while the enrolment of girls is 35%. There are 90% male teachers and only 10% female teachers. At the secondary level the gender gap even widens with 21% female students due to the high rate of drop-outs, which can be attributed to early marriage or financial problems. There are only

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<sup>94</sup> Steiner 1996: 24

<sup>95</sup> Warsame 2000: 29-34

2 female teachers at the secondary level as most female teachers are concentrated in the primary levels. At the university level male students (80%) exceed the number of female students (20%) in the different faculties with the exception of the faculty of Islamic studies, where the majority is female<sup>96</sup>.

Traditionally, marriage is encouraged at an early age (for women between 15-18 years and for men between 18-25) and is arranged by male relatives. As noted above, marriage-links serve the sociopolitical and economic interests of the wider community; hence, it is not considered just a private affair<sup>97</sup>. A woman is “given” to her future husband after the bride’s price (*yarad*) was settled between the male relatives of both sides. The *yarad* belongs generally to the bride’s father and her male relatives as a compensation for the loss of her labor as well as the loss of her reproductive value since her children will be part of her husband’s clan. However, according to Islamic law, a woman is entitled to get the *meher*, a compensation paid by the husband at any time of the marriage. Mainly, this serves as insurance in case of divorce. Polygamy is a common practice in Somali society and men are allowed up to four wives at a time. According to Islamic law, in order to do so, a man has to be able to provide for and to treat each wife the same. In practice, however, a man is likely to favour the new, younger bride<sup>98</sup>.

### 3.2 Women and Islam

Religion is a fundamental pillar of Somali society and an important source of identity that transcends the various clan divisions and loyalties. In the Somali context, historically, Islam has been interpreted and practiced according to pre-Islamic local customs, fusing Islamic belief with local traditions. Hence, Somali customary law (*xeer*) features certain elements of *shari’a*<sup>99</sup>.

Until the late 70ies and beginning 80ies, in Somalia Islam mainly served the social integration in opposition to non-Somalis, particularly against colonial invasion and the neighbouring Ethiopians. Up to this point the Somali shaped Islamic code of conduct did not enforce a strict obligation to the five pillars of Islam<sup>100</sup>. The events of civil war and the resulting absence of secular state structures, however, introduced a revival of religious practice, which led to the proliferation of Islamic welfare and schooling organizations. The growing influence of religious groups became most apparent in a change of dress code and public behavior, particularly in the urban context<sup>101</sup>.

**According to the Qur’an men and women are equal.** Women cannot be forced into marriage without their consent. They have the same economic rights as men. It is written in the Qur’an that “*to men is allotted what they earn, and to women what they earn*” (Qur’an 4:32). Women are also granted political rights as they are allowed to vote and run for political offices. However, “Within political life one Islamic Hadeeth has widespread recognition. It says: *A people will not prosper if they let a woman be their leader*. This view still holds in the form of political discrimination against women in Somalia”<sup>102</sup>, as will be seen in chapter 3.4.

### 3.3 Women’s Economic Role

Traditionally, the division of labour is clearly defined. **Men are considered to be the leaders of the family and the household.** They are the sole proprietors of the family’s livestock and economic wealth in general. In the traditional pastoral setting their tasks include the protection of the family and its property, the search for

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<sup>96</sup> NAGAAD 2007b: 13

<sup>97</sup> Steiner 1997: 25

<sup>98</sup> Warsame 2000: 13-15

<sup>99</sup> see Battera 2005, Le Sage 2005

<sup>100</sup> Steiner 1997: 29

<sup>101</sup> Bradbury 2008: 19-21

<sup>102</sup> Steiner 1997: 29



water from distant wells (*dhaamin*), exploring grazing opportunities for the livestock (*sahan*) and, therefore, deciding on migration movements. Also, the grazing and watering of camels fall under the responsibility of (unmarried) men, which can take them far away leaving women, children and the elderly behind in the nomadic camp<sup>103</sup>.

Pastoral women play a significant economic role as they do almost all the hard work. Equally, in urban settings women proved to be capable of feeding their families by doing menial jobs, which the men often overlook or shun of doing them. Hence, **Somali women have always been perceived as a vital pillar in Somali society ensuring the wellbeing of the family.** In the rural areas, the responsibilities of nomadic women range from domestic tasks such as child-rearing, cooking, cleaning, and further extend to caring for and watching the livestock that stays with the camp (goats, sheep and few burden camels), collecting firewood and fetching water. Additionally, women are responsible for building and dismantling the traditional nomadic hut (*aqal*) made of woven tree branches, as the family moves from one place to another in search for grass and water for the livestock. Although women traditionally do not own livestock, they are in large control over food items. Thus, consumption and distribution of milk and meat are undisputed responsibilities of women<sup>104</sup>.

The modernization of the economy with the advent of colonialism, sparking off increasing sedentarisation and urbanization, unleashed profound changes within traditional economic gender roles. Most importantly, the modernization doctrine of Siyad Barre's military regime had a far-reaching impact on family structures. The introduction of **the Family Law in 1974 granted women equal economic and legal rights**, especially in matters of inheritance and divorce. It further strongly encouraged women's access to education and to various professions in the public and private sectors. Article 55 of the Worker's Statute ensured the right of equal salary. Even though these progressive reforms were generally popular<sup>105</sup>, there was a strong resistance among Muslim clerics, who opposed these social changes and demanded the return to fundamental Islamic principles regarding the family. In 1975, ten Islamic leaders were executed for agitation and anti-revolutionary activities, which eventually triggered the radicalization of Islamic groups throughout Somalia<sup>106</sup>.

Further impacts on traditional Somali gender roles were the exodus of men in search of employment, mostly to the Gulf states in the mid-70ies, and the consequences of war, starting with the Ogaden-war between Somalia and Ethiopia in 1977-78 and continuing with the civil wars of the 80ies and 90ies. These events left many women as the new heads of the family, who ultimately replaced men as the bread-winners<sup>107</sup>.

#### **The paradox of women bread-winners**

"In post-war Somaliland women are often the sole providers of family income as petty traders. Among pastoralist communities women have taken on increased responsibilities for family livelihoods. While men acknowledge this, it has not translated into increased decision-making powers for women. The roles and rights of women have not been recognized in the distribution of employment opportunities. Men have [...] first priority in all jobs in government institutions and welfare services" (Bradbury 1997: 39).

Today, women find employment mainly in the private and informal sectors. They engage in business enterprises, but mostly working as secretaries and doing other subordinate services such as cleaning. The majority of the self-employed women are involved in small-scale trade, selling food items, charcoal, Khat (a narcotic stimulant), household goods, clothes and gold. They also provide services in beauty salons, tea-shops and restaurants.

<sup>103</sup> WSP 2005: 273

<sup>104</sup> Ibid.

<sup>105</sup> Warsame 2000: 29

<sup>106</sup> WSP 2005: 276; Bradbury 2008: 37

<sup>107</sup> WSP 2005: 276

Since the collapse of government institutions in 1991, numerous women's groups and organizations were established, supporting women's needs and basic rights. The eagerness of many international organizations promoting women's issues and human rights further triggered **the proliferation of women's NGOs throughout Somaliland**. Thus, many skilled and educated women, particularly so-called diasporas, found employment with international and local NGOs; they got absorbed into the civil society sector, which arguably meant a loss for women engaging in politics<sup>108</sup>.

However, **poverty is the reality for many women**. Most of them do not have access to credit institutions. Instead, the main source of credit facilities available to women is microfinance offered by local and international NGOs. Recent surveys of NAGAAD, however, suggest that the majority of women start their business with their own savings or with loans from relatives. An important way of saving money for women is through the membership in informal saving clubs known as *Hagbad*<sup>109</sup>.

Another crucial source of income are remittances transferred from Somalis living abroad. Interestingly, **remittances are preferably channelled to female relatives** despite the inferior social, economic and political position of Somali women. It is argued that, contrary to women, men have the tendency to invest money in lavish habits such as the consumption of Khat rather than supporting their families<sup>110</sup>.

### 3.4 Women in Political Decision-Making Processes

Even though women constitute the majority of Somaliland's population, thus also being the main supporters of any political party, **women are effectively excluded from political decision-making processes**. Traditionally, governance and maintaining order in Somali society is highly decentralized. In Somali customary law (*xeer*), there are no permanent political institutions or offices, but ad-hoc assemblies (*shir*) under the chairmanship of lineage-elders (*odayaasha*, *Sg. oday*) in response to occurring crisis or basically, whenever there is a decision to be made. Issues evolve roughly from the regulation of pastoral resources (access to pasture and water as well as sharing resources with neighbouring clans), the reconciliation of conflicts, the declaration of war, and the collective payment of the *dīya* (the blood compensation in case of homicide, which is commonly 100 camels for a man and only 50 for a woman).

In these clan-meetings, which are traditionally held under a shady tree (*geedka*), all male members of the clan who are above the age of sixteen are allowed to participate and have a say. The egalitarian character of these assemblies led the most prominent anthropologist in Somali studies, Ioan M. Lewis, to describe Somali society as "A Pastoral Democracy"<sup>111</sup> – a legacy that is echoed in many contemporary analyses of Somali society. However, this assumption fails to consider the position of women, who are not allowed to participate in these meetings. **Decision-making is traditionally regarded as the domain of men while women do not have a say at all**<sup>112</sup>. Although women are not supposed to give their opinions publicly, they are consulted privately on the matters of discussion<sup>113</sup>.

Even today, **engaging in politics actively is a big challenge for Somali women**. During the last parliamentary elections, held in 2005, out of a total number of 246 candidates seven women ran for elective

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<sup>108</sup> see Bradbury 1997, 2008; NAGAAD 2007a

<sup>109</sup> NAGAAD 2007b: 20; NAGAAD 2008: 23-25

<sup>110</sup> Warsame 2001: 16

<sup>111</sup> Lewis 1961

<sup>112</sup> see Le Sage 2005, Gundel 2006, Höhne 2006

<sup>113</sup> Warsame 2001: 8

positions (two for UDUB, two for Kulmiye and three for UCID). Only two made it to parliament<sup>114</sup>. Considering that an estimated 55% of the voters are female<sup>115</sup>, women are vastly under-represented. There are three interrelated reasons:

- a) First, because of a woman's dual clan-identity, belonging to both her father's clan and her husband's and children's clan, her loyalty towards the family remains unpredictable in the eyes of men. There will always be the question whom she will represent – her father's clan or her husband's clan? As politics always contain a certain clan dimension, the lack of a clear clan-identity disadvantages women to a great deal. A woman might even risk divorce, if she campaigns against a member of her husband's family.
- b) Second, in patriarchal Somali society, there is a general unwillingness of men to be represented by women.
- c) And finally, both constraints ultimately result in the lack of financial backing of female candidates by their clans.

The poor outcome for female candidates was widely criticized among local intellectuals, women's groups and local NGOs throughout Somaliland, and led to an outcry for a specific quota for women candidates, which is still being discussed by the time of writing this report<sup>116</sup>.

#### **Key statistics of women in Contemporary Somaliland Politics**

“According to a data obtained from the Civil Service Commission, the total number of Somaliland civil servants in 2006 was 5.419 out of which 1.324 were women. The data also shows that there were 37 government senior posts/General Directors of which none was a female. Moreover, there were 137 heads of departments of the different ministries, out of which only 7 were women. In the heads of sections, which number 270 in the different ministries, only 25 were woman. [...] Out of 51 cabinets ministers and vice ministers, there is only one woman minister, the Minister of Family Affairs and Social Development” (NAGAAD 2007b: 18).

### **3.5 Women in Conflict and Peace**

As noted above, Somali women are a vulnerable social group; hence, they are the ones who suffer particularly from violent conflict, displacement and poverty. For women, the death of close family members bears the risk of falling out of the collective security network<sup>117</sup>. Additionally they have to face forms of sexual violence such as a rape, which in the Somali context could hardly be more tragic as the victim is often forced to marry the perpetrator. Basically, this is practiced to ensure the full payment of the bride's price (*yarad*) to her father's clan, which otherwise would be lost as women have to enter marriage as virgins, and to avoid shame from the victim's family<sup>118</sup>.

However, Somali women have always played an important role in times of conflict, and it is not the intention of this section to present women as mere victims. Traditionally, they do not actively participate in fighting, and together with other vulnerable groups such as children, the elderly, the sick and the wounded but also highly valued authorities such as religious and traditional leaders, women are considered as protected group, “*biri ma geydo*”, literally “*spared from the spear*”<sup>119</sup>. Nevertheless, women do play a very active role

<sup>114</sup> Interpeace/Academy for Peace and Development 2006: 36

<sup>115</sup> NAGAAD 2008: 28

<sup>116</sup> see Interpeace/Academy for Peace and Development 2006; NAGAAD 2007a, 2007b, 2008

<sup>117</sup> See chapter 3.1 and 4.2

<sup>118</sup> Gundel 2006: 49

<sup>119</sup> Bradbury 2008: 18

during conflicts. The establishment of cross-clan ties through intermarriage and the resulting matrilineal links to affinal relatives (*xidid*) are a crucial source of social, economic and political cooperation. In times of conflict, these matrilineal linkages often form the basis for solidarity, reciprocal aid and most importantly peace. Hence, the cessation of hostilities and further agreements on reconciliation decided in traditional clan-meetings (*shir*), are often sealed with the “giving” of a bride to the opponent clan, which is another form of forced marriage called *godobtir*<sup>120</sup>.

Furthermore, **matrilineal ties (*xidid*) enable women to be key actors in the process of peace-building**. Because of their multiple clan-affiliation, women are able to travel the country more freely than men crossing even disputed territories. They carry messages back and forth between the clans, thus establishing important channels of communication and setting the ground for peace initiatives<sup>121</sup>. More explicitly, women have their very own interest in peace since the conflicting opponents might be her relatives, so that her brothers may fight her children or vice versa, as case I shows<sup>122</sup>.

Although they are not allowed to participate in clan-meetings, women constitute an important pressure group, organizing rallies, chanting poems of peace and influencing stakeholders who are related to them. For example, during the national reconciliation processes in the early 90s, women were responsible for logistics, providing food and shelter for several hundred delegates of the clan-conferences. They also kept waiting outside the meeting halls, pushing the clan-leaders not to further delay important decisions regarding the establishment of peace<sup>123</sup>.

**CASE I:** Amina grew up in the agro-pastoralist environment of Jidali village where everybody in the valley knew each other and contact with outsiders was limited. At the age of 17, her father arranged her marriage to the son of her mother’s brother. Amina’s father belongs to the *Habar-Yonis* sub-clan of *Isaaq*, whereas her mother is a member of the *Dhulbahante* sub-clan of *Darood*. After the marriage, she was expected to stick with her husband’s clan. Still, she could claim attachment to both clans. However, after the outbreak of civil war in 1988, government forces of Siyad Barre with the backing of *Darood* clans started fighting against the opposition movement SNM (Somali National Movement) supported mainly by *Isaaq* clans. For Amina this meant that the conflict was taking place between the clan of her husband and children and the clan of her father and brothers on the other side. While her father’s clan fled to the mountains, she had to seek refuge together with her husband’s clan and her children in the South of Sanaag and Sool. Recalling the long walk to the small village of Awr Boogeis, she remembers the hardship of hunger, fear and disease, which particularly affected her four children. Soon after their arrival in Awr Boogeis, her youngest son Abdi, who was only three years old, died. Later on, in 1991, when reconciliation talks were initiated in Sanaag region, Amina was one of the women who crossed the front-lines and facilitated first contact between the clan leaders.

#### 4. Women Accessing Land in Somaliland

“Land-ownership is free to everyone; there are principally same chances for men and women. But whenever there is conflict over land, women have less power and it is the men who have better access to law and to the courts. In the long run women have less chances”, as one of our interview respondents pointed out<sup>124</sup>.

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<sup>120</sup> Gundel 2006: 49

<sup>121</sup> Interpeace and Academy for Peace and Development 2009: 66

<sup>122</sup> Haroon 1997: 1-2

<sup>123</sup> Interpeace/Academy for Peace and Development 2009: 46

<sup>124</sup> Interview, HAVOYOCO, August 2009

According to a statistical survey sampling 360 households<sup>125</sup> in urban areas (Hargeisa, Burao and Boroma), the vast majority of women respondents own buildings (81%). When asked about their ownership of property (farm land, vehicles and livestock) less than half (42,4 %) responded positively<sup>126</sup>. Basically, there are direct and indirect ways for women to access land. Ownership is obtained either through buying or inheriting a plot of land, whereas control and utilization over land resources is exerted either through rent (particularly in the urban context) or, most commonly, through women's subordinate social status as wives, grandmothers, aunts, sisters, daughters, cousins and so on.

However, the situation is far more complex. Pre-Islamic customary laws (xeer) were informed by certain aspects of shari'a and, more recently, influenced by the legacy of colonialism introducing government institutions and positive law. Hence, a situation of legal pluralism was created where all three systems work in the same juridical domain. They complement each other, they work alongside and they can be contradicting<sup>127</sup>.

### Women and Legal Pluralism

"This legal scenario of legal diversity tends to shift the Rule of Law in Somaliland to Rule of Laws. In such a situation, women suffer most. They neither have the ability nor the means to maneuver in such situations. Hence, they end up being the looser." (NAGAAD 2007b: 29)

## 4.1 Women's Access to Land within Positive Law

The constitution of the Republic of Somaliland states that "All citizens of Somaliland shall enjoy equal rights and obligations before the law, and shall not be accorded precedence on grounds of colour, clan, birth, language, gender, property, status, opinion etc."<sup>128</sup>. Regarding land tenure, it is written in Article 31, The Right to Own Private Property: "Every person shall have the right to own private property, provided that it is acquired lawfully".

However, government structures remain weak in present-day Somaliland and even though **the constitution grants equal rights to men and women, including property-rights**, the government has failed to adopt appropriate policies and efficient mechanisms of implementation that protect particularly women. Legal loopholes relating to land tenure lead to frequent ownership and inheritance disputes where women are usually the losers.

Women face a series of problems trying to exert their rights:

- a) Few women can afford the expenditure of formal legal proceedings, including costs of transportation, issuing relevant documents and hiring a lawyer.
- b) They have very little or no knowledge about their constitutional rights and the procedural steps to be taken.
- c) The male-bias of government-institutions works against women's representation; there are no female investigators, prosecutors or judges and very few female lawyers.
- d) Weak juridical institutions and reported malfunctioning such as corruption aggravate women's inferior position.
- e) Cultural constraints hinder women from addressing issues publicly.

<sup>125</sup> "A household was defined as a permanent or temporary structure occupied by a family comprising of male/female head, children and grandparents from the same pot. The household is important for gender relationship formation and transmission of gendered values" (NAGAAD 2008: 10).

<sup>126</sup> NAGAAD 2008: 26

<sup>127</sup> See Battera 2005, Le Sage 2005

<sup>128</sup> Somaliland Constitution: Article 8

According to the judiciary structure of Somaliland, the district courts have jurisdiction over all personal cases, including matters of family affairs such as divorce, inheritance and related land-disputes. The main women-specific disputes heard in courts are that of family-maintenance after divorce, followed by rape cases, other forms of physical violence against women and robbery. In its latest survey, the women's umbrella organization NAGAAD states that slightly over half of the women respondents felt that their cases were dealt with fairly (52%), while 35% reported the contrary, and another 9% felt that they were treated very unfairly<sup>129</sup>.

There are only two legal institutions in Somaliland, that provide women with free legal assistance, that is the Legal Clinic of Hargeisa University and the Somaliland Women Lawyers Association (SWLA), founded in 2008 with the support of UNDP. The latter also runs an internship program placing female law graduates with various juridical institutions for a period of at least six months.

Our interview respondents agreed that **the only way to achieve equal justice is the government taking serious measures to improve judicial institutions**, including a clear mandate on decision-makers, implementation and supervision. But as one interviewee exclaimed: *"It is challenging for the government to come up with a strong law, it will take years and years to clean up sloppy government institutions. The government is everybody's favorite place to work. Corruption is a huge issue."*

The chronic weakness of government institutions to secure land-tenure is clearly shown in the following case<sup>130</sup>:

**CASE II:** Somewhere in Burao, a well-situated woman, a so-called diaspora, bought a big plot of land. Because she had already encountered problems of frequent ownership, she made sure that she is dealing with the rightful owner; also she had strong witnesses and was in possession of all relevant documents. However, one day her neighbours started to harass her, because they wanted to build a road that would lead right through her land. She put up a fence and hired a watchman, but to no avail. So she went to the police. To her surprise, they did not respond to her problem at all, even though she went to the police station and to the municipality several times. Finally, she was told to turn to her family as disputes were usually handled within the clan. Having lived abroad for a long time, she did not believe them at first, but she followed their advice and told her relatives about her problem. Then her male cousins went to the Mayor and other relevant chair holders. It even turned out, that some high-ranking government officials from Hargeisa had been involved, who tried to influence the process to the advantage of her neighbours. Eventually her cousins showed up on her land, this time with guns. They made it clear, that the neighbours were not fighting a single, helpless woman, and that whoever got a problem should come and see them first. From that day on, her land was secured and she never experienced any further problems.

## 4.2 Women's Access to Land within the Customary Law (xeer)

Due to the prevailing weakness of government institutions as well as a common mistrust in its efficiency, an estimated 80% of legal disputes are solved through mechanisms of Somali customary law (xeer)<sup>131</sup>. Traditionally, access to land is governed by patriarchal ideology; hence, women are largely excluded from landownership, which is the collective property of the family and is handed down from father to son. Women exert control only through their subordinate status as wives, mothers, grandmothers, aunts, sisters, daughters, and so forth<sup>132</sup>.

<sup>129</sup> NAGAAD 2008: 27

<sup>130</sup> The narrative is based on an interview conducted by Safiya Tani and Rita Glavitz in Hargeisa (August 2009).

<sup>131</sup> Gundel 2006: 17

<sup>132</sup> see Steiner 1997, Warsame 2000, Warsame 2001

As described above, a significant number of women have become the head of the family and are entitled to land-ownership. Thus, within the traditional system there is no such *xeer* that prevents women from purchasing land. Still, whenever there is a problem regarding land tenure (or other disputes) that is settled through customary law (*xeer*), **women are not treated as individual legal subjects but according to their subordinate social status as wives, mothers, sisters, or other relationships towards her male relatives.**

Furthermore, a woman cannot address issues such as land-disputes single-handedly. Whenever a woman has a problem and wants to talk to the elders, they would ask for a male relative to come instead and represent her. As one interviewee pointed out “As a woman you cannot compete. You cannot talk in front of men or you bring shame on yourself”. **Generally, in Somali culture leadership lies with men only; women are to be represented by her male relatives.** Married women are represented by their husbands or adult sons or, in case of a widow with small children, by her husband’s male relatives. Unmarried women, widows or divorcees without children are to be represented by their brothers or other immediate male relatives.

Matters of inheritance, for example after the death of a husband, are settled within the husband’s family. If a woman has sons, there are usually no problems occurring for the widow regarding inheritance, but if she has no children or only daughters, the male relatives of her husband will usually take the land of question for themselves. Our interview respondents agreed, that among the three legal systems in place, **the customary law offers the least protection for women.** The only chance a woman has within the customary system would be convincing the female relatives of the elders in charge to influence them to her advantage.

#### **4.3 Women’s Access to Land within Islamic Law/Shari’a**

As to legal affairs, **women usually turn to religious authorities (sheikhs) and the shari’a**, where they feel their interests are met sufficiently compared to the other legal systems in place. In general, people are believed to be most likely satisfied with decisions based on *shari’a*. Contrary to customary law, which is generally flexible and open to change, what is written in the Qur’an cannot be changed. Another advantage over positive law is that shari’a jurisprudence is quicker and less expensive than formal courts<sup>133</sup>.

The scope of Islamic law emerges from its main textual sources, the Qur’an, read alongside the Sunna, as well as the theoretical debates, evidence of policies and legal practices, court records, and fatwas. **Within Islamic framework, a woman is granted equal economic and political rights and is legally treated as an independent individual.** A Woman’s right to acquisition, utilization and alienation of property through purchase and inheritance is explicitly recognized in the Qur’an. The Qur’an notes that women “*shall be legally entitled to their shares*” and that “*to men is allotted what they earn, and to women what they earn*”; only if women choose to transfer their property can men regard it lawfully theirs.

According to compulsory rules of inheritance derived from Qur’anic verses, specific fractional shares of the deceased’s property are distributed to certain defined heirs among the relatives (children, parents, spouses and, in the absence of children, siblings). A woman’s share is generally half of what a man inherits. Even though a woman is granted her share of land, her brothers, for example, may insist that she takes money instead, as one interviewee suggested. Thus, it is more likely that a man inherits land. “The difference in treatment between men and women is usually explained by reference to the fact that it is also a feature of Islamic law that a wife is entitled to maintenance from her husband, in terms of shelter, clothing, food and medical care”<sup>134</sup>.

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<sup>133</sup> see Le Sage 2005

<sup>134</sup> UN-HABITAT 2005: 11

However, there are indications that women do feel frustration in their pursuit of property rights according to *shari'a*, because there are certain limitations, particularly as to matters of inheritance as the following case shows<sup>135</sup>:

**CASE III:** There was a married couple, who lived somewhere in Hargeisa. When the husband died, he left no children and because he had no brothers and no first or even second male cousins, more than half of that land went to his third cousin, who eventually decided to sell the house. The deceased's wife had been married to her husband for over 30 years, taking care of him and nursing him to the very end. Apparently, her commitment had no weight in the judges' verdict based on *shari'a*. In the end, there was nothing she could do about it and so she lost her house.

## 5. Women in Land-Based Conflicts

As women constitute more than half of the population of Somaliland, it is assumed that **the majority of victims suffering from land-based conflicts are women**. Particular vulnerable groups among women are the poor and refugees, outcasts, widows, divorcees, and single-parents; all of them experiencing themselves at the edge or outside of the collective support system that is guaranteed through kinship-ties.

Another important group of women in land-based conflicts are returnees from abroad, commonly known as diasporas. Their financial capacities usually exceed the locals' possibilities by far, so that they are perceived of "*having their pockets full of dollars*", as one interviewee phrased it. Hence, a great part of land owned by women, particularly in the urban context, belongs to so-called diasporas. Although they appear as dominant actors, they also face cultural constraints and harassment, quite often from their own relatives. Generally, when asked about the perpetrators, our interviewees responded that family members are playing a central role in land-based conflicts. They are the ones who know best about whereabouts, the economic situation and relationship-status of women, for example if she is all alone and, thus, an easy target. However, on the other hand, **women are not mere victims in land-based conflicts**; they also stimulate conflict, pushing their male relatives to increase their families' economic wealth, as the following case indicates<sup>136</sup>:

**CASE IV:** Somewhere in Hargeisa, a family suddenly found the road between their land and their neighbours blocked. Apparently, the neighbours had taken half of the road to increase their land. So the family quickly took the other part of the road in order to maintain access to their plot of land. The case was taken to the elders who decided that the road should be divided equally. At first, both parties

## 6. Conclusion and Recommendations

Women face a series of challenges when it comes to land tenure in Somaliland. It has been shown that cultural, economic and institutional barriers are serious obstacles for women who attempt to purchase or inherit land. The reality of plural legal systems causes a lot of confusion for women, who often do not have the knowledge of the procedural steps to be taken and/or the financial means to fight for their rights, which are enshrined within the constitution. Additionally, the weakness of government institutions disadvantages women to a great deal. The government has yet failed to implement an effective legal framework that secures the rights of women, who find themselves exposed to the will of men, as cultural constraints continue to be the biggest obstacle for women in male-biased Somali society. Therefore, it is strongly recommended

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<sup>135</sup> The narrative is based on an interview conducted by Safiya Tani and Rita Glavitz in Hargeisa (August 2009).

<sup>136</sup> The narrative is based on an interview conducted by Safiya Tani and Rita Glavitz in Hargeisa (August 2009).



- for the government, to adopt policies that protect particularly women's rights
- for the government, to improve land tenure security for women through effective and unbiased implementation and supervision;
- for the government, to increase women's representation within the judiciary;
- for the government and stakeholders of the civil society, to raise awareness to women's needs regarding land tenure, both on the institutional as well as the community level;
- for the community leaders, to eliminate traditional rules that discriminate women in land tenure.

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# VI. Appendixes

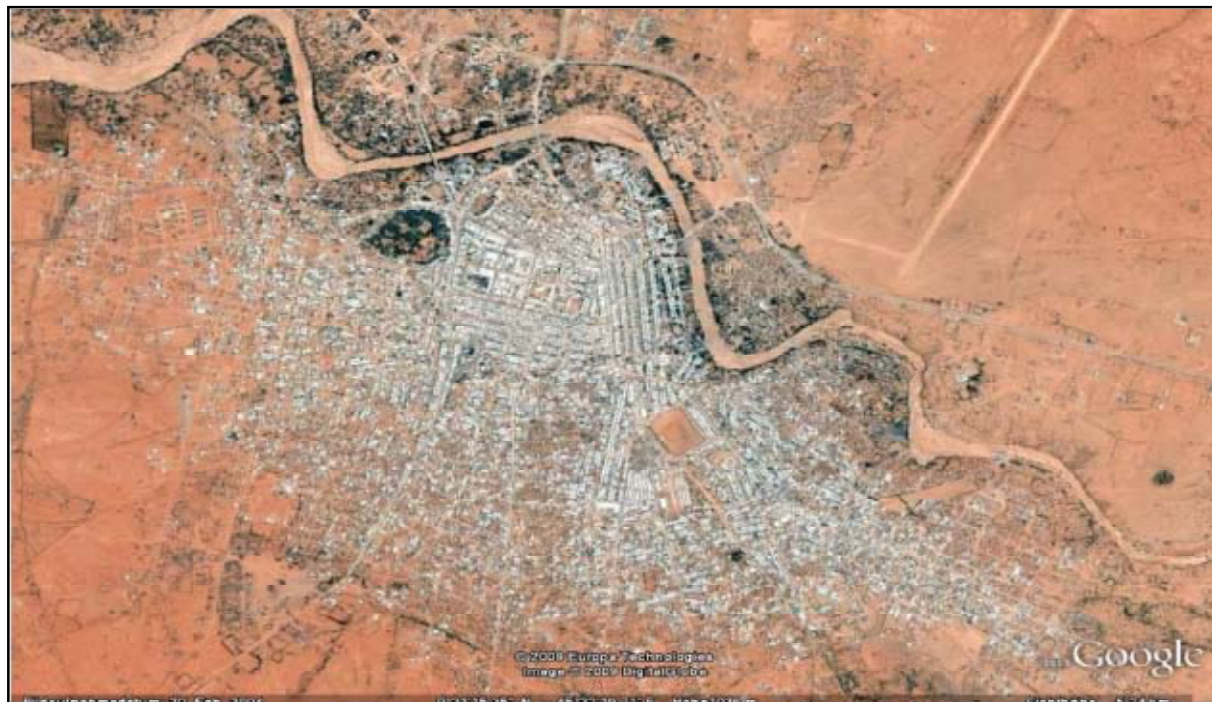
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*Figure 6: Map of Hargeisa*



Source: Google Earth

*Figure 7: Map of Burao*



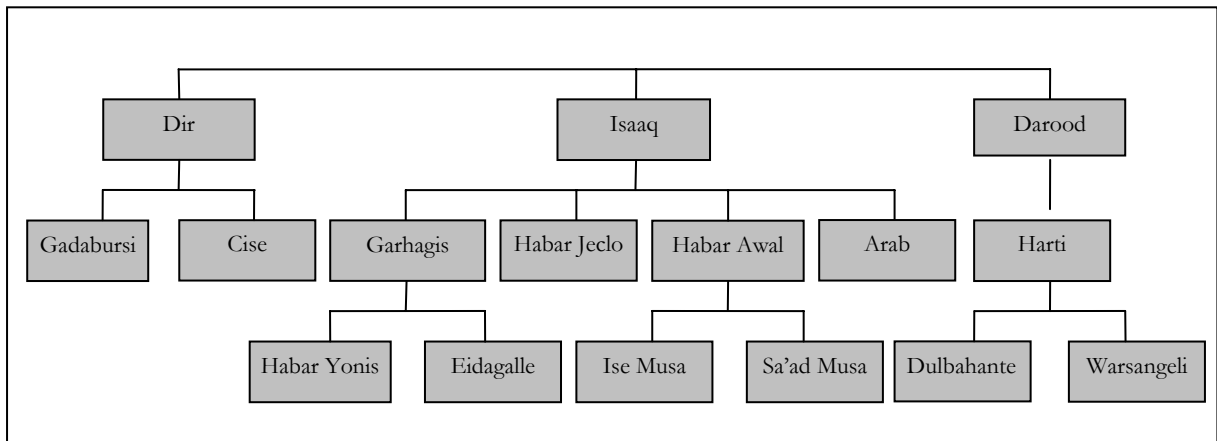
Source: Google Earth

Figure 8: Map of Somaliland



Source: Somaliland Government Official Website

Figure 9: Somaliland Clan Chart



Please note that this clan chart is not all inclusive and only shows some of the largest and politically more relevant clans and sub-clans.

**Figure 10: List of research and dialogue activities**

**a) Hargeisa**

No	Date	Type	Interview Partner/ Group
1	11/07/09	Semi-Structured Interview	SWLA (Somaliland Women's Lawyers Association)
2	3/07/09	Meeting	Working Group
3	15/07/09	Semi-Structured Interview	Director of Land Management Department Hargeisa
4	August 09	Semi-Structured Interview	Havoyoco
5	August 09	Semi-Structured Interview	Nagaad
6	August 09	Semi-Structured Interview	Ministry of Family Affairs and Social Development
7	August 09	Semi-Structured Interview	Interpeace (Hargeisa Office)
8	August 09	Semi-Structured Interview	Director of the National Urban Planning Commission of the Ministry of Public Works
9	22/09/09	Focus Group Discussion	Returnee Representatives
10	23/09/09	Focus Group Discussion	Gabooye Community Representatives
11	29/09/09	Focus Group Discussion	Oromo Community Representatives

**b) Burao**

No	Date	Type	Interview Partner/ Group
1	19/10/09	Focus Group Discussion	Gabooye Community Representatives
2	20/10/09	Focus Group Discussion	Women Groups Representatives
3	21/10/09	Focus Group Discussion	Returnee Representatives
4	22/10/09	Focus Group Discussion	Locale Councillors
5	23/10/09	Focus Group Discussion	Real estate Brokers
6	26/10/09	Consultation Workshop/ Presentation	Various Actors (State and NGO Officials)
7	12/12/09	Focus Group Discussion	Judges and Judiciary Officials
8	13/12/09	Focus Group Discussion	Returnee and Refugee Representatives
9	13/12/09	Focus Group Discussion	Locale Government Representatives
10	14/12/09	Focus Group Discussion	Oromo Community Representatives
11	14/12/09	Public Presentation	Burao Public
12	15/12/09	Focus Group Discussion	Elders
13	December 09	Film Shows in Burao in <ul style="list-style-type: none"> <li>•Kosor</li> <li>• Ali Hussein</li> <li>• Booramo</li> <li>• Qota</li> </ul>	Communities









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