Land Matters in Mogadishu

*Settlement, ownership and displacement
in a contested city*

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Map 1. *Southern and central Somalia*

Acknowledgments

Competition over the control and ownership of land has long been acknowledged as a driving force behind violent conflict in Somalia. As Besteman and Cassanelli argue in their groundbreaking book on the subject—*The Struggle for Land in Southern Somalia*—political reconciliation has little chance of long-term success, if it is 'not accompanied by mechanisms for resolving competing claims to land and other productive assets.'[1] Their analysis was largely concerned with rural land. This report is concerned with what is arguably Somalia's most contested piece of real-estate—its capital, Mogadishu.

Research for this report was undertaken in 2014, but with refugee returns continuing to increase in 2016, a large population of long-term internally displaced people in the city, and a new government and national development plan, its publication remains timely. Without an effective system of land governance in place, competition over land will continue to be a source of violent conflict, threatening to undermine stability and affecting all walks of life. While the land question has been acknowledged in successive peace agreements in Somalia, the political sensitivity and complexity of the subject means there has been limited progress in developing concrete policies to address the issue.

The issue of land in Mogadishu is multifaceted and deserves more attention than this report can give it, as do the dynamics of land in Somalia's other urban centres, such as Kismaayo, Baydhabo or Gaalkacyo. This report aims to inform the development agendas of the Somali Federal Government (SFG) and Federal Member States, and international policy makers, on the subject of land in Somalia.

Researching land in Mogadishu is a difficult undertaking. The sensitivity of the subject means that the researchers and authors of this report prefer to remain unnamed. We acknowledge the quality of their research

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1 Catherine Besteman and Lee Cassanelli, *The Struggle for Land in Southern Somalia: The War Behind the War*, London: HAAN Associates, 2000, ix.

Summary

Mogadishu, the capital of Somalia, has for more than two decades been one of the most highly contested cities in the world. Since the collapse of President Siyad Barre's government in early 1991, it has been the object of both military and political struggles almost without interruption. The nature of conflict in the city has evolved since 1991, when warlords waged fierce street battles for control of neighbourhoods, damaging or destroying much of the city centre and prompting massive population displacement and occupation of land by newcomers. In the years following the failed UN peace operation from 1993–1995, the city enjoyed an economic recovery fuelled by trade and remittances, but was fractured into a complex mosaic of warlord-controlled fiefdoms and was prone to chronic low-level insecurity. In early 2006, warlord militias were chased out by an alliance of Islamic courts and their affiliated militias—including those who later emerged as al-Shabaab[2]—which were, in turn, ousted by an Ethiopian military invasion in late 2006. An explosion of warfare pitting the militant Islamist group al-Shabaab against Ethiopian and transitional government forces inflicted still more displacement and damage on the city from 2007–2008. By 2008, al-Shabaab gained control over much of what became a divided city until, under pressure from African Union peacekeeping forces (African Union Mission in Somalia, AMISOM), it withdrew from most districts of Mogadishu.

The city's fortunes have improved somewhat since 2012, with the establishment of the Somali Federal Government (SFG). There are still major challenges. Al-Shabaab has infiltrated back into many districts and continues to launch devastating attacks in the city with relative ease and frequency. Security remains largely contingent on the presence of AMISOM troops, and hundreds of thousands of internally displaced persons and other vulnerable groups are still dependent on humanitarian

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2 *Harakat al-Shabaab al-Mujahidin* (Mujahidin Youth Movement) is a militant group in Somalia which is active across East Africa, commonly referred to as al-Shabaab.

assistance. There is cautious optimism, however, that Mogadishu's darkest days are over and that the city will gradually return to greater levels of peace and stability for its estimated 1.5 million residents.[3]

One of the most difficult and sensitive issues of the capital's long process of recovery and normalization is competing claims to land. The control and ownership of land and property have been underlying themes in Somalia's civil conflict since before the collapse of the state, arguably nowhere more so than in Mogadishu. From the first national reconciliation conference in 1993, addressing issues of land ownership has been seen as core to any reconciliation process. As a degree of stability returns to Mogadishu, members of the Somali diaspora have been returning in greater numbers and real estate investment has spiked, prompting the rise in value of land and bringing with it a surge of land-related disputes. During 2014, an estimated 80 per cent of court cases heard in Mogadishu's Supreme Court were related to land.[4]

This report considers the current state of land governance and the nature of continuing land disputes in Mogadishu. It does so in the context of the city's history, both before and during the prolonged period of conflict that began in the early 1990s. The report aims to build on the small but growing body of literature on urban land in post-conflict environments. It concludes by providing some preliminary policy considerations for both the federal government and the Benadir Regional Administration (BRA) relating to land governance reform, and to organizations within the international humanitarian and development communities with an interest in supporting them.[5]

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3 Latest estimates put the number at 1,650,227; UN Population Fund, *Population Estimation Survey 2014 for the 18 pre-war regions of Somalia, UNFPA, Somalia Country Office/Federal Republic of Somalia, October 2014.*

4 Interview with Chief Justice Aideed Abdullah 'Ilka Hanaf', Benadir Regional Court, 23 April 2014.

5 The Benadir Regional Administration (BRA) currently encompasses the 17 districts of Mogadishu and is used interchangeably with Mogadishu both in common parlance and administratively—the roles of Governor of Benadir and Mayor of Mogadishu are fused in a single position at the time of writing.

Conducting primary research in Mogadishu in the years preceding the collapse of Siyad Barre's government in January 1991 was difficult, due to the authoritarian nature of the regime. It became much harder from 1991 until relatively recently, due to state collapse and the resulting insecurity. Few trained researchers gained sufficient access to the city to carry out either quantitative or qualitative research. Freedom of movement for those that did secure access was extremely restricted and dependent on the patronage of local power brokers. Following al-Shabaab's withdrawal in 2011, however, and the signing of the first set of Garowe Principles later that year, which led to a broadly-supported roadmap to end Somalia's transitional period, research access to Mogadishu, though still limited, has improved.

Much of the research contained in this report was conducted between January and June 2014 by a small team of Somali graduates, following training in social science research methodologies and the background to the project.[6] More than fifty interviews were conducted with individuals currently or previously involved in land disputes, internally displaced persons (IDPs) facing or having recently faced eviction, traditional elders, lawyers, public notaries and land brokers. Further research was led by the report authors from August to September 2014, who also conducted interviews and other meetings with current and former government officials, members of the judiciary and leading international NGO representatives.[7]

Mogadishu remains a dangerous city in which to operate and conduct research. Due to the sensitivity of the subject of land in the capital, it has been agreed that all participants in the study—as well as the report's authors and team of researchers—will remain anonymous. Given the value of land in Mogadishu, the precarious status of ownership of land, and the challenges faced by the judiciary, only prominent past and present stakeholders are formally identified.

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6 The training, which took place in January 2014 in Hargeysa, Somaliland, was conducted by Cindy Horst under the auspices of the Rift Valley Institute (RVI).

7 The draft report was extensively reviewed, and was updated prior to publication.

Land in Mogadishu is a broad and complex issue. Questions of gender and land, and peri-urban land, are among the many issues that warrant more research. It is hoped that this report will prompt further investigations into these and other matters related to land in Mogadishu. Comparative case studies in other cities in the eastern Horn of Africa would also complement the findings of this report. The history and modern dynamics of land disputes in Kismaayo or Gaalkacayo, for example, are substantively different to those of Mogadishu. Research focused on these and other cities would further contribute to our comparative understanding of urban land politics and conflicts in Somalia.

This report begins by examining the contrasting way in which urban land issues—as opposed to rural, and especially agricultural, issues—have been treated in post-conflict environments. This is followed by a brief historical overview of Mogadishu itself, since its foundation more than a millennium ago until the collapse of the government in 1991, with the aim of identifying past practices of urban land tenure and patterns of land grabbing prior to 1991, and a section on dynamics in the city after the collapse of the government and before the formation of the FGS.

The report then discusses the prevailing situation of Mogadishu's land governance and related challenges, focusing specifically on the issue of private property, attempts to reclaim private land, the disputes that subsequently arise, and the manner in which these disputes are addressed, and on the specific situation facing IDPs and other vulnerable communities in Mogadishu—an issue of considerable significance given the link between IDPs and the growing value of and demand for land in the capital. The report concludes with a summary of the findings and policy considerations for the various stakeholders involved in the issue.

1. Introduction: Post-conflict urban land

Until recently, research on land issues in post-conflict urban settings remained relatively underdeveloped. The focus of most land research in post-conflict environments around the world was on the rural, and particularly the agricultural, setting. Urban land sometimes featured as a sub-heading in broader reports but was rarely treated as a topic in its own right. The differences between the urban and the rural post-conflict settings, however, are striking, and only recently has more sustained attention been devoted to the complexities of urban land disputes in these contexts.

As of 2008, more than half of the world's population live in urban environments.[8] Currently, the African continent remains the least urbanized in the world, with fewer than 40 per cent of its entire population residing in urban centres. Some studies have even questioned the lasting nature of Africa's rapid urbanization.[9] But the United Nations Human Settlements Programme (UN-Habitat) predicts that the continent's urban population will reach 50 per cent by 2035.[10] According to the 2014 UN population estimation survey, Somalia currently matches the African average, with an urban population of approximately 42 per cent.[11] The demographic transformation from a country that during the 1970s was still heavily rural is significant.[12] In 2013, the World Bank put annual

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8 UN Department of Economic and Social Affairs (ESA), Population Division, 'An overview of urbanization, internal migration, population distribution and development in the world', UN/POP/EGM-URB/2008/01, 14 January 2008.

9 Deborah Potts, *Whatever Happened to Africa's Rapid Urbanisation?,* London: African Research Institute, 2012.

10 UN-Habitat, 'The State of African Cities 2014: Re-imagining Sustainable Urban Transitions', 2014.

11 UNFPA, *Population Estimation Survey 2014.*

12 D.M. Bohra, 'Patterns of Urban Settlements in Somalia', *Geojournal* 3/1 (1979): 63–68; Herbert S. Lewis, Carol Kerven, and Nancy Southerland, 'Urbanization and outmigration in Somalia', US Agency for International Development (USAID), May 1973.

urban population growth in Somalia at 3.5 per cent, ranking it among the world's 50 fastest urbanizing countries.[13]

Accelerated urbanization is also one of the main long-term effects of armed conflict. Consequently, post-conflict countries in Africa are much more likely to be dealing with heightened urban land pressures. Cyclical conflict-induced displacement—most often from rural to urban areas—therefore, partly helps explain Somalia's high rate of urbanization. The study of urban land and conflict in Somalia requires urgent attention and understanding, especially if new cycles of violence are to be prevented.

Modern versus customary land tenure

It was once commonly assumed that formalization of land tenure—usually by providing individualized property rights in the form of title deeds—was an essential step for modernization in countries in the global south. In agricultural zones, modern land tenure offered a host of perceived benefits: farmers would gain equity in land against which they could borrow to invest; farmers would be more inclined to invest in land they knew they could sell at a profit; land disputes would be reduced with cadastral surveys and formal land titles; predatory land-grabbing would be stymied; women's ability to maintain control of their land would be protected by law; and commoditization of land would be facilitated, which would allow more efficient farmers to purchase the land from the less efficient.[14] Similar arguments have been applied to land ownership and land reform in urban and peri-urban settings, where real estate is often the main source of savings and investment for urban households, and where formal land titling is viewed as an essential precondition for private sector investment in high-value developments such as hotels, apartment complexes and businesses.

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13 World Bank, 'World Development Indicators', DataBank, Accessed 18 January.

14 For example, World Bank, *World Development Report 2008: Agriculture for Development*, Washington DC: The World Bank, 2008, 9, 138–142; Gershon Feder and Raymond Noronha, 'Land Rights Systems and Agricultural Development in Sub-Saharan Africa', *The World Bank Research Observer* 2/2 (1987): 143–69; Kenneth Dam, 'Land, Law, and Economic Development', Washington DC: Brookings Institute Working Paper, 2006.

The logic of title-based land ownership is based on the critical assumption that an effective and fair system of rule of law is in place to: verify ownership; survey land boundaries; provide uncontested documentation of ownership; verify and record land sales; and adjudicate land disputes impartially. In the majority of post-conflict states, these conditions do not prevail. The state's capacity is weak, its legitimacy is contested and trust in government is low. Often, predatory governments have exploited modern land tenure legislation and titling as the vehicle for massive land-grabbing by the rich and powerful at the expense of the poor and powerless. When these realities of government weakness and predation are combined with widespread land occupation and dispossession—often associated with civil wars—the result is a crisis of confidence in formal land titling in post-war urban centres.

It is now generally agreed among land tenure and development experts that within many rural communities the presence of effective customary institutions, unburdened by population pressures or the presence of valuable resources, negates the immediate need for bureaucratic and expensive formal tenure systems, particularly in states suffering from chronically weak institutions vulnerable to manipulation by the political elite.[15]

The issue is more complex in post-war urban settings. High population densities, the subsequent demand for and value of prized land, the proximity of multiple—often competing—communities, and the presence of key national economic and government infrastructure, all set the urban environment apart.[16] In some cases, rapid increases in urban land values generate speculation and land-banking that accelerate further rising land values and potential conflict over real estate. Rapid urban growth produces sprawling peri-urban zones where systems of urban and

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15 John W. Bruce and Shem E. Migot-Adholla (eds.), *Searching for Land Tenure Security in Africa*, Iowa: Kendall/Hunt, 1994; Catherine Besteman, 'Individualisation and the Assault on Customary Tenure in Africa: Title Registration Programmes and the Case of Somalia', *Africa* 64/4 (1994): 484–515.

16 Geoffrey Payne, *Urban Land Tenure and Property Rights in Developing Countries: A Review of the Literature*, London: Overseas Development Administration (ODA), August 1996.

rural land tenure can collide and produce intense land disputes without effective mechanisms to resolve them. In both normal and post-war settings, these complex conditions require institutions trusted by all communities, which are rarely found in countries emerging from war.

An important question is whether there can be a role for customary or hybrid land tenure systems in urban settings where formal titling has, for whatever reason, fallen short. The debate over this question is part of a much wider discussion of the role of informal governance systems in failed and fragile post-war states, and prospects for hybrid governance systems that combine elements of formal and informal sources of political authority.[17] As a recent review of this debate observes, 'non-formal institutions are often the only ones left standing after civil war' and hence play an unavoidable role in governance, including management of land disputes in urban settings, but must not be 'romanticized' as they are embedded in social power hierarchies that serve some interests much more effectively than others.[18]

Where urban land governance is concerned, some analysts argue that property rights through title allocation are essential in promoting prosperity among the urban poor, and see little role for customary tenure.[19] Others have raised concerns with title allocation among poor communities, including the reluctance of many urban poor to engage with the very government officials that they expect to evict them.[20] A recent UN-Habitat assessment is blunt. It concludes that 'conventional land

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17 World Bank, *World Development Report 2011: Conflict, Security, and Development*, Washington DC: The World Bank, 2011, 156; Camilla Toulmin, 'Securing Land and Property Rights in Sub-Saharan Africa: The Role of Local Institutions', Land Use Policy 26 (2008): 10–19.

18 Niagale Bagayoko, Eboe Hutchful and Robin Luckham, 'Hybrid Security Governance in Africa: Rethinking the Foundations of Security, Justice, and Legitimate Public Authority', *Conflict, Security, and Development* 16/1 (2016): 1.

19 Hernando de Soto, *The Other Path: The Invisible Revolution in the Third World*, London: Harper and Row, 1989.

20 Robert Neuwirth, *Shadow Cities: A Billion Squatters, A New Urban World*, New York: Routledge, 2005.

titling approaches have largely failed to deliver their expected results'.[21] Though formal title to land is desirable in the longer term, in the absence of an administrative framework widely considered fair and legitimate, the urban poor are unlikely to benefit from formal tenure arrangements alone, and as a result, turn to a variety of other means of maintaining claims on their plots of land. Customary and informal tenure systems should not, therefore, be wholly discounted in urban environments, but the volume of inhabitants and the variety of types of tenure held by them ultimately require relatively sophisticated systems to ensure sustainable security of tenure for all.[22] Available evidence suggests that customary and informal authorities are better suited to the ad hoc management and negotiation of chronic urban land disputes than in providing an alternative system of land tenure to formal titling.

An important subset of urban land governance in Africa is the issue of property rights in peri-urban areas. Fast-growing cities routinely experience rampant land speculation and land-grabbing in this particular context. Speculators secure titles to land that was previously communal and governed by customary land tenure systems. Privatization of communal lands leads to tensions that neither formal nor informal land tenure systems are well-equipped to handle. Research on peri-urban areas in Africa has shown that tenure systems in these areas are complex, contested and conflict-prone, and often regulated by customary or hybrid forms of land governance.[23] Since IDPs often cluster in informal settlements at the edge of cities, peri-urban land rights are also of special importance in countries emerging from war.

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21 UN-Habitat, *Handling Land: Tools for Land Governance and Secure Tenure*, Nairobi: UN-Habitat, 2012, 11.

22 Alain Durand-Lasserve and Harris Selod, 'The formalisation of urban land tenure in developing countries', Paper for World Bank Urban Research Symposium, 14 April 2007.

23 See for example Katherine Gough and Paul Yankson, 'Land Markets in African Cities: The Case of Peri-Urban Accra, Ghana', Urban Studies 37/13 (2000): 2485–2500; Dan Maxwell et al. 'Farming in the Shadow of the City: Changes in Land Rights and Livelihoods in Peri-Urban Accra', *Third World Planning Review* 21/4 (1999): 373–399; Melanie Lombard, 'Land Conflict in Peri-Urban Areas: Exploring the Effects of Land Reform on Informal Settlement in Mexico', *Urban Studies* (2015): 1–21.

In a review of these issues, UN-Habitat concludes that urban land rights need to be understood on a continuum from informal and customary rights to formal, registered freehold. 'The most appropriate form', it concludes, 'depends on the particular situation: customary rights, for example, may be superior to registered freehold in certain situations.'[24]

Urban conflict and accumulation

Literature on the changing nature of conflict, particularly since the end of the Cold War, is extensive.[25] More recently, growing attention has been paid to the urban dynamics of modern conflict.[26] In contrast to what were once labelled the 'peasant wars' of the twentieth century, more recent research has discussed the urban and slum wars of the twenty-first century.[27] A key theme in this body of research is that many contemporary civil wars in Africa take on political economy dynamics in which protracted armed conflict is used as a tool by powerful individuals and groups to accumulate wealth, including appropriation of valuable rural and urban real estate.

Despite conflicts going on around or in them, cities often maintain their fundamental importance as economic hubs, at least for the political and business elite. Urban land often retains considerable value, particularly in the most economically active districts. Where conflict is prolonged and widespread, however, and in the absence of functioning bureaucracy or judiciary, formal land tenure effectively ceases to exist. Here, powerful interest groups are able to exploit the vacuum left by the absent state, and appropriate and accumulate large swathes of public

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24 UN-Habitat, *Handling Land, 12.*

25 For example, Mary Kaldor and Basker Vashee (eds.), *New Wars,* London: Pinter, 1997; Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era*, Cambridge: Polity, 1999.

26 Since 2001, the Crisis States Research Centre at the London School of Economics (LSE) has published an extensive catalogue of publications focusing on the urban dynamics of conflict and development.

27 Eric R. Wolf, *Peasant Wars of the Twentieth Century*, New York: Harper and Row, 1969; Jo Beall, 'Cities, terrorism and development', *Journal of International Development 18/1* (2007): 105–120; Dennis Rodgers, *Slum Wars of the 21st Century: The New Geography of Conflict in Central America*, London: LSE, 2007.

and private urban land, a distinction moreover, that is often superfluous in these contexts. De facto tenure security is instead achieved through political and military power. This may be through membership of a powerful ethnic or communal group able to enforce claims to the real estate, or if there is sufficient wealth, by buying influence and paying off rival claimants to the land. As a result, in some war-torn capital cities, illicit accumulation of real estate is endemic, and occurs at the expense of the poor or politically weak.

Civil war is not always a precondition for this dynamic. As UN-Habitat notes, any country with weak rule of law and high corruption is prone to the misuse of land titling to advance the interests of the powerful and wealthy at the expense of the poor. 'Competing claims over land often occur under conditions of unequal power and resources', it concludes. 'Rich people and the middle classes have the means, knowledge and connections to buy and sell land, register it officially, demand services, use land as collateral to borrow money, and defend their rights to it'.[28] But civil war magnifies state failure and erosion of rule of law, and increases the odds that groups with the most firepower and cash will use those advantages to make claims on valuable urban land and enforce those claims by whatever means necessary. This political economy dimension to armed conflict and land accumulation is of direct relevance to the Mogadishu case.

Urban return and restitution

Urban centres, and particularly capital cities, often witness far greater volumes of displacement and migration, both inwards and outwards, during armed conflicts. Communities forcibly displaced from their homes, or whose rural livelihoods had been destroyed by conflict, will often migrate to cities in search of employment, security and humanitarian aid. When fighting occurs within the cities, it can produce a massive exodus to the city outskirts. In the case of civil wars that inflame communal tensions, the results can be ethnic cleansing of whole neighbourhoods

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28 UN-Habitat, *Handling Land*, 2.

or cities, or ethnic clustering and concentration for security. In either case thousands of homes and businesses are temporarily abandoned by their owners, and are usually quickly appropriated by new claimants. The prolonged back-and-forth migration of urban populations throughout conflict—a phenomenon manifest in Mogadishu—is often then followed by a period of rapid urbanization in the immediate post-conflict phase, further complicating the process of restitution as longer-term refugees start to return to the city. Restitution will often prompt secondary displacement of current occupants themselves displaced from homes elsewhere.

The UN has adopted a clear position on the rights of IDPs and refugees returning to a country following periods of conflict, articulated in the Pinheiro Principles.[29] The principles stress the right of all refugees and IDPs to housing, property restitution to the proper owner, and reparation for losses. Those who criticize the Pinheiro Principles say they cannot be applied in situations where there is no comprehensive registration of land and property ownership, and that they fail to address underlying causes of conflict precisely because they attempt to reinstate the status quo ante.

The Protocol on the Property Rights of Returning Persons—part of the Great Lakes Pact—adapts the Pinheiro Principles to address common land-related problems in the developing world, including the lack of documentary evidence of land and property ownership and effective formal justice mechanisms.[30] Ratified by all members of the Great Lakes Region, as well as several other countries—not Somalia—the Protocol legitimizes both alternative forms of evidence for litigants reclaiming land and property—such as neighbours' testimonies—and the customary resolution mechanisms.

In most post-conflict settings, neither the Pinheiro Principles nor the Great Lakes Protocol offer much guidance in designing a fair and effective

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29 Paulo Sérgio de Moraes Sarmento Pinheiro and Scott Leckie, 'The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons', Geneva: Centre on Housing Rights and Evictions (COHRE), 2005.

30 The full text is available online at http://www.icglr.org/index.php/en/the-pact.

policy of urban restitution. Simply put, there are no clear sets of princi-
ples or obviously successful precedents for urban property restitution
policies following prolonged conflict in weak and fragile states. There
are even fewer mechanisms for land restitution in a context of a victor's
peace wherein powerful, well-armed communities have no interest in a
return of property to original owners.

One example of the process of restitution of property is found in the
Ethiopian Somali Regional State capital of Jigjiga following the fall of
Mengistu Haile Mariam's *Derg* in 1991 when Somalis started to reclaim
family property that they had lost following the 1977–1978 Ogaden
War between Ethiopia and Somalia, and which had subsequently been
claimed by highland Ethiopians.[31] As many as half of the properties were
reclaimed through private negotiations, though some claimants resorted
to violence to evict highland occupants, while others involved govern-
ment officials at various levels of the city and district administrations.
Restitution claims were often accompanied by claims of autochthony to
the city, and Somali Ethiopians would use such claims against Somalis
they dubbed newcomers.[32] This argument, that 'an imagination of an
autochthonous community [in Jigjiga] … undercuts an imagination
of a unified Somali nation', clearly has significance in contemporary
Mogadishu.[33]

In the Somali cultural context, land rights discussions are frequently
expressed as a debate between three normative claims: rights by blood,
rights by birth and rights by citizenship—in Somali, *U dhashay, Ku
dhashhay, Ku dhaqmay*.[34] In rural areas and smaller towns where clans have
well-established customary control over land and wells, rights by blood—
or clan affiliation—is the dominant discourse, and disputes over land and

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31 Rony Emmeneger, 'Between Power and Authority: Enacting the State Through
Property in Urban Jigjiga, Ethiopia' *Politique africaine* 132/4 (1981).

32 Autochthony is the idea that a community was the first to inhabit a certain place, thus
entitling it to land.

33 Emmeneger, 'Between Power and Authority', 4–7.

34 Cedric Barnes, 'U dhashay—Ku dhashay: Genealogical and Territorial Discourse in
Somali History', *Social Identities* 12/4 (2006): 487–498.

wells often involve competing historical narratives over which group has legitimate claims to the resources. While the outcome of these debates is generally shaped by the cruder calculation of relative power—or the strength of a coalition one clan can assemble to enforce its claim—the argumentation matters in legitimating communal claims to land.

These narratives get more complex in major urban areas, which have over the past decades become more cosmopolitan. Land rights by blood is an especially problematic discourse in a capital city, which by definition is supposed to be a location where all citizens in theory have the right to live, own property and enjoy full political rights. Returning IDPs and refugees seeking to regain control over homes they abandoned during the war, confront not only the threat of violence from new claimants but also encounter discourses justifying the appropriation of the real estate that rejects the validity of their old titles or even their right to live in a certain neighbourhood.

Restitution claims have been challenged in various post-conflict settings with 'abandonment laws,' effectively denying the rights to reclaim land and property after a certain period of time. Following civil war in Sri Lanka and Rwanda laws were introduced that forfeited rights to property ownership after ten years of absence. Similar attempts were made in Bosnia and Herzegovina following the cessation of conflict. It has been suggested that the role played by the international community in ensuring the repeal of abandonment laws was one of its 'most widely hailed contributions' in the peacekeeping operation.[35]

Urban IDPs, informal settlements and planning

It is currently estimated that over 60 per cent of the world's 19.5 million refugees and 80 per cent of 34 million IDPs are living in urban environments, according to the UN Refugee Agency (UNHCR).[36] It was not until 1997, however, that the UNHCR established a formal policy on protection

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35 Scott Leckie, 'Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework', Geneva: UNHCR, March 2005.

36 'UNHCR – Urban Refugees', UNHCR. Accessed 19 January 2017.

issues in urban spaces—a belated recognition of the plight of urban IDPs but one that followed a period of rapid urbanization.

One of the primary challenges for humanitarian organizations working with urban IDPs in particular, is identifying them. Urban refugees are often more readily identifiable than urban IDPs. IDPs are less visible, scattered across the urban setting and in stark contrast to their rural counterparts, who are enclosed within designated and easily identifiable camps. The difficulty of differentiating urban IDPs from the urban poor can increase with prolonged or protracted displacement. In the case of Bosaaso, in Puntland, IDPs 'morph into economic migrants'.[37]

A 2010 study of urban IDPs by the UNHCR and Cities Alliance found that cities could absorb large numbers of IDPs unnoticed, that many live alongside the urban poor in slums and informal settlements, and that high rates of displacement-induced urbanization do not necessarily subside in the post-conflict phase.[38] Nonetheless, urban IDPs are often at greater risk than the urban poor, as they possess relatively weak social support networks and fewer urban livelihood skills. They are also likely to have been dispossessed of what few assets they possessed—including land.

Throughout the world, urban refugees and IDPs, and indeed the urban poor more generally, share an acute lack of tenure security and are thus at risk of forced evictions. Vulnerable urban communities are often forced from their homes, without warning, access to justice mechanisms or compensation. The existence of large populations of urban IDPs living in deplorable conditions presents a further security risk. The susceptibility to radicalization among marginalized communities is well documented.[39]

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37 Filiep Decorte and Ombretta Tempra, 'Improving Living Conditions in Bossaso, Somalia', *Forced Migration Review* 34 (2010): 16–18.

38 Anne Davies and Karen Jacobsen, 'Profiling Urban IDPs', *Forced Migration Review* 34 (2010): 13–15.

39 Elizabeth Ferris, 'Iraq's Refugees and Internally Displaced Persons: The Untold Story', Mahanirban Calcutta Research Group, Calcutta, December 2008; Sarah K. Lischer, 'Security and Displacement in Iraq: Responding to the Forced Migration Crisis', *International Security* 33/2 (2008): 95–119.

Recommendations for addressing the security threat posed by urban IDPs largely correspond with some of the UN's Guiding Principles on Internal Displacement which include protection against recruitment into armed forces and groups, the right to protection against forcible return or resettlement, the right to liberty of movement and the right to an adequate standard of living.[40]

The concept of the 'Right to the City', first termed by French philosopher Henri Lefebvre in 1968, was formalized in the World Charter for the Right to the City, adopted at the World Urban Forum in Barcelona in 2004. The Charter promotes the rights of vulnerable populations, including IDPs and refugees, the right to 'special measures for protection and integration' (Article II, Section 4), and 'equitable and sustainable urban planning' (Article V, Section 1).

Urban planning throughout Africa has otherwise been characterized as out-dated—modelled as it has been on inappropriate colonial or western contexts—or as a tool to advance the interests of the political and economic elite.[41] Attention is, all too often, paid to middle-class neighbourhoods within African cities resulting in greater levels of urban inequality. A new, more equitable approach to urban planning in Africa, represented by the Association of African Planning Schools, is however, slowly growing in influence. A total of 54 university or college planning schools from 18 countries on the continent—not including Somalia—are now members of the Association, which seeks to promote 'progressive, pro-poor urban policy and planning responses'.[42]

This chapter has attempted to briefly outline some of the broadly recognized issues surrounding land in urban post-conflict environments. An understanding of the distinct nature of urban—as opposed

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40 UN Office for the Coordination of Humanitarian Affairs (OCHA), 'Guiding Principles on Internal Displacement', OCHA/IDP/2004/01, Geneva: UNOCHA, September 2004.

41 Vanessa Watson and Babatunde Agbola, 'Who Will Plan Africa's Cities?', London: Africa Research Institute, September 2013; Stephen Berrisford, 'How to Make Planning Law Work for Africa', London: Africa Research Institute, November 2013.

42 'AAPS', Association of African Planning Schools. Accessed 30 January 2017. http://www.africanplanningschools.org.za

to non-urban—land tenure and conflict is central to understanding the challenges faced in Mogadishu today. Conflict-induced displacement along with the subsequent return of a wealthier diaspora community seeking restitution have a profound impact on the current dynamics. Attempts to address land challenges in Mogadishu that are not informed by experiences elsewhere are less likely to succeed. Similarly, attempts to address land challenges in Mogadishu that are not informed by the city's own history, are unlikely to succeed.

2. A brief history of land in Mogadishu

As one of the oldest cities in sub-Saharan Africa, Mogadishu has a rich, cosmopolitan history. Still, despite serving as a trading hub for several centuries, even before the advent of formal Italian rule the city's population numbered little more than 10,000. By 1960, when Somalia gained independence, that number had grown to an estimated 90,000. By the 1980s, shortly before the collapse of the Siyad Barre government, Mogadishu boasted a population of about one million, seven times larger than Somalia's then second largest city, Hargeysa.[43]

An account of how the city grew up until the collapse of the government in 1991 is critical to understanding current land dynamics in the city. While many of the key actors have changed, the legacy of developments prior to the 1991 state collapse endures. This is especially true of the weak and ambiguous legal framework—introduced by both Italian and British colonial governments and later entrenched by Siyad Barre's government—open to manipulation by political and economic elites, which continues to have an impact on the private property market in the city.

Further, dynamics between clans considering themselves to be hosts and those they consider to be guests are central to the discussion on land, and rights to hold land, across Somalia.[44] Despite its cosmopolitan past, these dynamics have also, at times, had a profound impact on attitudes towards the city and continue to influence current developments.

Pre-colonial Mogadishu

Mogadishu's location—near the bend of the Shabeele River as it starts to run parallel to the coast, and surrounded by some of the most fertile

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43 PADCO/USAID, 'Urban Development Assessment of Mogadishu', Washington: USAID, October 1983, 8.

44 Lee Cassanelli, *Hosts and Guests: A Historical Interpretation of Land Conflicts in Southern and Central Somalia*, London: Rift Valley Institute, 2014; Besteman and Cassanelli, *The Struggle for Land*; Barnes, '*U dhashay—Ku dhashay*'.

land in the Horn of Africa—combined with its natural harbour protected by offshore reef formations, was recognized for its trading potential by Arab and Persian migrants that settled on the site in the late ninth or early tenth century. Xamar Weyne, the city's oldest neighbourhood, is perched above low lying cliffs offering further protection that would later guard the city from Portuguese explorers as they sailed south expanding their Indian Ocean trade empire.[45]

The history of the *Reer Hamar* (literally, 'people of the city') is central to an understanding of the history of Mogadishu though it, like many other historical narratives in Somalia, is contested.[46] Some Reer Hamar communities trace their descent to the arrival of 'seven brothers from Al-Ahsa on the western side of the Persian Gulf near Bahrain' in the mid-tenth century, while others discuss thirty-nine families from twelve tribes arriving from the same location around the same time.[47] It is, however, commonly agreed that the Reer Hamar—despite a long history of inter-marriage with clans from the Benadir hinterland—belong to free-standing lineages that are not traced to the main Somali clan families. The settlement that became Mogadishu was as much a part—culturally and economically—of the great Indian Ocean trade networks linking India, Persia, the Gulf and coastal East Africa, as it was of the Somali hinterland.

Certainly, notions of hosts and guests had already surfaced by the time the Moroccan explorer ibn Battuta visited in the 1330s. He described a flourishing city still dominated by Arabs and Persians though with strong trade relations with neighbouring Ajuraan Somalis.[48] The city

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45 William D. Puzo, 'Mogadishu, Somalia: Geographic Aspects of its Evolution, Population, Functions and Morphology', PhD thesis, Los Angeles: University of California, 1972, 33.

46 Residents of the city still commonly refer to Mogadishu as Hamar or Xamar.

47 Anita Adam, 'Benadiri People of Somalia: With Particular Reference to the Reer Hamar of Mogadishu', PhD thesis, School of Oriental and African Studies (SOAS), University of London, 2011, 50–51.

48 Lewis claimed that the Ajuraan clan were 'derived from the marriage of an immigrant Arabian with a woman of the Hawiye'; I.M. Lewis, *The Modern History of Somaliland: From Nation to State*, London: Weidenfeld & Nicolson, 1965, 24. Adam also claims that the

dwellers, however, remained cautious of a Somali presence within the city walls. Every day after prayers, ibn Battuta reported, criers would travel throughout the city calling 'those from the outside to leave, the inhabitants to stay'.[49]

This arrangement between Ajuraan Somalis and Arab and Persian settlers lasted for more than two hundred years. By the sixteenth century Shangani had been established as a new quarter of the city to accommodate urban growth. At the same time, once traditionally pastoralist Hawiye communities were expanding into previously Ajuraan-held territory and, before long, had reached Mogadishu, breaking long-established trade relations between Ajuraan, and Arab and Persian partners.[50] The subsequent decline of trade to and from the city was compounded by the growth of Portuguese settlements further south along the Indian Ocean coastline. Mogadishu's prominence subsequently faded into obscurity and would not be revived again until the mid-nineteenth century.

Modest but regular trade with India, the Arabian Peninsula, and other commercial centres further south along the coastline had resumed by the early nineteenth century but was severely affected in the 1830s when an outbreak of the plague, coinciding with a prolonged period of drought and famine in the region, decimated Mogadishu's population.[51]

Forces under the control of the Imam of Oman had maintained a light presence in the city since the end of the seventeenth century contributing to the gradual regrowth of trade. In 1842, as the population was still recovering, the Omani Sultan of Zanzibar established a permanent presence in Mogadishu and would later pay tribute to the Abgal Sultan

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Morshe lineage of the Reer Hamar 'contains traditions linking it to the Ajuran'; Adam, 'Benadiri People', 104.

49 Charles Guillain, *Documents sur l'Histoire, La Géographie et le Commerce de l'Afrique Orientale*, Paris: Librarie de la Société de Géographie, 1848, 287, cited in Puzo, 'Mogadishu, Somalia', 29.

50 Ahmed Dualeh Jama, *The Origins and Development of Mogadishu, AD 1000 to 1850: A Study of Urban Growth Along the Benadir Coast of Southern Somalia*, Uppsala: Uppsala University, 1996, 90.

51 Edward A. Alpers, 'Muqdisho in the Nineteenth Century: A Regional Perspective', *The Journal of African History* 24/4 (1983): 441–59.

based in Afgooye to consolidate control of the city.[52] The presence of Zanzibari troops and a modest bureaucracy, coupled with the growth of slave labour in the region, contributed significantly to the city's revival in the latter half of the century, again as part of a thriving regional maritime commercial network.[53]

The East African slave trade reached its peak in the mid-nineteenth century. Slaves brought from the east African interior by Arab and Swahili traders were sold in a flourishing market on the island of Zanzibar.[54] By the 1830s and 1840s, large numbers of slaves were being brought to Mogadishu and surrounding areas in Arab *dhows*.[55] These slaves were the ancestors of many of the large population now referred to as the Somali Bantu, whose physical features set them apart from ethnic Somalis and who have continued to suffer as second-class citizens in Somalia.[56]

The French explorer Georges Revoil, who visited the city in 1882, claimed that as many as two thirds of Mogadishu's population were either slaves or freed descendants of slaves.[57] Two decades later a census of the slave population in Mogadishu conducted by the Italian anti-slavery campaigner Luigi Robecchi-Brichhetti found that 'of a population of nearly 6,700 more than 31 per cent were still slaves'.[58]

Mogadishu's pre-colonial history is marked by waves of urbanization and outward migration. One Somali historian notes that until 1850 in the coastal cities of Mogadishu, Marka, and Baraawe, 'mobility is a

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52 Puzo, 'Mogadishu, Somalia', 42–48.

53 Alpers, 'Muqdisho', 448.

54 Lee Cassanelli, *The Shaping of Somali Society*, Philadelphia: University of Pennsylvania Press, 1982, 148.

55 A *dhow* is a traditional sailing boat; Cassanelli, *Shaping of Somali Society*, 169.

56 Not all Somali Bantu trace their ancestry back to the East African slaves. Bantu farming communities such as the Makanne and Shidle along the Shebeele river predate the migration of Somali pastoralists in the area. See Ken Menkhaus, 'The Question of Ethnicity in Somali Studies: The Case of Somali Bantu Identity', in Markus Hoehne and Virginia Luling, eds. *Milk and Peace, Drought and War: Somali Culture, Society, and Politics,* London: C. Hurst and Co, 2010.

57 Alpers, 'Muqdisho', 451.

58 Alpers, 'Mugdisho', 451–452.

constant condition amongst most groups, depending on the season, and the only groups who are strictly attached to town life on an annual basis (living in the old quarters) [were] the Reer-Hamar, Reer-Marka and Reer-Baraawe'.[59]

Colonial Mogadishu

Mogadishu, along with the port cities of Baraawe and Marka, was officially leased to the Italians by the Sultan of Zanzibar in 1892, and seven years later the Italians further proclaimed a protectorate over the land between these cities. Later provisions by the Sultan of Zanzibar granted further authority to the Government of the Italian King over 'Public Lands', 'Forts and Public Buildings' and the 'Right of Trade, to hold Property, to erect Buildings, etc.'.[60]

All Italian-held territories in the eastern Horn of Africa were united under a single administration with its headquarters in Mogadishu in 1908. When the author and traveller Luigi Cufino visited the city in 1914 he estimated the population at 12,000. Permanent settlements and the majority of the population remained confined to Xamar Weyne and Shangani though by this time informal settlements were also starting to expand around these two districts.[61]

By the early twentieth century it is clear that Somalis from throughout the Somali-speaking region were residing in or on the outskirts of Mogadishu. While it was often noted that Mogadishu was remarkably mixed, the geologist Giuseppe Stefanini commented in 1922 on the segregation of certain clans in a squalid settlement in an area formerly known as Meschinopoli, in or near present-day Hawl Wadaag district. 'On the hill behind the lighthouse,' he wrote, he found 'a decrepit and filthy

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59 Jama, *Origins and Development*, 30.

60 Marco M. G. Guadagni, 'Colonial Origins of the Public Domain in Southern Somalia (1892-1912)', *Journal of African Law* 22/1 (1978): 1–29. As Guadagni elaborates, the definitions of these terms, without clear legal precedence in Italy at the time, were ambiguous.

61 Puzo, 'Mogadishu, Somalia', 64.

village of rough shacks, inhabited by ... outcasts from the city.'[62] This tendency for clans to congregate by neighbourhood was, as noted below, partially but not entirely overcome in the first decades of independence. It resurfaced vigorously during the first years of the civil war, when security could only be assured by reliance on one's clan for protection.

Rapid population growth throughout the first quarter of the twentieth century, combined with the Italian's desire to segregate themselves from the Somali population of the city, prompted the drafting of the first urban plan, which was approved by the Italian administration in 1929. Under the plan the 'indigenous' population living in temporary structures within Xamar Weyne and Shangani were pushed to the outskirts. Six hundred years after Battuta's visit to the city, 'guests' to the old quarters of the city were still required to leave by sunset when the gates were shut.[63]

Continuing growth throughout the 1930s led to the formulation of a new urban plan in 1938 and, subsequently, the establishment of the indigenous villages of Shibis and Bondheere, and a new Italian residential area along Lido Beach in present-day Abdulaziz district.[64] The final years of the 1930s witnessed the greatest levels of colonial investment in the city's infrastructure as the Italian fascist government prepared for war, with the construction of various public buildings, the installation of telephone lines, and the completion of a railway connecting the city to Afgooye and Jawhar.

In 1941, less than a year after the outbreak of World War II, Mogadishu was occupied by British forces who would go on to control the colony until it was handed back to the Italians under a United Nations Trusteeship Agreement in 1950. The city's population size changed little during the years of British rule as the mass exodus of Italians was offset by the

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62 'Nella collina dietro il faro visitammo anche 'meschinopoli,' un cencioso e lurido villagio di capanne mobili, abitate da Migiurtini, reietti dalla citta, delle cui cabile non fanno parte'; Guiseppe Stefanini, *In Somalia: Note E Impressioni Di Viaggio*, Firenze: Felice le Monnier, 1922, 42, cited in Puzo, 'Mogadishu, Somalia', 66.

63 Roland Marchal, 'A Survey of Mogadishu's Economy', Nairobi: European Commission/Somali Unit, August 2002, 5; Adam, 'Benadiri People', 99.

64 Alberto Arecchi, 'City Profile: Mogadishu', *Cities* 1/3 (1984: 223–224.

arrival of more Somalis. British administrators occupied the properties of the Italians who had fled the city and dismantled infrastructure to be shipped elsewhere in the war effort.[65]

The signing of the UN Trusteeship Agreement in 1950 guaranteed Somalia's independence ten years later. Efforts were directed towards self-government. Three new villages of Waabeeri, Hodan, and Wardhiigley were established during the Trusteeship—in spite of slowing population growth during that period—and the original settlements of Xamar Weyne and Shangani were now a small part of an expanding city.

The post-independence era

The first decade of independence saw a sharp rise in Mogadishu's population. At independence the city's population was estimated at 90,000. Less than a decade later at the time Siyad Barre seized power in a military coup in 1969, the population had soared to an estimated 250,000—a trend that tracked the wider 'urban bias' of sub-Saharan Africa's demography during the 1970s.[66]

Informal settlements (*obbosibo*) expanded with little or no planning. The majority of the population of the city were subsequently living in squalid, cramped conditions without access to basic public services.[67] In 1962 the UN and the Somali government co-financed a pilot project for the construction of affordable housing in the city. Three years later, in 1965, the National Housing Agency was established and started to construct apartment blocks in a neighbourhood between Hodan and Hawl Wadaag districts. This area would become known as the 'African Village' in 1974 when leaders of the Organisation of African Unity attended a summit in the city.[68]

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65 Puzo, 'Mogadishu, Somalia', 79–81.

66 Robert Bates, *Markets and States in Tropical Africa: The Political Basis of Agricultural Policies*, Berkeley: University of California Press, 1981; Arecchi, 'City Profile', 225.

67 Marchal, *Survey*, 5–6.

68 Arrechi, 'City Profile', 224.

Further donor-funded projects attempting to address the growth of informal settlements were, however, ultimately unable to keep up with the influx of migrants to the city. Population growth averaged at approximately ten per cent per annum throughout the 1960s making Mogadishu among the fastest growing cities on the African continent.[69] Migrants to the city often settled on the first available space on its peripheries, bringing with them the materials used to construct the same makeshift *aqal* (a traditional Somali hut) inhabited by the pastoralist population of the interior; these settlements were notorious for 'disease, illiteracy, crime and other problems'.[70]

Nonetheless, and in part due to the unregulated nature of migration to and growth of the city, Mogadishu remained, at least until the late 1980s, an unusually mixed city. In most neighbourhoods Somalis from different clans lived side by side. One 1972 study found that there were 'no "quarters" of different Somali tribal groups in Mogadishu', though there were 'frequent disagreements and violent outbreaks between differing tribal members in the city' and that clan identity persisted.[71] A study carried out in 1987 investigating the city's disadvantaged areas, gave a more nuanced assessment—though careful not to specify named clans:

> Compared to many other cities in the world, Mogadishu is a relatively homogenous city in terms of ethnic and cultural variations. Nevertheless there are tendencies for some areas to be characterised by the presence of people of particular regions or areas. Some of the differences are seen as common knowledge. For example, Kaasa Bobulare [in Hodan District] is reputed to have many 'northerners', Yaqshiid to have many people from Shabeele Dhexe [Middle Shabeele] and Buulo Eelay [in Waabeeri District] to have many people from Bay and Bakool.[72]

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69 Puzo, 'Mogadishu, Somalia', 148.

70 Puzo, 'Mogadishu, Somalia', 90–99.

71 Puzo, 'Mogadishu, Somalia', 166–167, 232.

72 Rick Davies, 'The Village, the Market and the Street: A Study of Disadvantaged Areas and Groups in Mogadishu, Somalia', Mogadishu: British Organisation for Community

In the aftermath of the outbreak of civil war in 1991, the existence of these urban clan enclaves became much more apparent, and even led to a 'green line' separating the territory of the two most powerful, warring Hawiye clans, the Abgal and the Habar Gedir.

The construction of European-style, stone residences during the colonial period also added a degree of class structure to Mogadishu. Districts immediately surrounding the old city and particularly along the coastlines—including Abdulaziz, Shibis, Bondheere, Waabeeri and Xamar Jajab—contained relatively higher proportions of the sought-after European style dwellings at the time of independence. Most of the Italian-planned residential areas of the city were bought by the government and many of the larger homes once housing senior Italian administrators were distributed to senior government officials.[73] Following independence, similar style housing was also constructed in parts of Hodan District 'for more prosperous Somalis, Europeans, and Somali government employees'.[74]

By the late 1980s, Mogadishu was a sprawling city of close to a million inhabitants. Its population growth was fuelled by a combination of factors including: the country's high fertility rate; an influx of Somali refugees and displaced persons from the Ogaden War with Ethiopia in 1977–1978; and substantial urban drift from the countryside to the capital where the vast majority of wealth, employment, educational opportunities and services were concentrated. Mogadishu's growth was in part a reflection of the marginalization of the rest of the country during the first decades of independence.

The city was divided into a number of well-defined residential, military and light manufacturing quarters. Large stretches of valuable real estate (for instance, along Afgooye Road from KM-4 to KM-7) were appropriated for government ministries, military bases, embassies and the Somali National University, forming public lands and real estate. These public

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Development, September 1987, 34.

73 Puzo, 'Mogadishu, Somalia', 181–187.

74 Puzo, 'Mogadishu, Somalia', 121.

lands would later become the site of squatting, private appropriation and intractable land disputes following the fall of the government in 1991. Large informal settlements consisting of *aqal* formed a distinct peri-urban zone surrounding much of the city. The most mixed, cosmopolitan neighbourhoods of the city were generally found in the centre or south Mogadishu, and tended to be more middle class or affluent. Much of northern Mogadishu and other neighbourhoods were more closely identified as enclaves of one clan or another. North Mogadishu, for example, was particularly associated with Hawiye and Abgal clan populations, who were among the first and most numerous of the Somalis to settle in the city, and whose pastoral hinterland adjoins northern Mogadishu.

Urban land legislation

Although land reform laws were drafted in 1960, 1967 and 1969, they were never passed. Shortly after the military coup ushering Siyad Barre into power, however, the 1970 Law for Social Protection (Law 67 of 1 November 1970) was passed under which 'all forms of tribal association, rights, and privileges, including rights over land and water, were abolished and claimed by the state.'[75] Until this point the Somali Penal Code, 'almost a replica of the Italian Penal Code' of 1930, had been in place.[76]

In 1973, the Urban Land Distribution Law was approved by President Siyad Barre. The legislation stipulated that all urban land was public property (Article 7) but that land in urban areas could be bought at a fixed price per square metre (Article 12). Ownership by Somali nationals was permanent, while foreign nationals were required to renew leases every 50 to 99 years (Article 15). Land for permanent development, referred to as *daminyaale* land, was to be authorized by the Ministry of Public

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75 Allan Hoben, 'The Political Economy of Land Tenure in Somalia', in *Land and Society in Contemporary Africa,* eds. Richard Downs and Stephen Reyna, Hanover: University Press of New England, 1988, 206.

76 Martin Ganzglass, *The Penal Code of the Somali Democratic Republic,* New Jersey: Rutgers University Press, 1971, xiii.

BOX 1. LAW NO. 10: 17 DECEMBER 1980

An amendment to the 1973 Urban Land Distribution Law was passed in 1980. Authority over all land in the city, *munishibaale* and *daminyaale*, was transferred to the Mogadishu municipality. 'Registers, documents and maps relating to land for permanent use in Benadir Region, which was previously managed by the Ministry of Public Works, shall be transferred to the Local Municipality of Mogadishu' (Article 19). All Somalis over the age of 18 were to receive equal access to land at a fixed price per square metre, unless they already owned another plot in the city; exceptions to this rule could be granted by the Mayor of Mogadishu (Article 8). Individuals granted *daminyaale* land were required to finalize construction of permanent structures within a period of two years. Those granted *munishibaale* land were required to finalize construction of temporary structures within one year (Article 13), though extensions could be granted (Article 14). Failure to comply with all regulations set by the local government would result in the annulment of the title deed (Article 10). With regards to private property, '[t]he Mogadishu Municipality shall create registers for the different types of plots and for all the entities pertaining to development of the land', and 'registration of plots shall be based on the legal documents for titles or other documents certifying ownership of the land upon order of the court. The description of these documents shall be recorded in the register' (Article 23). A further amendment to the law, issued a year later, restored some authority to the Ministry of Public Works. The new amendment also further clarified the process through which title deeds were to be issued. There was further clarification of the government's land record keeping protocols: 'Once the Local Municipality issues a permit for land … it shall send a copy of the land permit to the Ministry of Public Works to record it in the general register … for record keeping' (Article 5).

Works.[77] *Daminyaale* land included all land adjacent to the city's primary tarmac thoroughfares at the time. Land for temporary use, referred to as *munishibaale* land—and on which permanent structures could not be built without upgrading the status of the land to *daminyaale*—could be authorized by local or municipal, authorities (Article 21).[78] All land was to be registered with the Land Administration Department (Article 27) and all settlements were required to follow strict zoning rules issued by the Ministry of Public Works (Article 24).

A year later, in 1974, Benadir Region was delimited to include only the city of Mogadishu. Two new regions, Lower and Middle Shabeele, were established, incorporating the remaining territory of the former Benadir Region. The city was divided into 13 districts (*degmooyin*), which were further sub-divided into departments (*xaafado* or *laamo*), sections (*waaxyo*), and finally neighbourhoods (*tabeelooyin*) comprised of between 50 and 250 households.

Access to the formal property market to all but the political and economic elite in Somali society was, however, almost impossible. The extremely bureaucratic process of buying land through the municipality, combined with the high price of buying land on the open market—once a building had been constructed on land purchased from the municipality it was eligible to be sold privately—limited the opportunity to purchase city plots to the very few who had the right political connections or significant capital.[79]

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77 The term *daminyaale* is presumably derived from the Italian reference to 'domanial lands', which extends as far back as the 1892 agreement between the Sultan of Zanzibar and the Government of the King of Italy; Guadagni,'Colonial Origins', 17.

78 The term *munishibaale* derived from the Italian 'municipale' referring to local municipal government.

79 Davies, *The Village*, 40. The 1983 PADCO/USAID report for the Mogadishu Municipality confirmed some of Davies findings, claiming: 'The Land Office is understaffed and unable to check applicants as to their need, income level, or even whether or not they own other land in the city … It is apparent that this system allows opportunity for abuse of the procedures and intent of the program … Prime sites have usually ended up in the hands of the wealth households': PADCO/USAID, 'Urban Development', 70.

Once access to the property market was granted, however, significant profits were to be made. With no taxes collected on resale, property owners were reported to be selling at an increased value of between 500 to 1000 per cent within a few years.[80] This trend in rising land values in southern Somalia was due to an unprecedented land rush caused, amongst others, by high inflation rates that encouraged investment in durable assets and the return of Somali labourers from overseas oil fields with capital to invest. Land speculation became inevitable.[81] These factors fuelled decades of land banking, land-grabbing and speculation, since few if any other investments were as reliable as real estate in fast growing Mogadishu and riverine agricultural areas. As with much socialist legislation, the intention had been to ensure equal affordable access to land. Instead, bureaucracy, corruption and greed often prevented individuals from purchasing land through official ministry channels, forcing them to turn to the private market. This market was, however, largely dominated by government officials or their relatives, who had little incentive to address inefficiency and corruption in either market.

The master plan and informal settlements

According to the 1980 Urban Land Distribution Law amendment, the Mogadishu Municipality was mandated to produce a master plan to address population growth and growing congestion. Article 3 of the amendment proposed a solution to the administration of land for residential, industrial, commercial, communal and security use throughout the city. Discussions were held between the Mogadishu Municipality and the Italian government over a USD 1.2 million contract to develop the plan. Planning and Development Collaborative International (PADCO) were subsequently asked to comment on the terms of reference, drawn up with the Italian government with support from USAID. PADCO comments were that the plan would 'likely be disappointing in a number

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80 PADCO/USAID, 'Urban Development', 52.

81 Besteman and Cassanelli, *The Struggle for Land, 19–20.*

of respects,' suggesting that it would serve more as a wish list than a viable plan, and failed to take into account inevitable urban growth.[82]

PADCO went on to suggest the possible role of the towns of Afgooye and Balcad, each within 25–35 kilometres of the city, as 'satellite centres' of a wider Mogadishu Metropolitan Region. Each town had an existing economic base, hosting various factories and agricultural projects, which could be expanded to ease congestion of both infrastructure and people in Mogadishu. Importantly for future IDP and urban poor communities, PADCO also reported that 'large land allocations' along the roads to these towns had already been made which threatened to congest the highways without proper planning.[83] Consultations for the master plan still continuing five years after it was mandated, when PADCO produced its 'End of Mission Report'.[84]

There are differing opinions on the Municipality's approach to the growth of informal settlements in and around the city. According to one long-term observer, the 'precarious living conditions of the newcomers were well known, and cause for alarm, yet neither the state nor the local government took any practical action.'[85] This frank analysis of government inertia in land administration is also found in a 1984 city planner's profile of Mogadishu: 'Instead of admitting the existence of the shantytowns, the authorities have instead tried to forget them and their inhabitants.'[86]

Article 16 of the 1980 amendment applied to the 'Eviction or Demolition of Illegal Construction'. According to the article, the municipality had the authority to order evictions of multiple illegal buildings constructed on areas of land that was allocated in the master plan for alternative use. Compensation would not be given to residents, although new plots of

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82 PADCO/USAID, 'Urban Development', 57–58.

83 PADCO/USAID, 'Urban Development', 59.

84 PADCO/USAID, 'End of Mission Report: Land Policy/Mogadishu, Somalia', Washington: USAID, 1985. The total area of the city grew from approximately 1,500 hectares in 1970 to 8,000 in 1984.

85 Marchal, *A Survey*, 5.

86 Arecchi, 'City Profile', 228.

land may have been provided if the residents had lived on the land for eight years 'from the start of the application of this law'. There are no further references to the city's burgeoning informal settlements in any of the urban land laws.

Despite the lack of a master plan, formalization of informal settlements appears to have occurred gradually as districts were zoned. Referring to 'squatter areas' on 'unzoned land', the 1983 PADCO report suggested that, when 'the land is zoned, the government may remove the squatters or allow them to apply for ownership.'[87] In 1983, the municipality formalized a growing settlement in Wardhiigley District. Roads were constructed through the settlement. Those with constructions in the way of the roads were issued titles to new plots in Kaaraan District in the north-east of the city, while those remaining were given deeds to the land they were inhabiting.

In several instances of *obbosibo* formalization or clearing throughout the 1970s and 1980s, so-called squatters were relocated to Wadajir in the south-west of the city. In 1984, squatters from several informal settlements throughout the city were relocated to Gubadley, four kilometres from the nearest tarmac road to the north-east of the city.[88]

According to the 1987 study on Mogadishu's disadvantaged areas, land on the periphery of the city had not been privatized prior to the expansion of the city and could, therefore, be claimed easily by the government for future sale—or, indeed, relocation of the urban poor.[89] Peripheral *goof* land,[90] however, was still used by nomadic communities for grazing, complicating the matter. Often this land was left entirely undeveloped, though in some cases traditional owners of the land had partitioned the land into plots using fallen tree branches and other brushwood. Recognition of traditional ownership on the periphery of the city was

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87 PADCO, 'Urban Development', 47.

88 Davies, 'The Village', 45–46.

89 Davies, 'The Village', 43.

90 *Goof* is a large unregistered plot of land on the outskirt of cities and the countryside. It is usually owned by individuals or families who inherit it paternally, with boundaries known locally. Families use *goof* lands, variously, for grazing, farming and residence.

not supported by the Urban Land Law or its amendments, though in certain cases independent arrangements could be made with 'influential city people' to formalize rights to these *goof* plots.[91]

Pending collapse

Following defeat in the Ogaden War with Ethiopia in 1977–1978 and the subsequent loss of Soviet Union client status, the Somali government pursued an alliance with the West. As a result of their re-engagement, Western donors and multi-lateral institutions pressured the government to take steps to liberalize the economy, which it did, if only haltingly. In the land sector these measures led to a further concentration of land ownership among elites.[92] Liberalization, combined with soaring numbers of refugees displaced by conflict in the Somali region of Ethiopia, also drove the rapid rise of the aid industry in Somalia—and the importance of Mogadishu as the primary entry point for such aid:

> Newly arrived Western expatriates had to be housed. Somalis see no coincidence in the arrival of relief to Mogadishu and the construction of expensive villas to be rented to expatriates (or lived in by Somali project heads with access to aid money). In 1988–1989 it was widely acknowledged that these villas were built with public moneys by top government officials … who then rented them out to diplomatic and expatriate missions. Indeed, one outlying subsection in Dharkeenley district was nicknamed *Boolli Qaran* [National Loot], since it was money from government coffers that provided for construction of villas there in the late 1970s.[93]

Dissatisfaction with the government, again partially the result of defeat in the Ogaden War, was growing throughout Somalia in the 1980s

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91 Davies, 'The Village', 45.

92 Hoben, 'Political Economy of Land Tenure', 216.

93 Anna Simons, *Networks of Dissolution: Somalia Undone*, Boulder: Westview, 1995, 53.

made manifest by the proliferation of rebel movements.[94] Collective punishment meted out against specific clans and sub-clans for the actions of individuals—a policy first employed by British and Italian colonizers—grew increasingly common as Siyad Barre's government steadily lost control of territory beyond Mogadishu. Growing tension among clans and rising insecurity was reflected by the increasing segregation of new settlements on the peripheries of Mogadishu. Security was increasingly sought through clan affiliation as the government's Red Berets, now dominated by the President's own clan, grew increasingly brutal.[95]

As the economy began to plummet in the mid-1970s, the importance of the aid industry and the manipulation of it among the political elite grew. A growing sense of urban, and particularly Mogadishu, bias in the distribution of aid contributed to anger among rural populations. Tensions between urban and rural populations—as well as underlying clan tensions—were central to the early political crisis in the country. A retrospective analysis has noted that 'more than 60 per cent of the country's foreign aid in the 1980s ended up in Mogadishu.'[96] There was, according to some observers, a '"hidden" class character of urban areas like Mogadishu' in the early days of the conflict.[97]

Rebel factions finally arrived in Mogadishu in late 1990 and, by January 1991, Siyad Barre had fled the city. Contrary to conventional wisdom, however, 'the civil war that started in Mogadishu in late December 1990 did not open a completely new era. To a large extent, Mogadishu had already been in a decidedly war-like situation' by early 1990, with violent clashes between security forces and the populace.[98]

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94 The Somali Salvation Democratic Front (SSDF) was established in 1978; the Somali National Movement (SNM) in 1981; the United Somali Congress (USC) in 1987; and the Somali Patriotic Movement (SPM) in 1989.

95 Lidwien Kapteijns, *Clan Cleansing in Somalia: The Ruinous Legacy of 1991*, Philadelphia: University of Pennsylvania Press, 2012, 121–122.

96 Peter Little, *Somalia: Economy without State*, Oxford: James Currey, 2003.

97 Ali Jimale Ahmed, 'Preface', in *The Invention of Somalia, ed. Ali Jimale Ahmed, Lawrenceville NJ: Red Sea Press, 1995, ix.

98 Marchal, 'A Survey', 7.

Similarly, land within and on the outskirts of the city was already a contentious issue. Land administration was weak and laws were regularly flouted. Corrupt distribution and appropriation of both public and private land had been occurring for several years already. While the scale of displacement increased dramatically in the years that followed, Mogadishu was already hosting a large population of people forced to flee conflict and natural disasters elsewhere in Somalia and eastern Ethiopia. Informal settlements had been growing since the beginning of the twentieth century.

3. City in conflict

The events leading up to, and immediately following the collapse of Siyad Barre's regime are well documented and do not need to be repeated at length.[99] Various rebel movements had contributed to the downfall of the government in 1991 but then failed to reach an agreement on power sharing and a political transition. Instead, southern Somalia became the site of protracted state collapse, a vicious, clan-based civil war between the rival clan militias that overthrew Barre, massive population displacement, the outflow of close to one million Somali refugees to neighbouring countries, the rise of a war economy and a famine that claimed 250,000 lives.

Mogadishu was at the centre of this crisis. In the first months of 1991, victorious clan militias looted government and embassy buildings in the capital. They also turned on members of rival clans. The result was a period of massive and chaotic dislocation in early 1991, in which millions of Somalis fled their homes to reach territory controlled by their clan. This flight to safety occurred in multiple directions, and affected all clans. It was Mogadishu—the most cosmopolitan urban centre of the country—that saw the largest exodus, which had a disproportionate impact on the Darood clan family, vulnerable minority groups such as the Reer Hamar, and other non-Hawiye clans. As non-Hawiye clan members fled Mogadishu, members of the now dominant Hawiye clans poured in from the countryside, occupying vacant government buildings and abandoned private residences in the city.

One academic work has described this pivotal moment as the 'clan cleansing' of Mogadishu.[100] Whether the city was intentionally cleansed in a bid to appropriate real estate from fleeing residents or was a result

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99 Terrence Lyons and Ahmed I. Samatar, *Somalia: State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction*, Washington DC: Brookings Institution Press, 1995; Mary Harper, *Getting Somalia Wrong? Faith, War and Hope in a Shattered State*, London: Zed Books, 2012.

100 Kapteijns, *Clan Cleansing*, 213

of spontaneous flight for safety, the net result was the same. By mid-1991, Mogadishu was demographically and militarily dominated by one clan family, the Hawiye. From this point, heavy fighting between rival Hawiye clans, the Abgaal and Habar Gedir clans, led to the destruction of much of the city centre and the establishment of a green line separating northern and southern Mogadishu.

It was not long, however, before non-Hawiye populations began to gradually return to Mogadishu, a trend that accelerated during the 1993–1995 UNOSOM (United Nations Operation in Somalia) peace operation. Return was initially easier for members of militarily less powerful clans. Members of other clans had to make careful calculations and seek protection from relatives or business partners of the locally more powerful Hawiye clans. They returned as guests, with constrained rights. They joined an existing influx of destitute rural dwellers who had left their homes during the 1991–1992 famine, composed mainly of members of the Digil-Mirifle clan family—the Mirifle lineages especially became better known as Rahanweyn—and farming minority groups such as the Somali Bantu.[101]

From 1992, Mogadishu was divided into three broad zones of influence, divisions that persisted at least until the mid-2000s.[102] The northern part, encompassing Kaaraan, Yaaqshiid, Shangani, Shibis, and parts of Bondheere districts, was dominated by the Mudulood Hawiye clan confederation, and particularly the Abgaal clan under the leadership of Ali Mahdi. The district of Wadajir was also an Abgaal enclave in the far south of the city under the control of warlord Muuse Suudi Yalahow until he moved to northern Mogadishu to 'play a greater role in Abgaal politics.'[103] Between Wadajir and northern Mogadishu was the rest of south Mogadishu, significantly more diverse, but dominated politically

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101 Marchal, 'A Survey', 12.

102 Marchal claims that this division of the city was still apparent in 2002 when 'A Survey' was published.

103 Marchal, 'A Survey', p. 12.

and militarily by the Habar Gedir clan, and in particular by General Mohamed Farah Aideed until his death in 1996.[104]

These clan dynamics were largely sustained by the two main access routes to the city, with the Balcad Road in northern Mogadishu leading into the Abgaal-dominated Middle Shabeele Region and the Afgooye Road in southern Mogadishu leading into the clan-diverse Lower Shabeele region, which the Habar Gedir clan dominated militarily during this period.

Land and peace agreements

Over a dozen national peace conferences were attempted in Somalia from 1991 to 2008, and many more have been held at the regional level.[105] The status of land and property was seen as central to most of these reconciliation efforts.

One of the most important early reconciliation accords, the March 1993 Addis Ababa Agreement that framed UN state-building and peace-building efforts during the UNOSOM mission, has a provision that applies specifically to the 'restoration of property and settlement of disputes.' It states that 'all private or public properties that were illegally confiscated, robbed, stolen, seized, embezzled or taken by other fraudulent means must be returned to their rightful owners.'[106] The agreement was, however, never implemented, and General Aideed later publicly renounced it and went on to direct his militias against UN forces.[107] Following the death of 25 Pakistani peacekeeping troops and 18 US servicemen at the hands of Aideed's militias in Mogadishu in 1993—as well as hundreds of Somalis killed or wounded—most troop-contributing

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104 Marchal, 'A Survey', 13–14.

105 Mark Bradbury, 'The Search For Peace: A Synthesis Report of the Peace Mapping Study', Nairobi: Interpeace, June 2009.

106 'Addis Ababa Agreement', USIP Peace Agreements Digital Collection. Accessed 30 January 2017.

107 Ken Menkhaus et al., 'A History of Mediation in Somalia Since 1988', Mogadishu: Interpeace/Centre for Research and Dialogue, May 2009, 36.

countries started to pull their forces out of Somalia. By March 1995 the UN force had withdrawn completely.

The locally-initiated and UNOSOM-supported Hiraab Peace Agreement of January 1994, aimed principally at establishing peace between Hawiye clans, likewise made specific reference to property.[108] 'Personal properties looted from each other, such as buildings, cars, etc., must be returned, abiding by the Muslim Sharia.'[109] The Agreement further called for 'peace and brotherhood for the Hawiye clans and all the Somali people.' The focus on Abgaal-Habar Gedir relations in the conference, however, left other clans—particularly the Murusade and Hawadle, two Hawiye sub-clans—feeling marginalized from the process, resulting in further factional violence throughout the city.[110]

In the late 1990s, discussions between leading Hawiye representatives were re-initiated with the intention of establishing an inter-Hawiye political platform to match the Isaaq and Darood platforms that had grown in Somaliland and Puntland respectively.[111] Following the National Reconciliation Conference held in Cairo in 1997, Ali Mahdi and Hussein Aideed—the latter now holding much of southern Mogadishu following the death of his father in 1996—agreed to the establishment of a Benadir administration representing both sides.[112] Again, the agreement broke down and fighting resumed, though it may still be considered to represent an important shift towards a Hawiye alliance establishing ownership over Benadir Region.

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108 The Hiraab clan federation of the Hawiye clan family incorporates the Mudulood—which further incorporates the Abgaal, Wacdaan, Moobleen and Ujajeen sub-clans—the Duduble, the Sheikhal and the Habar Gedir.

109 Halima Ismail, 'Report on the Hiraab Peace Conference held in Mogadishu, 13–16 January 1994', in *Crisis Management and the Politics of Reconciliation in Somalia*, eds. M. A. Mohamed Salih and Lennart Wohlgemuth, Uppsala: Nordiska Afrikainstitutet, 1994, 121.

110 Ken Menkhaus and John Prendergast, 'Political Economy of Post-Intervention Somalia', Somalia Task Force Issue Paper #3, April 1995, 10.

111 Menkhaus et al., 'A History of Mediation', 36.

112 Hassan Sheikh, 'How to Administer Mogadishu', in *Whose Peace is it Anyway? Connecting Somali and International Peacemaking*, eds. Mark Bradbury and Sally Healy, London: Conciliation Resources, 2010, 80.

As low-level conflict continued in the city, interspersed by brief periods of relative calm, shari'a courts began to emerge in southern Mogadishu over the latter half of the 1990s.[113] These courts, many still serving a particular clan community and supported by the city's business community, were linked with militias to enforce the judgements meted out. The alliance between the shari'a courts, militias and the business community in Mogadishu would go on to provide support to the Transitional National Government (TNG) that emerged from the Somali National Peace Conference held in Arta, Djibouti in May 2000 under the leadership of Abdiqasim Salad Hassan.[114]

As with the Addis Ababa Agreement, the 'restoration of properties that were confiscated during the conflict to their lawful owners' was one of five primary themes of the Arta peace agreement.[115] Despite a plan to move the TNG to Baydhabo as an interim seat of government, Abdiqasim Salad Hassan insisted on moving straight to Mogadishu after the Conference and appointing both a governor of Benadir Region and a mayor of the city. The decision proved premature, with the TNG restricted to certain districts of the city by militias loyal to warlords that had been marginalized by the proceedings in Djibouti.[116] The sensitive issue of land further contributed to the TNG's subsequent failure:

> Although the TNG established a National Commission for
> Reconciliation … the Commission never became active and its
> chairman, Abdirizaq Hagi Hussein, resigned on 25 July 2001.
> Instead of furthering and consolidating the reconciliation
> process inside Somalia, divisive issues relating to the definition

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113 According to Barnes and Hassan, the first Islamic Courts were established in northern Mogadishu in August 1994 by 'Islamic clerics from the locally powerful Abgal sub-clan of the Hawiye … with the blessing of their "secular" political leaders', but were later dismantled by Ali Mahdi for fear of their leader, Sheikh Ali Dheere, growing too influential; Cedric Barnes and Harun Hassan, 'The Rise and Fall of Mogadishu's Islamic Courts', Africa Programme, Chatham House, April 2007, 2.

114 Ken Menkhaus, 'Somalia: A Situation Analysis', UNHCR WriteNet Paper 7, November 2000, 4–5.

115 Menkhaus et al., 'A History', 45.

116 Menkhaus et al., 'A History', 46–48.

of citizenship rights became a hindrance to trust and confidence building. Primary amongst these were the unresolved issues of *ku dhashay*, vs. *u dhashay* and *ku dhaqmay*. The efforts towards reconciliation that had been begun in Arta were not sustained in order to address these unresolved questions, which had particular relevance to the status of the capital city, Mogadishu.[117]

Just two years after the failed Arta Conference, a new peace process was established in Kenya and continued until late 2004. The Mbagathi Process—named after the move from the town of Eldoret to Mbagathi near Nairobi in February 2003—was initiated by the regional Intergovernmental Authority on Development (IGAD).[118] Land and property disputes were again listed as one of six core reconciliation issues to be addressed by a sub-committee of a broader technical committee.

According to one of the 'resource persons' appointed to assist the committee it was 'unanimous in its conviction that the prolongation of injustice, that leaving property in the hands of those who have taken it by force, would lay the seed for the next conflict.'[119] Despite the intentions, no real action was taken.

The TNG's mandate expired during the Mbagathi Process. In its place, a Transitional Federal Government (TFG) was established in 2004, operating in accordance with a Transitional Federal Charter, and with the former Puntland president, Abdullahi Yusuf, a member of the Darood clan, selected to lead. The Charter addressed land policy in vague forward-looking terms: 'The Government shall define and keep constant the national land policy and framework of the land in the Somali Republic which shall ensure the registration, use, ownership, access, occupation, management rights, security, interests and title of the land' (Article 66).

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117 Menkhaus et al., 'A History', 50.

118 Eniola Anuoluwapo Soyemi, 'IGAD and Somalia', Nairobi: Rift Valley Institute Meeting Report, 25 October 2013.

119 Gunther Schlee, 'Consultancy Report to the Somali National Reconciliation Conference in Support of Committee 3 – Land and Property Rights', Djibouti: Intergovernmental Authority on Development (IGAD), November 2003, 7.

BOX 2. IGAD'S MBAGATHI PROCESS

Restitution of property was given priority by the committee—and it acknowledged the reality of land expropriation during the colonial era and the misuse of power by post-colonial governments. In contrast to previous peace processes that appear to have given little more than lip service to reconciliation, the committee made clear recommendations to address land issues:

- A committee would be tasked with researching violations of property rights under both British and Italian colonial administrations, and assess rights for compensation;
- Regional and district courts would be tasked with addressing violations perpetrated by post-colonial governments;
- An appeal would then be made to those holding property illegally to return it to their rightful owners: 'Those who do not comply expose themselves to punishment';
- Further committees would be established: one to deal with the 'resolution of conflicts on land and settlement in general, including urban lands'; another to deal with farmlands; and a third tasked with repossession of government assets;
- Committees would be staffed by 'different branches of the administration, the police and local dignitaries and elders', and would have the authority 'to summon the parties to the conflict and witnesses, and to call for expert advice';
- Appeals could be heard within a period of ten days from a ruling by the committee, otherwise the ruling would be final;
- Finally, it was recommended that the administration of land remained in the hands of regional administrations and that federal institutions would be required to request land from regional administrations for specific use.

The Charter further called for the establishment of a National Commission for the recovery and registration of public and private property, and a National Resettlement Commission (Article 68). Chapter 14 of the Charter, addressing the pending transitional period, further mandates the TFG to 'endeavour to repossess and restore to the state all public properties, either movable or immovable, within or outside the country', restore private property 'to the rightful owners', and 'make necessary efforts to resettle refugees and displaced persons' (Article 71).

Unable to establish itself in the nation's capital, the TFG under President Yusuf was forced to locate first in Jawhar and later in Baydhabo, pending the deployment of requested peace-keeping troops without whom the president 'would be completely outgunned in Mogadishu and could govern only as a "guest" of the Mogadishu opposition.'[120]

In an attempt to demonstrate that Mogadishu was ready once again to be the seat of government—allowing the TFG to return to the capital—Mogadishu's power brokers, along with leading members of civil society and the business community, announced the Mogadishu Security and Stabilization Plan (MSSP) in mid-2005.[121] The plan's focus was to secure Mogadishu by dismantling roadblocks, confining militias to cantons on the city's peripheries, and establishing a regional administration. Despite some initial successes, the plan's eventual failure was blamed on continuing factional rivalries and the formation of the warlord-based, US-backed Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT). According to the perceptions of a then civil society activist, Hassan Sheikh Mohamud—later elected as SFG president in 2012—'the immediate impact was the emergence of the Islamic Courts Union (ICU) and their takeover in early 2006 of Mogadishu and most of the regions in south central Somalia.'[122]

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120 Ken Menkhaus, 'The Crisis in Somalia: Tragedy in Five Acts', *African Affairs* 106/204 (2007): 362.

121 Menkhaus, 'The Crisis in Somalia', 365–370.

122 Sheikh, 'How to Administer Mogadishu', 82.

The shari'a courts had become well entrenched in Mogadishu since their emergence in the 1990s, though their significance had been largely obscured by internationally backed national peace conferences. A Sudanese-trained cleric Sheikh Sharif Sheikh Ahmed revived the courts in northern Mogadishu in 2003 and a year later was nominated to chair all courts throughout the city.[123] Having secured complete control of all 16 districts of Mogadishu by June 2006—following the ousting of Mogadishu's warlords and with backing, once again, from the business community—the courts were able to implement effective security throughout the city for the first time since the collapse of the state in 1991:

> Road-blocks were removed and even the ubiquitous piles of rubbish that had blighted the city for a decade or more were cleared. The main Mogadishu airport and seaport were reopened and rehabilitated for the first time in a decade. Squatters were made to vacate government buildings, illegal land grabs were halted, and special courts were opened to deal with the myriad claims for the restitution of property.[124]

Though Mogadishu-centric, the ICU—as they declared themselves in mid-2006—secured a degree of support from all clans, and attracted support from all Somali speaking regions, including Somaliland, Puntland, the Somali Region of Ethiopia and north-eastern Kenya.

Despite the ICU's initial successes, fear that they represented the growth of a radical Islamist government in Mogadishu caused US and Ethiopian concerns, prompting the latter to take pre-emptive action with the former's tacit backing. On 28 December 2006, Ethiopian troops marched into Mogadishu, triggering the collapse of the ICU and a period of some of the heaviest fighting in the city's history. Over a ten-month period in 2007, an estimated 700,000 people were displaced from the city, while countless buildings were damaged or destroyed.[125]

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123 Barnes and Hassan, 'Rise and Fall', 3.
124 Barnes and Hassan, 'Rise and Fall', 4.
125 UN OCHA, 'Somalia Humanitarian Overview', March 2008.

The African Union Mission in Somalia (AMISOM) stabilization force was first deployed in early 2007 to support Abdullahi Yusuf 's TFG and the establishment of peace in Mogadishu. Ethiopian forces remained in the city, waging high-intensity warfare against the remaining elements of the ICU militias. This armed resistance, which included some Islamist-based groups such as the faction which later officially named itself *Harakat al-Shabaab al-Mujahidin* (Mujahidin Youth Movement) and became known as al-Shabaab, had a popular appeal as a resistance against the Ethiopian occupation. It continued until the signing of the Djibouti Peace Process in 2009, which resulted in the formation of a new Transitional Federal Government under the leadership of former ICU chair, Sheikh Sharif Sheikh Ahmed. The TFG's security was still dependent on the under-manned AMISOM, whose deployment was expanded in 2009 to allow for the exit of the Ethiopian forces. Sheikh Sharif's administration, backed by the small Ugandan and Burundian AMISOM contingents was, like his predecessor, largely confined to a few districts of the city.[126] Hopes that he would re-introduce clan transcending Islamic courts in Mogadishu did not materialize in the face of opposition within his coalition government, concerns over international reaction, and al-Shabaab threats made against shari'a court judges not to engage with the TFG.[127]

It was not until August 2011, following suicide bombings in Kampala, and the subsequent deployment of additional Ugandan troops to AMISOM which defeated al-Shabaab's annual Ramadan offensive, that the latter was forced to retreat under military pressure from most of Mogadishu. Around the same time, a devastating rural drought led to famine in 2011, resulting in a massive influx of IDPs to Mogadishu. Still, security within the city gradually improved following al-Shabaab's withdrawal. A newly elected Somali Federal Government, under the leadership of President Hassan Sheikh Mohamud, declared an end to the country's 12 years of transitional governments in September 2012.

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126 Paul Williams, 'AMISOM in Transition: The future of the African Union Mission in Somalia', Nairobi: Rift Valley Institute Briefing Paper, 13 February 2013.

127 Ken Menkhaus, 'Somalia: What Went Wrong?', *The RUSI Journal* 15/4 (2009): 11.

Between 1991 and 2012, events in and around Mogadishu prompted the repeated displacement of large populations. The slow recovery of the late 1990s and early 2000s based on a pragmatic desire for order supported by business, clan and growing Islamist networks—culminating in the ICU in 2006—was followed by a period of some of the heaviest fighting and the upheaval of roughly half of the city's population. This and other instances of repeated displacements in the city over more than two decades have only added to the complexity of land and property issues. The next phase—the more recent context to this study—is one of relative security, with significant numbers of diaspora returning to Mogadishu, considerable investments, and an increasing international presence.

Throughout the period of *de facto* state collapse from 1991 to 2012, signatories to reconciliation accords repeatedly failed to address land conflicts that their own peace accords highlighted. But that reluctance to address sensitive issues—and powerful vested interests—at the political level did not prevent individual Somali returnees to Mogadishu from crafting their own solutions. Indeed, even as early as the mid to late 1990s, some Somalis, usually those able to draw on maternal clan links or old friends and associates, worked with clan elders to approach squatters in their homes and negotiate face-saving deals in which the original owner paid a fee for services rendered to the occupant—for protecting and maintaining the property while the owner was away—in return for renewed access to the property.[128] This was only an option for a minority of landowners since most new occupants refused to consider leaving the property, and the threat of violent response made any attempt to open a negotiation risky. Of the original owners who were able to regain at least partial control of their homes, many opted to sell them, fearing that they would not be able to maintain control of the land or live in it securely for the foreseeable future. But the fact that at least some instances of land restitution were managed successfully through informal channels, raise hopes for more comprehensive solutions.

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128 Ken Menkhaus, 'Governance without Government in Somalia: Spoilers, Statebuilding, and the Politics of Coping', *International Security* 31, 3 (2006–2007): 100.

4. Private property, power brokers and a weak legal framework

The weakness of successive transitional governments, combined with low levels of political will, has meant that there has been no sustained attempt to address this most sensitive, but potentially transformative issue. As fragile gains are made in Somalia, however, there is a growing recognition that land and property disputes are potential obstacles to full reconciliation and normalization. A 2014 survey found that residents of Mogadishu consider land disputes to be among the leading drivers of conflict in the city.[129]

The political progress of recent years—despite reversals and delays—has resulted in increasing investor confidence and the gradual return of both diaspora Somalis and international humanitarian and development organizations. These developments have, in turn, contributed to a rapid increase in the value of land and property in those Mogadishu neighbourhoods that are considered relatively safe. This rise in the value of land in parts of Mogadishu has only added to the current competition for it, and to the corresponding urgency to address the land question.

Private property disputes in Mogadishu

Disputes over private property in Mogadishu have a long history, some pre-dating the outbreak of widespread conflict following the collapse of the Siyad Barre government in 1991. The end of the transition in 2012, however, saw a surge in the number of disputes actually reaching the courts. The following section describes four non-exclusive primary factors relating to prolonged conflict in Mogadishu, either causing or complicating recent or on-going disputes.

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129 Observatory of Conflict and Violence Prevention (OCVP)/Heritage Institute for Policy Studies (HIPS), 'Perceptions of Security and Justice in Mogadishu: Interpreting results of the OCVP Conflict and Security Assessment', Mogadishu: OCVP/HIPS, September 2014.

Diaspora return

There is no accurate information available on the numbers of Somalis returning to Mogadishu, nor is there a precise count of the urban population.[130] Various indicators do support the widely held belief that there has been a surge in diaspora returns to the city in recent years. In 2013, for example, 35 per cent of 260 new companies established over a four-month period were registered by diaspora Somalis and the average number of international flights arriving at Aden Adde Airport in Mogadishu has increased considerably since 2012.[131]

Reasons for diaspora to return vary, although the reclamation of private property is clearly a priority for many.[132] Improved security and improved access within the city have enabled Somalis to return to find properties that they were forced to abandon during the conflict. Property was sometimes left in the hands of relatives and friends acting as caretakers in their absence. The pace at which the conflict engulfed the city in the last days of 1990, left families little choice but to hastily pack as much as could be carried and flee. Title deeds were often left behind or, in other cases, lost during frantic attempts to escape the conflict.

The situation awaiting diaspora returnees intending to reclaim property also varies, though more often than not the current occupants of the properties in question will challenge claims of ownership, and a lengthy and expensive process of arbitration will ensue. Outrage at the circumstances is often shared by both parties. Given the length of time many diaspora Somalis have been absent, it is not uncommon for properties to have been sold by the occupants that had seized the land following the collapse of the government to new tenants. New occupants feel a sense of entitlement to the properties in which they have resided

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130 The UNHCR does not differentiate between refugees and the diaspora, but estimates the return of 40,000 ex-refugees in 2014, up from 10,000 in 2013; UN Refugee Agency (HCR), 'Global Appeal 2014-2015'.

131 *Financial Times*, 'Welcome to Mogadishu', 31 May 2013.

132 Interviews by project team for this report, Mogadishu, 2014.

for many years, especially if considerable investments have been made or if families may have been raised there.[133]

In a country where over 70 per cent of the population are under the age of 30, many individuals have grown up knowing only the properties in dispute as their homes.[134] Though there are no legal precedents for claiming formal squatters' rights in Somalia, occupants often refer to them nonetheless. These form part of a wider set of narratives current to Mogadishu justifying squatters' rights to land. The most popular narrative is to discredit the claimants as former cronies in the Barre regime. This argument contends that the original owners' claims to the real estate is illegitimate, on the grounds that they were the true land grabbers as wealthy and privileged civil servants in the Barre government. Others stress what legal experts would refer to as 'adverse possession', namely, that their claim to the land is valid because of the length of time they made uncontested use of it, and that the original owners forfeited their claim by being absent for 25 years. Still others argue that they have made extensive renovation to damaged homes and cite costs that exceed the value of the property, making it uneconomic for original owners to compensate them in order to regain the home. What is typically not stated publically, but understood privately, is that many of the squatters are enjoying the fruits of a 'victor's peace' from 1991–1992, and can, by dint of affiliation in a powerful Mogadishu clan, reject claims of the original inhabitants without consequences.

Shifts in where and by whom power is exercised in Somalia have direct correlations with the value of the property. Unsurprisingly, the most valuable properties in Mogadishu were, prior to the collapse of the state, often owned by either the government itself or by the wealthiest and best-connected individuals in the city. Similarly, as competing factions established their authority over different parts of the city following

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133 Interviews by project team for this report, Mogadishu, 2014

134 UN Development Programme (UNDP), 'Somalia Human Development Report 2012: Empowering Youth for Peace and Development', New York: UNDP, xix; Interviews by the project team for this report, Mogadishu, 2014.

the collapse of the government, the most prized properties were often allocated to senior faction leaders. High profile diaspora returnees have the advantage that their residence in certain properties was, and remains, common knowledge, both to neighbours and among today's power brokers in the city. This can make for a relatively smooth reclamation process.

Mogadishu's former middle classes, however, often face greater challenges reclaiming their property. In a situation where title deeds may have been lost—and where countless forged title deeds are in circulation—neighbour testimony is often called upon to verify a claim. 'Reliable and verifiable testimony' is sanctioned as part of 'alternative and informal community-based mechanisms and processes for resolving property disputes' in the Protocol on the Property Rights of Returning Persons in the Great Lakes Pact.[135]

Gathering neighbour testimonies is, however, not always possible. Residents from areas identified with specific clans often fled *en masse* as the United Somali Congress (USC) began its purge of inhabitants associated with the Siyad Barre regime. As one resident who participated in a focus group discussion for this report pointed out, 'in Hodan [District], 90 per cent of residents fled. The problem is that there are no neighbours [left] that can confirm the ownership of any individual.'[136]

A further example of the problematic nature of neighbour testimony arose in a case where one large *hawala (*money transfer) company attempted to purchase a property on the city's prestigious Maka al-Mukarama Road. While conducting due diligence on the question of the building's ownership, the company established from neighbours that the vendor had inherited the property from his father and that the family had lived there for many years. Several months after the company had exchanged contracts on the property and started developing it, the

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135 Somalia is not a signatory to the Pact though the principles are now commonly adopted throughout the developing world.

136 Focus group discussion with traditional elders from Hodan District, an area previously acknowledged for its large northern population, Hodan District, Mogadishu, 10 March 2014.

seller's brother returned from the diaspora with the original title deeds, informing the company that he had bought his brother's share of the inheritance and was, in fact, the true owner of the property.[137]

This case demonstrates that diaspora returnees may not always be the victims of property appropriations. They may themselves also exploit the weak legal framework surrounding land and property in the city to their own advantage. Complaints have certainly been registered in the Benadir Regional Court against members of the diaspora selling copies of title deeds of a single property from abroad to multiple buyers in Mogadishu.[138]

Inheritance

Inheritance-related disputes do undoubtedly occur in Mogadishu, regardless of conflict. Particularly in urban areas, disputes within the typically large Somali family were common even before the collapse of the Siyad Barre government in 1991.[139] Both before and during conflict, the application of shari'a law—expanded on later—has been broadly accepted as the most effective dispute resolution in inheritance disputes. Nevertheless, the prolonged period of conflict in Mogadishu has certainly complicated inheritance-related land disputes.

There is also considerable overlap between inheritance and diaspora-related disputes over land in the capital. Over the past two decades, many older Somalis who fled the conflict have died in exile, bequeathing properties to family members. These beneficiaries—also largely in the diaspora—are now returning to Mogadishu, sometimes for the first time since early childhood, to reclaim family property. While those who fled when adults are likely to be able to locate their own property with ease, their children or other relatives may often struggle.

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137 Interview with civil servant, Wadajir District, Mogadishu, 1 March 2014.

138 Interview with member of the Benadir Regional Courts, Hodan District, Mogadishu, 27 January 2014.

139 Somali women have, on average, six children; Somali men, under Islamic shari'a law, can marry up to four women without divorcing.

Remaining family members in the diaspora will often nominate one or two siblings or relatives to return and reclaim all family property on their behalf. As with the diaspora reclaiming their own property, families with strong networks in the city will tend to find the process far simpler than those without. Long-standing family friends or extended relatives who have remained in Mogadishu will often provide support. For those returning to Mogadishu for the first time in their adult lives, unfamiliar with the way things work in the city, this support is invaluable. As a general rule, families from major lineages and with more privileged or powerful status enjoy much richer social capital in Somalia than those from minor or caste-like lineages.[140]

For many diaspora families dispersed throughout the world, however, family and clan relations outside Somalia have often deteriorated over time regardless of social status. Disputes within families in the diaspora now returning are growing increasingly common in Mogadishu, either as a result of individuals reclaiming property without the consent or knowledge of relatives elsewhere in the diaspora, or due to differing opinions on what to do with property once reclaimed. Those who have settled and intend to remain in the diaspora are more likely to favour the sale of property and the distribution of proceeds, while those willing to return are more likely to wish to retain the property.

Under shari'a inheritance law, male relatives are entitled to twice the value of inheritance due to female relatives. While there remains general acknowledgement that shari'a law, as applied by local respected *ulemas*, or legal scholars, should be adopted in all intra-family disputes, many continue to find their way to the formal courts.

Multiple title deeds

Many title deeds were left behind, destroyed, or lost as residents fled the city in the early 1990s. Original title deeds that do still exist, however, must now be verified on account of the multiple photocopies that have

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140 Gregory Norton, 'Land, Property, and Housing in Somalia,' Nairobi: UN-Habitat, Norwegian Refugee Council and UNHCR, 2009, 51.

been made of genuine deeds and the overwhelming prevalence of forged deeds in circulation.[141] Until recently, an entire section of Mogadishu's sprawling Bakaara Market, known as Abdalla Shideye, was dedicated to the production of forged documents, including land title deeds.[142]

Public notaries, often called upon to draft legal documentation, have also been implicated in the production of forged land title deeds. Some forged documents are produced using relatively sophisticated techniques, while others are crudely drafted documents artificially aged with black tea.[143] Verification of title deeds is a complicated and potentially expensive process. Details of original title deeds—including the name of the individuals purchasing the land, the date of purchase and the reference number of the deed—issued for *munishibaale* land by the Mogadishu municipality between 1952 and 1991 were manually recorded in registers held at the municipality offices. Reference numbers on the title deeds correspond with a plot number on official city maps.

As Mogadishu descended into conflict, employees of the former Land Department at the municipality took possession of both the registers and land design. To this day, those former employees, who are widely known in Mogadishu, provide a service verifying title deeds and locating land and property. Though the main individual in possession of the *munishibaale* register now lives in the diaspora, following repeated death threats, he still maintains an office in central Mogadishu. Verifying *munishibaale* title deeds requires an initial registration fee of USD 100. The land in question is then valued and a quote for verification is given in line with the valuation. Upon payment, a scan of the register is sent to the office in Mogadishu.[144]

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141 The exact number of plots in Mogadishu that were titled and deeded prior to 1991 is unclear. The 1983 PADCO report for USAID estimated that 157,000 deeds had been issued between 1975 and 1983; PADCO/USAID, 'Urban Development Assessment', p. 69.

142 'Banadir regional administration bans fake documents locally known as "Abdalla Shideeye"', *Goobjoog,* 28 September 2016. Accessed 16 December 2016.

143 Interview with public notary, Hodan District, Mogadishu, 15 February 2014.

144 Interview with Chairman of the Land Disputes Committee, Wadajir District, Mogadishu, 9 July 2014. In disputes brought before the Land Disputes Committee,

Daminyaale land titles are somewhat easier to verify. Public notices of all permanent land titles, including the buyer's details, were issued in regular official bulletins—the *Bollettino Officiale* until 1974, *Faafinta Rasmiga Ah* thereafter—giving 30 days to appeal against the titles.[145]

Allocation of land in Mogadishu by successive transitional governments has further complicated the situation. Both the TNG, led by Abdiqasim Salad Hassan, and the TFG, led successively by Abdullahi Yusuf Ahmed and Sheikh Sherif Ahmed and Hassan Sheikh Mohamed led SFG, as well as successive mayors, are all alleged to have allocated land in Mogadishu to private individuals and organizations.[146]

TNG title deeds—often referred to as 'Arta deeds' in reference to the peace conference that brought about the TNG's existence—were issued for multiple plots in an area of Hodan District in 2001. They were contested almost a decade later, when the original owner, in possession of deeds issued by the Siyad Barre government, returned to Mogadishu. Residents on the plots apparently understood that the earlier documentation had greater legitimacy than their own and were willing to re-purchase the land from the original owner. Over the course of the decade, however, the value of the land had risen significantly. After a lengthy period of negotiation by clan elders representing both parties, the dispute was peacefully resolved, with the residents agreeing to pay a sum closer to the original price paid for the plots than their recent value.

Mogadishu's District Commissioners (DCs) have also been accused of complicity in the allocation of land owned by others. District Commissioners' authority grew considerably following the collapse of the state. As described in a 2013 report by the Urban Heritage Centre in Mogadishu,

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members of the committee subsequently call the individual to confirm reference numbers given on the scans.

145 RVI/HIPS are in possession of scanned copies of all bulletins issued between 1950 and 1989.

146 UN Security Council, 'Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2244 (2015): Somalia', S/2016/919, 31 October 2016, 25–26.

the 'importance of the District Commissioner is the result of the civil war. They are the godfathers of their districts. No specific laws determine their role or responsibilities.'[147] District level security agencies are also managed by the District Commissioners. According to one recent study, DCs are one of the most important security providers in Mogadishu.[148] Thus, they have the ability to enforce, or indeed ignore, judgments made by the courts.

Land grabbing

The term 'land grabbing' has tended to be interpreted as the acquisition of large plots of agricultural land, usually by foreign companies or governments.[149] In the context of Mogadishu, land grabbing can be considered as the purchasing of large plots of land, usually on the city's outskirts, by investors for the sake of development or to host displaced populations. Illegality is not necessarily implied by the term. Given the current chronically weak legal framework, the lack of land administration systems, and the apparent number of land owners still displaced from Mogadishu, however, the acquisition of large plots of land in and around Mogadishu is cause for concern. The United Nation's Somalia Eritrea Monitoring Group in its 2016 report, detailed several cases of the privatization and reallocation of public land in Mogadishu by various government officials allegedly for private gain.[150]

In the early 2010s, large swathes of land along the coastline immediately north and south of Mogadishu were purchased for real estate

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147 Urban Heritage Centre, 'Assessment of Mogadishu Municipality Urban Land Administration', 2013, 25. (unpublished)

148 Ken Menkhaus, 'Non-State Security Providers and Political Formation in Somalia', Center for Security Governance, April 2016, 24. The current DCs are not as powerful as their pre-SFG predecessors.

149 In John Anthony Allan et al. eds., *Handbook of Land and Water Grabs in Africa: Foreign Direct Investment and Food and Water Security*, London: Routledge, 2013, not one of the 32 chapters focuses on urban land; similarly, Lorenzo Cotula, *The Great African Land Grab?*, London: Zed Books, 2013, is primarily about large-scale investments in agricultural land.

150 UN Security Council, 'Report of the Monitoring Group', 119–122.

development.[151] Former residents of the area near the Keysaney Hospital are reported to have staged regular demonstrations against the appropriation of their land, to no avail.[152] The 1987 study on disadvantaged areas noted: 'Land on the outskirts of the city has not been privatized prior to the growth of the city, and so the government has had little difficulty asserting its control over that land.'[153]

Ownership of large plots of land in Dayniile District, though for different purposes, is similarly questionable. A 2014 Amnesty International report claimed:

> Land ownership in Dayniile is unclear, with both the
> government and clans in the area claiming ownership … Land
> appropriations are rampant and have led to a 'gatekeeper
> system', a lucrative business led by powerful individuals and
> groups, often with links to district commissioners and other
> local level authorities or militia, who present themselves to
> internally displaced people as legitimate landowners.[154]

Interviews for this study provide additional grounds for concern that powerful individuals may be attempting to exploit their positions to grab land in Dayniile, despite the fact that the district was largely reserved for the Somali National Army and state-owned industries prior to the collapse of the state.

Privatization of public lands in the outskirts of Mogadishu is increasingly common. In February 2015, an estimated 21,000 IDPs were evicted from land in northern Dharkenley district previously owned by the Ministry of Civil Aviation and Transport with little prior notice and relocated to join thousands of IDPs evicted from 21 October Road in

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151 'Somalia housing boom as Mogadishu emerges from ashes of war', AFP, 3 January 2016. Accessed 16 December 2016.

152 Interview with lawyer, Hodan District, Mogadishu, 11 February 2014.

153 Davies, 'The Village', p. 43.

154 Amnesty International, 'No Place Like Home: Returns and Relocations of Somalia's Displaced', London, February 2014, 37.

Waabeeri District.[155] While some of the families remain in the area, many of the 912 plots (15 by 20 metres each) were resold privately.[156] In late July 2016, the Prime Minister of the Somali Federal Government formed the Protection of Public Properties Committee whose mandate is to review and monitor the authorization and use of public lands.[157]

Resolution of private property disputes in Mogadishu

The successful resolution of private property land disputes in Mogadishu ultimately depends upon the willingness of parties to negotiate. A shared sense of outrage at the circumstances of property disputes can be translated, through negotiations, to a shared understanding of the complexity of the situation leading to settlements considered acceptable by both parties.

Those reclaiming property will often accept that a 'caretaker' fee paid to the occupant of their property, reimbursing expenses made for the property's upkeep and security, and contributing towards relocation costs of the occupant, is reasonable. Acknowledgement of multiple more or less legitimate title deeds can similarly result in mutually satisfactory arrangements. This is a revealing example of a negotiated, face-saving solution that works well within a Somali cultural framework.

Problems arise when one or both parties involved in a dispute are determined to win the case outright and power dynamics emerge. In such circumstances, disputes will often pass through a standard chain of justice mechanisms, almost always starting with the involvement of traditional elders and often ending at the Supreme Court.

Traditional justice mechanisms: Xeer and shari'a

Somali customary law, or *xeer*, is a complex set of norms and rules that govern inter and intra-clan relationships, 'the set of rules and obligations

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155 Human Rights Watch, 'Somalia: Forced Evictions of Displaced People', 20 April 2015. Accessed 16 December 2016.

156 UN Security Council, 'Report of the Monitoring Group', 119.

157 UN Security Council, 'Report of the Monitoring Group', 123.

developed between traditional elders to mediate peaceful relations between Somalia's competitive clans and sub-clans,' according to one study on rule of law in Somalia.[158] *Xeer* long pre-dates the advent of colonialism, and the modern state, in the Somali-speaking lands, and is commonly believed to pre-date the advent of Islam and resulting introduction of shari'a.

Historically, *xeer* has held greater influence in rural than in urban areas of Somalia, and, in part, because of the movement of rural populations into the cities during the war, it has become increasingly important in urban areas too. Before state-collapse in the 1990s, the influence of *xeer* in urban centres had slowly declined throughout the twentieth century, as governments attempted to consolidate formal justice mechanisms. Law 67 of November 1970 (see previous text box), banned 'tribalism' and with it 'key elements of *xeer*, including tribal land, water and grazing rights, as well as collective responsibility and *diya*-payment.'[159] When the Somali state collapsed, however, there was a reliance on traditional justice mechanisms, even in urban centres, in the absence of a judiciary and state security agencies.

There are three primary processes of *xeer* namely, negotiation, mediation and arbitration. While negotiation commonly serves as a starting point, 'mediation is most suitable in a situation where the parties' responsibilities are clear but misunderstanding is rife and communication has broken down or is non-existent. It is generally aimed at easing tension and inducing the parties to agree to face-to-face negotiation.'[160] In arbitration, meanwhile, 'the opposing parties present their cases to a neutral third party. Unlike mediators, arbitrators have the power to propose solutions after hearing proofs and arguments from each party. Under arbitration, each party can choose its own arbitrating panel members,

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158 Andre Le Sage, 'Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives', Geneva: Centre for Humanitarian Dialogue, 2005, 32.

159 Le Sage, 'Stateless Justice', 20. *Diya*-payment refers to blood compensation.

160 Mahdi Abdile, 'Customary Dispute Resolution in Somalia', *African Conflict and Peacebuilding Review* 2/1 (2012): 93.

but the parties will have to commit to comply with the panel's recommendations, which can be binding and enforceable.'[161]

When Siyad Barre's government collapsed in the 1990s, certain clans associated with it were forced to flee Mogadishu, abandoning their property. Smaller clans and minorities, unable to arm or defend themselves against violence, were also disproportionately affected by land appropriation.[162] Clan demographics in Mogadishu over two decades later are widely recognized to be quite different from what they were, at least up until the early 1980s. The segregation of clans into specific neighbourhoods and the domination of certain clans over others—when compared to the pre-conflict context—is more pronounced. As a result, *xeer* does not always serve the interest of Mogadishu's smaller clans and minorities, who find it harder to reach a satisfactory enforceable consensus.

Indeed, for a consensus to be enforceable it requires either a common acceptance of elders' recommendations by both parties to a dispute or the presence of an implementing agency, most commonly in the form of a clan militia. There is no central, objective implementation agency of traditional justice, so the size and strength of one clan militia relative to another may again determine whether consensus is enforceable or not.

The collective nature of *xeer* inextricably ties it to clan. Indeed, the primary function of *xeer* has historically been to manage and foster relations between different clan lineages. The actions of the individual reflect on the group, and compensation is usually made by the group on behalf of the individual. An inherent contradiction exists, therefore, in the application of collective justice in the management of private property, the ownership of which is so intrinsically tied to individual, as opposed to collective, liberty. It appears that *xeer* works more effectively between some groups—especially clans that live next to each other or

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161 Abdile, 'Customary Dispute Resolution', 93–94.

162 Focus group discussion with Reer Hamar elders, Xamar Weyne District, Mogadishu, 25 April 2014.

regularly interact with each other—than others. In other words, dispute mediation is more effective between some clans than others.

Somalia is almost exclusively a Muslim society, which largely adheres to Shafi'i school of Sunni Islam. The combination of *xeer* and shari'a coexisted in Somalia prior to British and Italian colonial rules. The colonial powers introduced codified laws. [163] Somalia's 1962 Law of Organization of Judiciary allowed shari'a 'only for matters concerning family, inheritance, and minor civil disputes, and Somali xeer … as a legitimate option for the settlement of clan conflicts.' Somalia's post-independence civilian government recognized Islam as the official state religion.

In 1975, Islamic scholars challenged the Siyad Barre regime's introduction of the Family Law, which gave equal rights for men and women. Ten *ulemas* opposed this and, as a result, were publicly executed. In the 1980s, more Islamic scholars returned to Somalia from Egypt and Saudi Arabia, at a time when the government's authority and legitimacy was in decline and disputed. When the Somali state collapsed in 1991, these returning *ulemas* and the reformist Islamic movements associated with them, 'established a real foothold in the country, particularly in the south central regions.'[164] Since then, shari'a and its legal supremacy in Somali law has been an increasingly critical issue.

The provisional Constitution of the Federal Republic of Somalia makes several specific points about shari'a. Article 2(3) says that 'No law can be enacted that is not compliant with the general principles and objectives of Shari'a,' while Article 3(1) adds that the constitution itself is 'based on the foundations of the Holy Quran and the Sunna of our prophet Mohamed (PBUH) and protects the higher objectives of Shari'a and social justice'. Article 4(1) adds 'After the Shari'a,' the constitution is 'the

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163 Joakim Gundel, Louis-Alexandre Berg and Yahya A. Ibrahim, 'Political Economy of Justice in Somalia', Justice, Security and Development Series, International Bank for Reconstruction and Development / The World Bank, April 2016, 6.

164 Anon, 'Islam and Somali social order', in *Whose Peace is it Anyway? Connecting Somali and International Peacemaking*, eds. Mark Bradbury and Sally Healy, London: Conciliation Resources, 2010, 94.

supreme law of the country. It binds the government and guides policy initiatives and decisions in all sections of government.'[165]

Many Somalis see shari'a courts as a just and effective approach to solving land disputes, partly because of the current legal system's dysfunctions. The Islamic courts that grew in Mogadishu during the 1990s are still regarded by many as having provided the most effective justice, and that were perceived—rightly or wrongly—as incorruptible and non-partisan, in particular towards clan. Shortly before the Ethiopian invasion, the Islamic Courts Union administration 'were gradually shifting towards a more neighbourhood-based, rather than lineage [clan] based, jurisdiction.'[166] The ICU's Benadir Court was established in 2006 to hear land and property disputes. Judges were paid a regular monthly salary of around USD 300 and courts had the authority to enforce their decisions.

According to a former senior ICU judge, the Benadir court successfully adjudicated approximately 600 cases.[167] Not all judges were well versed in urban land law, however, and there were internal disputes over the application of shari'a alongside secular law. Nonetheless, faith in the courts' integrity, combined with fear of their militia's ability to implement decisions, ensured widespread popular compliance. Many former shari'a judges are now reluctant to be associated with the current judiciary in Somalia.[168]

Formal justice mechanisms

That an estimated 80 per cent of court cases heard in Mogadishu's Supreme Court are related to land is testament to the fact that neither traditional justice mechanisms nor shari'a, are currently sufficient to

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165 The full text of the constitution, dated 12 June 2012, can be found online at http://www.constitution.org/cons/somalia/120708_ENG_constitution.pdf.

166 Menkhaus, 'The Crisis', 375.

167 Interview with former senior ICU judge, Mogadishu, 24 May 2014.

168 Interview with former senior ICU judge, Mogadishu, 24 May 2014.

address disputes.[169] When parties to a dispute are not willing to negotiate and determined to win outright, cases will necessarily find their way to the formal courts, beginning a prolonged, and often extremely expensive process of arbitration. Confusion surrounding the content of urban land laws, who is responsible for administering land, who and when various bodies are responsible for hearing land cases, and how judgments should be implemented, has resulted in a complex situation open to manipulation.

Unlike the 2004 Transitional Charter, and in contrast to almost all peace agreements signed since 1991, the Provisional Constitution does not mandate a national land commission. However, the Vision 2016—a 'framework for action' drawn up by President Hassan Sheikh's government in February 2014—did call for Independent National Commissions, including one to deal with land issues.[170] Article 43 of Chapter 3 of the 2012 Provisional Constitution, prepared as part of the roadmap to end the transition in Somalia, is dedicated to land and property, though it is drafted in vague terms providing almost no guidance with regards to the management of land disputes:

> The Federal Government shall develop a national land policy,
> which shall be subject to constant review. That policy shall
> ensure [amongst other things]: That any land and property
> dispute is resolved promptly and satisfactorily for all.[171]

Further confusion is prompted by the final sub-article 43 (5) on land, stating that the 'Federal Government, in consultation with the Federal Member States and other stakeholders, shall regulate land policy, and land control and use measures.' In Mogadishu at least, the wording of the Article reactivated competition over the administration of urban land

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169 Interview with Chief Justice Aideed Abdullah 'Ilka Hanaf', Benadir Regional Court, 23 April 2014.

170 The text can be seen online at www.raxanreeb.com/wp.../Vision_2016_-_Framework_for_Action.docx.

171 By the end of its four-year tenure in September 2016, the SFG had not drafted a national land policy.

between the Ministry of Public Works and the BRA that existed prior to the collapse of the state.[172] The BRA maintains that Law 10 of 1980, which transferred to it administration of all land in Mogadishu, still applies, supporting its argument with reference to Article 139 of the Provisional Constitution:

> All laws in force immediately before the effective date shall continue to be in force and shall be construed and applied with such alterations, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution until such time as such laws are amended or repealed.[173]

The competition for authority over the administration of land—an asset that is not just a potential income stream but a considerable political resource and source of prestige—has so far prevented any meaningful revisions or reform of existing land laws and the land administration system. Since the national land policy is still yet to be drafted, along with Article 43's ambiguity, and the existence of Article 139 effectively sanctioning the continuing applicability of Law 10 of 1980, the BRA retains *de facto* control of land administration in Mogadishu.

Nonetheless, donor-driven efforts to improve the capacity of the BRA have resulted in various developments, including the establishment of the UN-Habitat supported Urban Planning Department, expanded on later. In September 2013 an 'Interim Legal Framework for Benadir Regional Administration', drafted with support from UN-Habitat, the Human Relief Foundation, and the European Union, was signed into law by the Mayor of Mogadishu. The framework acknowledges the 'shared and overlapping responsibilities' with the federal government though

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172 At the time of writing, there had been no resolution to the bureaucratic tussle between the BRA and the Ministry of Public Works. In November 2015, the new Mayor of Mogadishu froze land adjudications in Mogadishu; 'Dhalha condemns arrest of innocent residents amid land dispute triggers detention in Mogadishu', *Goobjoog*, 5 January 2016. Accessed 16 December 2016.

173 Law No. 61 (1981), however, details lands that fall outside local government, including beaches, grazing land, agricultural area and land with mineral deposits.

also attempts to clarify the BRA's autonomy with reference to the Local Administration Law (Law 19 of 1963). BRA Law 3.6, coming under the broader 'Urban Services and Standards Law', refers specifically to land disputes, stating that the 'BRA shall contribute to resolution of land disputes through improved land registration and information systems, its land committees and cooperation with judicial and community dispute resolution mechanisms.' BRA Laws 5.10 and 5.11, dealing respectively with 'Pro-Poor Housing' and 'Land Use', further consolidate its responsibilities over land in Mogadishu.

The Mayor of Mogadishu and governor of Benadir Region between July 2010 and February 2014, Mohamed Ahmed Nur 'Tarsan', established a Land Disputes Committee, staffed by seven former members of the Mogadishu Municipality. Neither the committee nor its members were provided with terms of references and relations between the committee and the formal courts were complicated and sometimes fraught. Six of the members were in the former land administration department, while the chairman of the commission worked with the department of taxation.[174] The procedures for referring a case to the committee varied. Cases were often referred to the mayor's office and onto the committee by the Benadir Regional Court, though parties would also often bypass the courts and appeal directly to the mayor's office.

The committee would request all documents held by the parties to the dispute, which were then verified by those in possession of the registers, gazettes and land design. Committee members would often visit the disputed land or property and request testimony from neighbours. Opinions on whether the committee would make a ruling itself or whether it was obliged to pass those recommendations onto the regional courts differed, though cases would often still find their way through to the appeals court, and subsequently onto the Supreme Court.

In early 2014, President Hassan Sheikh appointed Hassan Mohamed Hussein 'Muungaab', a former military court judge, as Mogadishu mayor

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174 Urban Heritage Centre, 'An Assessment', 17.

and Benadir governor.[175] Despite some hopes that the new mayor would push for structural reform of the BRA, including the land administration department, immediate attention was focused on security.[176] Some administration officials were replaced, including four of the seven members of the land disputes committee. The handover from previous staff to those newly recruited was haphazard. It is unclear how many disputes the previous committee handled. While hard copy files of all disputes are stored on site, cases were not systematically registered.[177]

Once established, the new committee started to register its entire caseload digitally, providing a slightly clearer picture. In its first three months of operation the committee had registered approximately 200 new disputes, after which it stopped accepting new cases so that it could clear the caseload to date.[178] According to the past chairman of the committee, Salah Sheikh Ibrahim, the current procedures are clear. The Benadir Regional Court refers cases to the committee, which verifies legal documentation—without making site visits to collect neighbour testimony—before making its recommendation to the court. For its part, the court is not legally obliged to—and, indeed, does not always follow—the recommendation of the committee.[179] In late October 2015, the current Governor of Benadir region and Mayor of Mogadishu, Sheikh

175 Muungaab served as Mayor from February 2014 to October 2015, and was later appointed as State Minister of the Ministry of Justice in August 2016.

176 The new mayor did, however, make announcement in March 2014 acknowledging the clan dynamics of land occupation in Mogadishu and calling on the Abgaal and Habar Gedir, both Hawiye sub-clans, to cooperate with his administration and return land being held illegally; 'DAAWO MUUQAALKA: Jen Mungaab" Abgaal iyo H/gedir waa in laga saara Guriyaha dad ee ay haystaan haddii kale Xamar Caasimad ma noqonayso', New Somali, 10 March 2014. Accessed 30 January 2017.

177 Interview with Chairman of the Land Disputes Committee, Wadajir District, Mogadishu, 9 July 2014.

178 According to the Chairman, the majority of cases have been submitted by members of the Majerteen, Marehan and Isaaq clans.

179 The legality and structure of the Committee was questioned by the government's Solicitor General. Legal experts argue that the current structure of the land dispute committee is not in line with Law No. 48 (1981) which interprets Law No. 10. Article 28 of this law asks that the land dispute commission be composed of five members from the BRA's Land Administration department, police department, department of public

Yusuf Hussein Jim'ale, was named to replace Muungaab. The new mayor suspended the adjudication of new land disputes in Mogadishu until the outstanding land disputes are solved.[180]

The judiciary, meanwhile, at least according to the Provisional Constitution, remains 'independent of the legislative and executive branches of government' (Article 106). The courts' handling of land disputes in Mogadishu, aside from the complicated relationship with the land disputes committee, is subject to much criticism. For all participants with experiences of land disputes interviewed for this study, endemic corruption within the formal court system is one of the greatest obstacles to justice.[181] Low salaries, the lack of expertise and training, the lack of protection, the lack of funds to reform the judiciary and the weak legal framework surrounding land are all cited as reasons for the persistent corruption within the courts.[182]

In April 2013, the Somali National Dialogue on Justice Reform Conference was held in Mogadishu over a period of five days, which acknowledged the 'current dismal status of the judiciary and Rule of Law institutions' in Somalia. The conference communiqué issued a number of recommendations that, if followed, would amount to an overhaul of the current systems in place. To date, few of the recommendations have been implemented.[183] A law enabling the formation of the constitutionally mandated Judicial Service Commission (JSC) has been passed by the

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relations, and a member from the office of the Solicitor General; Interview with a lawyer with reference to the official gazette, Mogadishu, October 2016.

180 Different sources consulted in Mogadishu in October and November 2016 confirmed that the suspension did not help progress on resolving outstanding disputes.

181 'More than fifty per cent of judges in the Benadir Region were corrupt'; Interview with Chief Justice Aideed Abdullah 'Ilka Hanaf', Benadir Regional Court, 23 April 2014.

182 Between 2007 and 2013, 27 assassinations and 12 attempted assassinations of judicial personnel were recorded; 10 judges were killed in 2013 alone. Gundel, Berg and Ibrahim, 'Political Economy of Justice in Somalia', 3

183 'Somalis Lament Lack of Progress on Judicial Reform', AllAfrica, 25 April 2014. Accessed 30 January 2017.

federal parliament but the precise structure of the JSC is still subject to dispute.[184]

Fees are expected at every step of the process through the courts. One participant in the study claimed that an opponent had managed to bribe court administrators to retrieve his original title deeds from case files held within the courts.[185] Another participant drawn into a land dispute, having had prior experience of corruption within the court systems, claimed to have refused to produce original title deeds to the courts for fear of losing the documents.[186]

Though district-level courts are not legally mandated to hear civil cases over property worth more than USD 3,000, many district court officials still expect to be the first port of call for all disputes before referral to the Land Disputes Committee or Benadir Regional Court.[187] A participant in Yaaqshiid District whose property was being claimed by another party, and who bypassed the district courts instead of applying directly to the Benadir Regional Court, was informed that their case was dismissible, since it had not passed through the correct procedures.[188]

Once the court has made its judgement, implementation usually relies upon district level police forces. Judgments made at the regional, appeals or supreme courts are passed onto the police commander for Benadir Region who, in turn, writes to district-level police commanders who are tasked with carrying out the judgment and, where necessary, evicting occupants from properties. If, however, the property is associated with

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184 The law was passed by just 79 of 275 members of parliament. According to the 2012 Provisional Constitution, the Judicial Service Commission is meant to comprise 9 members including the Chief Judge of the Constitutional Court and the Chair of the Human Rights Commission. The Human Rights Commission was yet to be established at the time of writing, however, and the Judicial Service Commission is constitutionally required to nominate judges to the Constitutional Court.

185 Interview, Yaaqshiid District, Mogadishu, 25 February 2014.

186 Interview, Wadajir District, Mogadishu, 23 February 2014.

187 Prior to the collapse of the state in Somalia, District Courts were mandated to hear cases over property worth up to 3000 Somali Shillings. In 2012 the Chief Justice of the Supreme Court amended this to USD 3000.

188 Interview, Yaaqshiid District, Mogadishu, 1 March 2014.

powerful individuals district police officers will respond to the police commander for the region requesting support from the regional forces.[189] This complex arrangement, involving numerous district and regional level power brokers, means that many powerful individuals, still occupying land and property illegally, remain able to influence whether or not court decisions are implemented.

Summary

An extremely weak legal framework surrounding private property in Mogadishu has been exploited by various actors seeking to profit from the status quo. *Xeer*, with its origins in managing intra and inter-clan affairs, is ill suited for addressing complex private property disputes. Shari'a law has, at times, offered an effective dispute resolution mechanism but its implementation became politicized. Many judges proficient in shari'a law are now unwilling—and some unqualified—to work within the formal justice system.

While the constitution remains provisional, the architecture of the formal justice system is still in flux, and does not have the confidence of those inside the system, let alone the general public. The situation has led to the commonly heard expression, *'ku qabso ku qadi meyside'*, which translates loosely as 'make a claim, however unjust, and you will end up gaining something'. The cost of pursuing justice through formal channels against dubious claimants is likely to equal, if not exceed, the cost of paying them off, and take considerably more time, without guaranteeing the expected outcome. Wealth and political connections have often usurped the truth in property disputes. Meanwhile, competition between the regional and federal administrations over control of urban land and property ensures that the much-needed comprehensive reform of the systems in place remains a low priority.

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189 Interview with police officer, Hodan District, Mogadishu, 12 March 2014.

5. Informal settlements, internal displacement and the urban poor

The presence of informal settlements in Mogadishu is far from unique. Until 1991, the city largely mirrored the global trend of rapid urbanization in many developing countries. In capital cities and economic centres such as Nairobi and Lagos, this was largely due to a mixture of population growth, skewed national economic development and poor planning. In Somalia, however, after a period of rapid and haphazard urbanization following independence, the growth of informal settlements over the past three decades has largely been a consequence of prolonged civil conflict, recurrent flooding, drought and famine, and no planning. At different times, Mogadishu has been both the epicentre of the conflict, generating mass displacement within and beyond the country, and a shelter amidst regional instability.

According to a June 2012 assessment made by the International Committee of the Red Cross (ICRC) and the Somali Red Crescent Society (SRCS), an estimated 369,000 IDPs and urban poor were settled in informal and semi-permanent settlements across the city.[190] As of September 2016, the UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that 1.4 million people were living in 'emergency and crisis' in Mogadishu.[191] Communities residing in informal settlements have become embedded in the urban fabric, with the vast majority residing on government or private land that was abandoned during the conflict. When it assumed office in 2012, President Hassan Sheikh's SFG, alongside the BRA, discussed the need to clear the city of informal settlements and IDPs, and in some instances, acted upon it.

Access to land and security of land tenure are important determinants of vulnerability experienced by IDPs and the urban poor in Mogadishu.

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190 International Committee of the Red Cross (ICRC), 'Mogadishu IDP Survey', June 2012.

191 UN OCHA, 'Somalia: Humanitarian Snapshot', September 2016.

Those settled on government or private land have little or no security of tenure as property is reclaimed, and very little access to land within the city. Without a clear and comprehensive approach to the issue of IDPs and the urban poor, Mogadishu's densely populated IDP camps will morph into vast urban slums, creating a permanent under-class of city residents living in squalid conditions, and, some argue, an on-going security threat.

Protracted urban displacement

Some of the communities living in informal settlements were originally displaced from Mogadishu during the early 1990s. Others, displaced to Mogadishu from further afield early on in the conflict, having spent many years living in the settlements, now consider themselves to be permanent residents of the city. This situation, again, is not unique to Mogadishu. Recent studies suggest that most of the worlds' IDP population, estimated at 27.5 million in 2010, now live in a state of protracted displacement.[192]

The 2012 ICRC-SRCS survey indicated that the highest number of IDPs in Mogadishu, around 60 per cent, originated from four of the regions hardest hit by the 1991–1992 famine: Bay, Bakool, Lower Shabeele and Middle Shabeele. Many also had land appropriated during the 1990s conflict. Other IDPs from these regions arrived more recently, particularly after the 2011 famine. Many of these—particularly those from clans who do not have recourse to militias or have less political influence—claim that they were forced to sell their land, often below market value, to survive. In both cases the loss of previously held land makes the prospects of return more challenging. The issue of land in Mogadishu, therefore, is also intrinsically tied to wider land issues in Somalia.

The number of IDPs in Mogadishu is never static, with permanent inflows to and outflows from the city. Since the collapse of the state, agricultural communities in southern and central Somalia have

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192 For example, Elizabeth Ferris, ed., 'Resolving Internal Displacement: Prospects for Local Integration', Washington DC: Brookings Institution, June 2011.

increasingly engaged in seasonal migration to Mogadishu to meet liveli-hood needs.[193] These seasonal flows are driven by a number of mutually exacerbating factors, including conflict, climate change, poverty and the lack of service provision. Without stability, local reconciliation and large-scale development initiatives, these regions remain unable to permanently re-absorb large displaced populations without threat-ening to re-stoke local resource scarcity and conflict. Evidence suggests that many of those displaced in Mogadishu that wish return to their homelands would be unable to do so even with support.[194]

While some will move to and from the city according to the seasons and situations in their homelands, many are repeatedly forced to move within the city. According to a 2008 report many IDPs were forced to move more than ten times within a period of two years.[195] These included the 700,000 people displaced from Mogadishu in 2007—roughly half the population of the city—most of whom went to the Afgooye corridor before eventually returning to the city. Despite constant upheaval, many IDPs and urban poor have little choice but to remain in or on the outskirts of the city. Mogadishu still provides many with a livelihood, whether through food aid, informal livelihoods or as a daily wage earner. Generations of once rural families have now been born and grown up in Mogadishu and, despite enduring urban poverty, have no intention of migrating to rural areas.

The distinction between IDPs and the urban poor is increasingly diffi-cult to discern. The transformation over the past decade of the former United States Embassy compound in Wadajir District—now commonly referred to simply as 'Ex-US Embassy'—illustrates the gradual formal integration of IDPs and some informal settlements in Mogadishu over

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193 Daniel Maxwell and Nisar Majid, *Famine in Somalia: Competing Imperatives, Collective Failures, 2011-12*, Oxford: Oxford University Press, 2016.

194 For example, the 2013 Somalia Tri-Cluster Assessments of various settlements in Mogadishu.

195 Displacement Solutions, 'Housing, Land and Property Rights in the South Central Somalia: Preliminary Assessment and Proposed Strategies for Expanded Approaches', August 2008.

several years. Satellite imagery available via Google Earth from 2002 and 2008 reveals an area largely overgrown with scrub with a few permanent structures. By June 2009 an area to the south of the compound, starts to populate. By September 2009, large swathes of the compound have been cleared of scrub but still appear uninhabited. By July 2010 semi-permanent structures (with corrugated iron roofs) appear spread out across the compound. By August 2011, the month that the UN declared famine in Somalia, informal shelters fill much of the space between the semi-permanent structures, and by late 2012 the area is densely populated. Around this time, various NGO and INGO publications refer to the former US Embassy as one of many IDP camps in Mogadishu.[196] As of early 2013, semi-permanent structures started to crowd out the informal shelters and, by mid-2014, humanitarian data collectors were informed that their inhabitants were from the host community.[197]

While it is important to maintain the category of IDP within Mogadishu—to inform understanding of associated needs and to shape the implementation of aid and protection programmes—the assumption that all urban IDPs will eventually leave Mogadishu when stability is restored is misleading and misinforms policy development. The fluidity of categories, and the desire of many to remain where they now reside, was acknowledged as far back as 2007,[198] but this long-standing reality is not reflected in the recent government's policy or rhetoric, which is still centred on return.

The rise of gatekeeper landlords

Mogadishu attracts many IDPs from the regions in southern and central Somalia as it serves as a hub for the distribution of humanitarian aid. Since the beginning of the conflict, the capital has always been the key entry point for aid, as well as for international peacekeepers. Throughout

196 This includes Humanitarian Bulletins by UN OCHA, UNHCR Population Tracking Reports and Inter-Agency Protection Cluster Updates.

197 Interview with UNHCR representative, Nairobi, 20 August 2014.

198 For example, Danish Refugee Council, 'Report on Profiling of Internally Displaced Person: Mogadishu', Nairobi: DRC, May 2007.

the conflict, large parts of Somalia have been inaccessible to international aid agencies. During the famine in 2011, aid agencies had to negotiate—often unsuccessfully—with al-Shabaab to gain access to areas under its control.[199] Since 2012, as major towns and cities in Somalia have been gradually wrested from al-Shabaab, the group, still in control of much of the southern and central Somalia hinterland, has also sought to restrict the overland delivery of humanitarian aid to the regions. As a result, Mogadishu remains the recipient and terminus of much of the aid reaching Somalia.

The majority of IDPs and urban poor are settled in government-owned buildings or have congregated in camps on both public and privately owned land. The influx of aid has given rise to the phenomenon of 'gatekeepers'—also commonly referred to as 'black cats'—ostensibly serving as representatives of these communities and providing them security.[200] Many, however, act more akin to feudal landlords, profiting from the distribution of aid reaching the settlements and often charging forms of rent to those they claim to protect and represent. Gatekeepers often operate within a web of local power brokers, comprised of landowners, district officials, and businessmen. These networks of power brokers, who are often from the dominant clans in their districts, have effectively monopolized the business of urban informal settlements and inward migration to Mogadishu.

Gatekeepers' prominence has risen over the past two decades due to the prolonged absence of government, creating opportunities for private individuals to lay claim to public and private land to rent accommodation to displaced and poor individuals. Income has peaked and troughed in line with the crises that have prompted substantial humanitarian responses, with the famine in 2011 introducing boom times for

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199 Ashley Jackson and Abdi Aynte, 'Talking to the Other Side: Humanitarian Negotiations with Al-Shabaab in Somalia', London: Overseas Development Initiative (ODI), December 2013.

200 This is not confined to Mogadishu—a protection study of Kismaayo describes the same. Simon Narbeth and Calum McLean, 'Livelihoods and Protection: Displacement and Vulnerable Communities in Kismaayo, Southern Somalia', London: ODI, 2003.

Mogadishu's gatekeepers and their associates. Continuing insecurity in the city still means international humanitarian agencies have restricted access to their beneficiaries, forcing them to rely on remote service delivery via local implementing agencies, and leaving them unable to effectively monitor distribution of aid.

It has been argued that, in the absence of government, gatekeepers have played an important role in providing protection and a degree of tenure security to the most vulnerable communities in Mogadishu. Nonetheless, the vast majority of informal settlements in the city offer deplorable living conditions to their inhabitants, with poor sanitation and little or no access to health services or security.[201]

The push to the periphery

Although security remains tenuous, Mogadishu has been undergoing a transformation since al-Shabaab's withdrawal in 2011. Investments in property and businesses have prompted a development boom in the city. The international humanitarian and development community are growing increasingly confident, moving beyond the immediate confines of the airport to re-establish offices in the city. This injection of interest and investment, however, has also prompted the rapid rise in the value of and demand for land in the city.

The SFG's formation in 2012—ostensibly the first non-transitional government since 1991—prompted further demand for land in Mogadishu, with once public land and formerly government-owned buildings reclaimed and restored by various ministries. The BRA, too, attempted to reclaim and restore former municipal buildings. The growing demand for land, both private and public, has left Mogadishu's IDP and poor populations in an increasingly precarious situation. Mass evictions of informal settlements in the city are now a regular occurrence.

The predicament of Mogadishu's most vulnerable communities is exacerbated by the location of many of the informal settlements.

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201 Human Rights Watch, 'Somalia: Women Shouldn't Live in Fear of Rape', 13 February 2014.

According to the 2012 ICRC-SRCS survey, 60 per cent of all IDP settlements, and 55 per cent of the total population of IDPs were situated in Hodan, Wadajir and Dharkenley districts. Dharkenley District, on the western outskirts of the city, has remained relatively free from the strains of this growing demand. Wadajir District, however, situated close to the international airport, hosts the vast majority of international NGOs, UN agencies, secure hotels and a number of government ministries, including the Ministry of Foreign Affairs and the Ministry of Planning. Parts of Hodan District, meanwhile, which were known to host large northern populations that were forced to flee Mogadishu when the government collapsed, have seen the same communities returning in large numbers to reclaim family property. As a consequence, both districts are experiencing unprecedented demand leading to the eviction of huge numbers of IDPs and urban poor.

Government officials regularly raise the impact informal settlements have on both the security situation within, and the image of Mogadishu. These concerns explain the government's prioritization of clearing informal settlements next or near to government properties such as: the large Daarwish camp near to the Presidential compound, Villa Somalia, in Wardhiigley District; Sigale camp adjacent to the prominent Maka al-Mukarama road in Hawl Wadaag District; and the Trebunka camp near various military compounds in Hodan District.[202] As an official at the Benadir Regional Administration explained: 'They [informal settlements] are difficult to deal with … The areas can become centres for drug dealers and other criminal activity. They ruin the image of the city.'[203]

In January 2013, the federal government initiated a plan to relocate IDPs living in settlements in Mogadishu to areas outside the city. To implement the agenda the government established an inter-ministerial 'Mogadishu IDP Relocation Task Force' comprised of five ministries.[204]

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202 Interview with civil servant, Wadajir District, Mogadishu, 1 March 2014.

203 Interview with civil servant from the Benadir Regional Administration, Hodan District, Mogadishu, 25 January 2014.

204 These included the ministries of interior and national security (chair); defence; information and communication; human development and public services; and natural

Representatives of international bodies including UN agencies, international NGOs and the Organisation of Islamic Cooperation (OIC) were also invited as members to support the task force to ensure the plan adhered to international standards and involved a voluntary, consultative and rights-based approach. The former Mayor of Mogadishu, Mohamed Ahmed Nur 'Tarsan', announced the plan in February 2013, suggesting that a large portion of the relocations would occur by 20 August of the same year, exactly one year after the end of the transitional period in Somalia.[205]

The government's original plan involved the establishment of new temporary camps on the outskirts of the city, serving as a stepping-stone for two to three years before IDPs return to their original homelands. Dayniile District, Gubadley, to the north east of the city, and Jazeera, along the coast south west of the city, were identified by the task force as possible locations for the temporary camps. Gubadley and Jazeera were subsequently dropped from the list, reportedly on account of their distance from the city, lack of livelihood opportunities and insecurity.[206]

Concerns over ownership of land, the prevalence of unexploded ordinances littering the area and the presence of al-Shabaab militants, have also delayed the process of relocation to Dayniile District indefinitely. The government's claim of ownership to the land is based primarily on the fact that much of the land in Dayniile was reserved for the Somali National Army prior to the collapse of the government. Local Murusade clans in the area have contested this, however, claiming ancestral rights to their traditional *goof* land that pre-dated the Siyad Barre government. By June 2013, UNOCHA claimed to have cleared 70 per cent of unexploded ordinances from Dayniile.[207] The UNDP had also established five prefabricated police stations in the area in a bid to

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resources.

205 IRIN News, 'Somali Government to Relocate IDPs, Welcome Returning Refugees', 27 February 2007.

206 Parts of Jazeera have also been bought for private development.

207 UN OCHA, 'Mogadishu IDP Relocation - Benchmarks and Progress', June 2013.

address the security concerns. The progress of the IDP Task Force was, however, interrupted by the al-Shabaab attack on the UNDP compound in June 2013.[208] Even if such posts were to become fully operational, it is unlikely that they would meet the serious challenges of IDP resettlement, land ownership and administration.

Forced evictions

Despite failing to secure suitable locations for resettlement the government nevertheless pushed ahead with evictions from informal settlements. Reports published by the UN Operational Satellite Applications Programme (UNOSAT) of the UN Institute for Training and Research (UNITAR) suggest the pace of evictions has increased since the SFG's formation in late 2012. Satellite images of Mogadishu captured between August 2011 and November 2013 were analysed to estimate the total number of 'distinct IDP shelter concentrations', and the total number of 'IDP shelter structures'.

Between August 2011, shortly after the UN declared a state of famine in Somalia, and May 2012, the estimated number of distinct IDP shelter concentrations rose from 226 to 513, with the number of IDP shelter structures rising from 41,000 to 74,000.[209] Between May 2012, shortly before the formation of the SFG, and November 2013, the number of shelter concentrations dropped by 190 to 324, with approximately 55,000 individual shelters.[210] The end of the famine, declared by the UN in February 2012, and the subsequent voluntary resettlement of many IDPs, will have contributed to this drop, but it does not explain the movement of all IDPs.

Between May 2012 and June 2013 the UNOSAT data indicates the opening of new camps on the Afgooye Corridor (KM-7–KM-13) and the expansion of camps on the periphery of Hodan and Dharkenley districts

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208 Interview with UN-Habitat Officer, Mogadishu, April 2016.

209 UNITAR/UNOSAT, 'Update 4: Continued Expansion of Somali IDP Shelter Concentrations in Mogadishu, Somalia (18 October 2011 - 2 May 2012)', May 2012.

210 UNITAR/UNOSAT, 'Update 6: Reduction of Somali IDP Shelter Concentrations in Mogadishu, Somalia (3 June 2013 - 24 November 2013)', December 2013.

(KM-6–KM-7).[211] Between June and November 2013, the data further indicates the contraction of these peripheral camps, and the subsequent expansion of existing camps and opening of new camps on the Afgooye Corridor.[212] The UNOSAT data is supported by Amnesty International reports in 2013 and 2014, which documented numerous forced evictions in Mogadishu throughout 2013.[213] According to Human Rights Watch, about 21,000 internally displaces persons were evicted from a large plot of land in northern Dharkenley district in February 2015 with little prior notice.[214]

Human Rights Watch and Amnesty's findings also support information gathered for this project on the nature of many of the evictions taking place. Many participants claimed that they had received little or no notice of the evictions, and no resettlement options. The use of force, by both Somali security agencies and African Union peacekeepers, also appears to be common.[215] The United Nations Special Rapporteur for the Human Rights of IDPs, the UNHCR and various other humanitarian agencies advocate for evictions to follow the international standards outlined by the UN Office of the High Commissioner for Human Rights (OHCHR).*216* Indeed, a Compact on the Protection Against Evictions of Internally Displaced Persons in Mogadishu, drafted by the Ministry of Interior and National Security with the support of international agencies in September 2013, reiterates many of these basic principles including the evictees' rights to consultation and information, sufficient notice

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211 UNITAR/UNOSAT, 'Update 5: Reduction of Somali IDP Shelter Concentrations in Mogadishu, Somalia (12 May 2012 - 3 June 2013)', July 2013.

212 UNITAR/UNOSAT, 'Update 6'.

213 Amnesty International, 'Somalia: No place for the displaced: Forcible eviction of displaced communities', 13 September 2013; Amnesty International, 'Somalia: No place like home'.

214 Human Rights Watch, 'Somalia: Forced Evictions of Displaced People'.

215 Interview, Waabeeri District, Mogadishu, 28 February 2014.

216 UN Office of the High Commissioner for Human Rights (OHCHR), 'Basic Principles and Guidelines on Development-Based Evictions and Displacement', A/HRC/4/18, Geneva: OHCHR, 2007.

before eviction, and protection from force.[217] The Compact remained unendorsed by the SFG. The lack of a clear policy or strategy for the clearing of informal settlements in Mogadishu is demonstrated by the different approaches federal ministry staff adopted to reclaim ministerial property. While several ministries have been accused of employing similar heavy-handed tactics as those described above, others, including the Ministry of Sports and Youth and the Ministry of Health, are understood to have given advanced notice to resident IDP communities and attempted to have sought resettlement solutions.[218]

The use of force by Somali security agencies during evictions does not, however, obviously contravene any Somali laws. Article 128 of the 2012 Provisional Constitution on the 'Abuse of Powers' states that 'human rights abuses alleged to have been committed by members of the armed forces against civilians shall be brought before a civilian court'. During the SFG's first mandate, however, legislation enacting this had not been passed and few if any cases related to evictions had been brought before the courts. The reported involvement of African Union peacekeeping troops in forced evictions, however, would be in violation of the UN mandate to 'take appropriate steps to protect the civilian population in the country, consistent with international humanitarian, human rights and refugee law'.[219]

Government policies

In early 2014, the Ministry of Interior and National Security was in the process of drafting a comprehensive 'Policy Framework on Displacement in Somalia'. An early draft of the document reaffirms the basic principles of the Compact on the Protection Against Evictions of Internally Displaced Persons in Mogadishu, which had not had endorsement by the

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217 Ministry of Interior and National Security, 'Draft Compact on the Protection Against Evictions of Internally Displaced Persons in Mogadishu'. (unpublished).

218 Interviews with IDPs at the Ministry of Youth and Sports, Shangani District, Mogadishu, 30 January 2014 and 28 February 2014.

219 UN Security Council, 'The Situation in Somalia', S/RES/1772 (2007), 20 August 2007; UN Security Council, 'Somalia', S/RES 2124 (2013), 12 November 2013.

cabinet by the end of the first SFG's mandate. The Framework, however, offers far greater details on the definition of IDPs, the roles and responsibilities of various stakeholders, protection measures, approaches to protracted displacement and durable solutions. The Policy Framework also reaffirms all IDPs entitlements to constitutional and human rights 'as granted to other citizens without discrimination'.[220] With reference to the 2012 Provisional Constitution, if endorsed this would therefore also include Article 21 on the Freedom of Movement and Residence which states that 'every person lawfully residing within the territory of the Federal Republic of Somalia has the right to freedom of movement, freedom to choose their residence, and freedom to leave the country.'

If or when enacted and implemented, the Policy Framework would represent a remarkably progressive approach to the issue of displacement in Somalia. By the time the first SFG's mandate ended the Policy Framework was yet to be endorsed by the cabinet. The lack of progress in securing the endorsement of parliament could be interpreted as deliberate, enabling authorities to pursue an agenda that contravenes numerous stipulations contained within the Framework.

As with the management of private land in Mogadishu, there has been a growing competition between the SFG and the BRA over the management of IDPs in and around the city. The draft Policy Framework asserts the federal government's primary responsibility for displaced populations in Somalia, and calls on the regions' Governors and District Commissioners to 'closely collaborate' with the Ministry of Interior and Federalism in planning and implementation.

In September 2013, however, the Benadir Regional Administration also enacted as law an 'Interim Legal Framework', which discusses its responsibility to 'develop policies and laws to protect the rights and improve access of vulnerable urban groups, urban poor, youth and women, displaced, and persons with disabilities' (BRA Law 3.3) and to 'promote schemes for the regularization and upgrading of informal settlements, with rights of secure tenure to occupants and for the participative and

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220 Interview, Ministry of Interior, 8 February 2014.

co-operative management of such settlements' (BRA Law 5.2). BRA Law 1.2, on Coordination, states that the BRA 'shall carry out its mandate in coordination with relevant federal ministries and stakeholders with due regards to their respective power as per Somali law.' In the absence of an implemented Policy Framework, however, Somali law does not oblige the BRA to coordinate its displacement-related activities with federal ministries. In the meantime, private interests are stepping in.

Many of the populations evicted from settlements and buildings within the city are now repopulating the Afgooye Corridor. The area between KM-7 and KM-13 has experienced waves of IDP settlement over the past decade, as outbreaks of conflict in Mogadishu saw displacement from the city, or when periods of conflict and famine throughout southern Somalia pushed displaced people towards the city. Reliable information on land ownership in this area is difficult to find. It is clear, however, that those currently in control of the land—whether gatekeepers or legitimate land owners—have capitalized on the presence of large populations of vulnerable communities. Signboards dotted along the road between KM-7 and KM-13 advertise the availability of plots for displaced people, alongside a phone number to call to discuss terms and conditions.[221]

Summary

The presence of large numbers of IDPs since the collapse of the government and the onset of conflict throughout southern and central Somalia have added to the complex of land issues in Mogadishu. The rapid and haphazard growth of the city in the years following independence and preceding the formal collapse of the state in 1991, was poorly managed. New neighbourhoods emerged before they were planned or formalized. Poorer neighbourhoods and their inhabitants were largely ignored. In common with much of the developing world, informal settlements emerged and grew. In Mogadishu, as the Siyad Barre regime battled rebellions across Somalia and then finally collapsed, these informal settlements became home to a mix of people displaced from other parts

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221 Interview with UNHCR representative, Nairobi, 20 August 2014.

of the country as well as the city's most vulnerable communities. Over time, the line between these communities has blurred.

In the absence of a strong regional or national government Mogadishu's vulnerable communities have been exploited by local gatekeepers, power-brokers controlling access to land and humanitarian aid. Lacking formal institutions for more than two decades the role of gatekeepers has gradually been institutionalized in Mogadishu. In 2014 they have far greater influence over the lives of the city's vulnerable communities than either the Benadir Regional Administration or the federal government of Somalia. The networks between the city's gatekeepers and district authorities—the latter are ostensibly answerable to the Benadir Regional Administration—has further entrenched the formers' position. Mogadishu's district commissioners are still appointed and dismissed at the behest of the mayor. Gatekeepers, backed by other members of the political and economic elite adapt to the new political circumstances.

IDPs and the urban poor, meanwhile, will likely continue to be squeezed from parts of the city re-opening to investment and development. International humanitarian agencies, still restricted in their movements and unable to monitor their programs effectively, have little influence. Even if their access were to improve, formulating sustainable solutions for more than 300,000 people in an environment like Mogadishu, requires the efforts of a number of different stakeholders at considerable expense.

Draft policies and legislation are worthless without the elite's political support. The international community can advise on best practice and those expected to implement it can pretend to agree. However, without the buy-in of all power-brokers—including those operating outside of the formal institutions—little progress will be made. More innovative approaches are needed if the lives of Mogadishu's most vulnerable are to be improved.

6. Conclusion and policy considerations

The complex of issues and interests surrounding land and property in Mogadishu is not simply a result of the conflict that engulfed the city following the 1991 state collapse. Land administration was weak and open to abuse long before the outbreak of conflict, and poor urban planning had prompted the disorderly growth of the city since the colonial period. Mogadishu was by no means unique in this respect, and many post-colonial cities were growing equally, if not more, haphazardly, during the same period. Few cities, and no national capitals, however, have experienced such a prolonged state of conflict and disputed authority over the past quarter century.

Short-term measures will help ease the current situation, but only if a sustainable, long-term and holistic approach to land and property rights in Mogadishu is devised. This approach should both address past and present grievances—including those predating 1991—and anticipate Mogadishu's peaceful future. The formulation of a new approach should be high on the second SFG's agenda. A vital first step will be agreeing Mogadishu's status within the Federal Republic of Somalia, as mandated in the 2012 Provisional Constitution (Article 9), and clarifying the division of responsibilities and authority over the city's land and property.

Legal reform

Restoring public confidence in the judiciary is not just important for land governance but also a necessary step towards rebuilding state legitimacy in Somalia. This will take time, and above all, political commitment and compromise.

Without ensuring accountability and transparency throughout the judiciary, the public will remain deeply sceptical of the impartiality of the courts. In a system so deeply entrenched with corruption, reform will be gradual. Satisfactory working conditions—guaranteeing security and a regular appropriate income, for example—are a prerequisite for addressing corruption in the courts.

Given the lack of capacity of, and trust in, the formal judiciary, and in the absence of reform, alternative dispute resolutions could be considered. *Xeer* is effective for some land cases though clearly insufficient for many. The effectiveness of the shari'a courts to each of Mogadishu's districts should not be discounted though again there will be limits to its applicability, as well as the reluctance of some judges to serve. The success of the experiment with district-based shari'a courts that led to the Islamic Courts Union, is partially attributed to its capacity to implement decisions via its militias. The latter, however, included militias that formed the nucleus of al-Shabaab, and fear of its military wing alone was sufficient for evicting illegal occupants from many homes. The use of current district-based security forces to implement court decisions is equally problematic, and exposes the process to various power brokers with their own agendas. Above all, it should be the respect for the judicial process and personnel, rather than fear of armed force, that will deliver credible justice.

Land policy and legislation

There were great expectations for the various independent commissions mandated by the 2012 Provisional Constitution. Although the Provisional Constitution does not include commissions for land or resettlement, a land and property commission was included in the first SFG's original Vision 2016 work plan, though it was never established. Establishing an independent body designed to assume authority over all land matters would likely just introduce a new layer of bureaucracy and encourage yet more competition between various institutions. Independent commissions established to support the process of drafting policy and legislation, and to take on an oversight role, monitoring the formal courts and implementation of court decisions, for example, could, however, play a constructive role.

Ultimately, a new urban land policy is needed to establish sustainable solutions for Mogadishu. Legislation drafted more than four decades ago, and amended more than three decades ago, is still in force, though often only partially applied. Comprehensive and forward thinking policies,

based on consultations with various stakeholders and learning from examples in other developing or post-conflict urban environments, will take time to draft and longer still to enact through legislation.

An inter-ministerial committee could be formed with representatives of the ministries of justice, interior, public works and planning. An independent land and property commission, meanwhile, could be formed of leading members of civil society, lawyers, and (urban) land experts, including, if necessary, international consultants. The outcome of the inter-ministerial and independent commissions, together with the public consultations, will help the independent Constitution Review and Implementation Commission and the new members of the Somali federal parliament to add an urban land distribution framework to the constitutional review process and its final endorsement.

The policy that emerges needs to be realistic, taking into account both the current and projected capacity of institutions in Somalia, especially in light of the failings and legislative stasis experienced under the first SFG. Current government officials and civil servants should receive training but significant investment should also be made into educating the next generation of officials and civil servants. Dedicated graduate and post-graduate courses on urban land management and tenure, and (pro-poor) urban planning could be established at leading higher education institutions, of which there are many across Somalia. Syllabi for such courses should be based on the most progressive and context appropriate examples. Lessons can be learned, for example, from member schools of the Association of African Planning Schools.

Land administration

Land policy also needs to clearly define the division of authority and responsibility between the different institutions involved in its administration, and particularly between federal and regional governments. There appears to be general agreement that land policy and authority should be devolved to the regional level. If, however, Benadir Region is confirmed as the federal capital of Somalia, there will be a continuing risk of overlapping mandates.

Establishing a new land administration system for Mogadishu is likely to take several years and require significant external support. For example, it remains unclear whether it will be possible to retrieve historical cadastral records from the hands of private individuals.[222] The maps listing plot numbers remain in Mogadishu, but the register necessary for verifying title deeds is held by an individual in the diaspora. Retrieving the maps, therefore, ought to be relatively straightforward though a caretaker fee may be required in lieu of lost income for verification services. Retrieving the register will be more complicated.[223]

Nevertheless, there is a good deal of capacity for land administration in Mogadishu. There are several former employees of the Mogadishu Municipality with extensive knowledge of the issue of land and planning in the city who would be able to support the process of establishing a new land administration. The first phase of rebuilding a land administration system in Mogadishu would entail a comprehensive evaluation and assessment of the current system and structures, and the remnants of the pre-1991 system and structures. This would require the endorsement and support of the Mayor and the head of the Department of Urban Planning (DUP) at the Benadir Regional Administration.

Although over-regulation of land management is neither desirable nor feasible given the federal and regional government's current capacity, some interventions will be necessary, especially to safeguard the interests of groups and communities with less political and economic influence.

Protecting Mogadishu's most vulnerable communities

Resorting to violent evictions of entire camps with little or no notice, and no plans for resettlement is also likely to provoke anger towards the government and AMISOM peacekeepers. Yet providing shelter, tenure

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222 The individuals are known to the BRA and its Land Disputes Committee, which regularly refers cases to them.

223 There was a plan to persuade the individual in possession of the register to return to Mogadishu with his documents, by promising him a significant sum of money and guaranteeing his security within the city. Interview with Chairman of the Land Disputes Committee, Wadajir District, Mogadishu, 9 July 2014.

security and protection to the 2012 estimate of 369,000 IDPs and urban poor in Mogadishu is currently beyond the capability of either the federal government or the Benadir Regional Administration.

Immediate measures can be taken to ease the burden of those living in informal settlements. Ensuring public land and property is not reclaimed unless there are immediate plans for redevelopment and guaranteeing a reasonable period of notice should provide some protection against needless, and at times violent, evictions. Government security agencies should be issued with strict guidelines on how to conduct evictions. African Union peacekeeping troops should not be expected to support the process and should refrain if requested. The new SFG should revive the 'Mogadishu IDP Relocation Task Force', composed of government, donor and humanitarian representatives, to monitor evictions carried out under the properly implemented policy drafted by the appropriate line ministries—currently Interior and National Security.

The external NGOs with the greatest expertise in providing relief to informal settlements in Mogadishu and with an understanding of the city's gatekeeper dynamics—including, for example, the Norwegian Refugee Council, Danish Refugee Council, ICRC and SRCS—should continue their humanitarian operations. Longer-term projects must, however, be coordinated among partners and international organizations to ensure a comprehensive approach to the broader issue of land for vulnerable communities.

There is an immediate need to conduct further research on peri-urban land ownership. Vulnerable communities will continue to be squeezed out of the city centre to its edges. The failure of the Mogadishu IDP Relocation Task Force to secure land for resettlement was largely due to the lack of knowledge of land ownership in the sites considered. The Afgooye Corridor has subsequently become the de facto site in a process but one dominated by unofficial gatekeepers. Conducting a comprehensive mapping exercise of land ownership along the Afgooye Corridor and other areas of Mogadishu's immediate hinterland is vital to inform and ensure successful relocation plans. PADCO's recommendation in

the 1980s, of establishing the towns of Afgooye and Balcad as 'satellite centres' for permanent—and voluntary—resettlement, still has relevance.

Long-term support

If the issue of land in Mogadishu is to be effectively addressed, the incoming federal government and Benadir Regional Administration will require significant and long-term political and technical support. Various international agencies are willing and have the expertise to offer support and land issues in Somalia. Both UN-Habitat and UNHCR have been operating in Somalia throughout the conflict. In recent years, UN-Habitat, with the support of the UK Department for International Development has helped establish the Department of Urban Planning at the BRA. In early 2014, it co-organized a two-day urban consultation in Mogadishu to disseminate the results of surveys and mapping work, and discuss 'solutions for urban planning, land management, and reconstruction.'[224] UN-Habitat still works closely with the DUP under different projects. Finally, the Disaster Management Agency (DMA), which completed a major survey of IDPs, has capacity to help formulate national policies and implementation strategies.

UN-Habitat has various project proposals to further strengthen the capacity of the Benadir Regional Administration's land-related functions. There are plans to conduct pilot cadastral surveys in the city, digitize existing and available land records, and prepare a common reconstruction plan for the city, and various projects under urban planning and land management. Some are currently running including Property Taxation and Land Dispute resolution projects. Nonetheless, there is an assumption that donors prefer to focus on investments in the physical reconstruction of infrastructure rather than supporting the coordination and management of such efforts.

Other proposals have focused on establishing permanent settlements for IDPs and urban poor in or near Mogadishu as part of a broader process of sustainable urban recovery. UN-Habitat estimates that securing

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224 UN-Habitat, 'SECIL Newsletter', February 2014, p. 2.

sustainable settlement for 6,000 IDPs and urban poor—less than two per cent of the total 2012 ICRC-SRCS figure of 369,000—would cost a little under USD 4 million, providing a rough indication of the total costs of a sustainable solution for all IDPs and urban poor intending to remain in the city. Donors should consider directing further funds towards a range of sustainable, long-term urban land projects in Mogadishu and throughout Somalia, especially considering the rise of federal member state capitals. Supporting further research into specific issues relating to land and justice will ensure better informed policy.

There are no quick fixes for a problem that stems from a long history of mismanagement and more than two decades of conflict. Hasty, ill-conceived policies will likely create further problems rather than alleviate those that already exist. This should not, however, serve as an excuse for further government inertia. There are immediate steps that can be taken.

Glossary of acronyms, words and phrases

Al-Shabaab	see *Harakat al-Shabaa al-Mujahidin*
AMISOM	African Union Mission in Somalia
aqal	traditional Somali hut
ARPCT	Alliance for the Restoration of Peace and Counter-Terrorism
autochthony	the idea that a community was the first to inhabit a certain place, thus entitling it to land.
Boolli Qaran	(*Somali*) 'National Loot'; nickname of Mogadishu sub-division
BRA	Benadir Regional Administration
daminyaale	(*Somali*) land designated for permanent development
DC	District Commissioner
degmooyin	(*Somali*) urban districts
Derg	(*Ge'ez*) committee; short name of the Coordinating Committee of the Armed Forces, Police, and Territorial Army that ruled Ethiopia from 1974 to 1987
DUP	Department of Urban Planning
DMA	Disaster Management Agency
goof	(*Somali*) traditional ancestral land
Harakat al-Shabaab al-Mujahidin	(*Arabic*) Mujahidin Youth Movement, commonly referred to as al-Shabaab
hawala	money transfer system
ICRC	International Committee of the Red Cross
ICU	Islamic Courts Union
IDP	internally displaced person

IGAD	Intergovernmental Authority on Development
ku dhaqmay	(*Somali*) rights based on living for a long period in a certain location, even if born elsewhere
ku dhashay	(*Somali*) rights associated with being born in a particular location in Somalia
laamo	(*Somali*) urban department; sub-division of *degmooyin*
MSSP	Mogadishu Security and Stabilization Plan
munishibaale	(*Somali*) land designated for temporary use
obbosibo	(*Somali*) informal settlements
OHCHR	UN Office of the High Commissioner for Human Rights
OIC	Organisation of Islamic Cooperation
PADCO	Planning and Development Collaborative International
Reer Hamar	(*Somali*) people of the city
SFG	Somali Federal Government
SRCS	Somali Red Crescent Society
tabeelooyin	(*Somali*) urban neighbourhoods of 50–250 households; sub-division of *waaxyo*
TFG	Transitional Federal Government
TNG	Transitional National Government
u dhashay	(*Somali*) rights based on clan membership
ulema	(*Somali*) legal scholars
UN-Habitat	United Nations Human Settlements Programme
UNHCR	United Nations Refugee Agency
UNITAR	United Nations Institute for Training and Research
UNOCHA	United Nations Office for the Coordination of Humanitarian Affair

UNOSAT	United Nations Operational Satellite Applications Programme
UNOSOM	United Nations Operation in Somalia
USC	United Somali Congress
waaxyo	(*Somali*) urban section; sub-division of *xaafado* or *laamo*
xaafado	(*Somali*) urban department; sub-division of *degmooyin*
xeer	(*Somali*) Somali customary law

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Map 2. *Mogadishu*

District

Main road

Point of interest
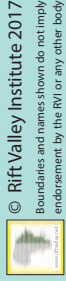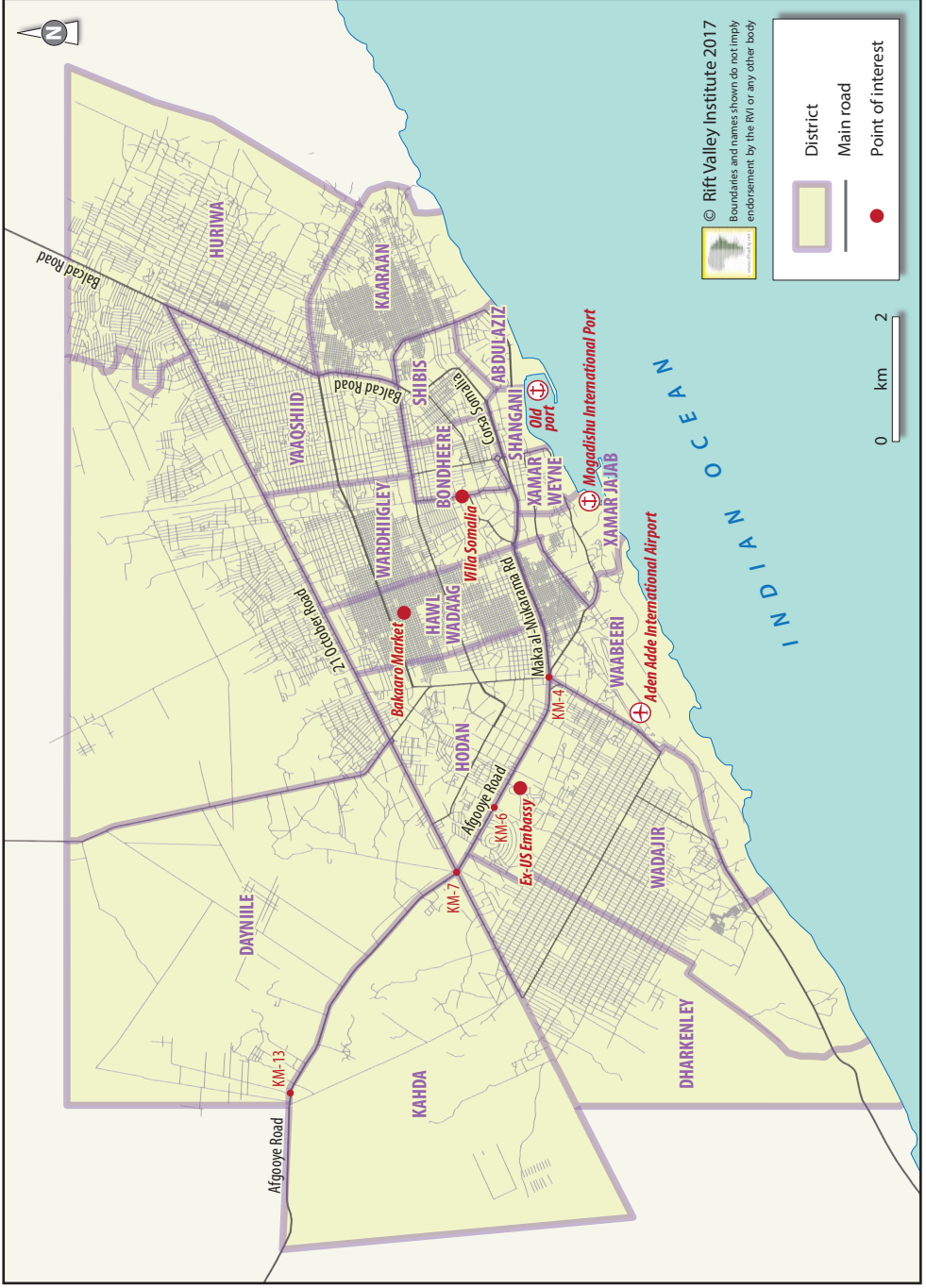
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Boundaries and names shown do not imply
endorsement by the RVI or any other body

MAP*grafix* 2017

0   km   2

HURIWA

KAARAAN

YAAQSHIID

SHIBIS

Balcad Road

Balcad Road

ABDULAZIZ

SHANGANI

Old
port

Mogadishu International Port

XAMAR
WEYNE

XAMAR JAJAB

BONDHEERE

Villa Somalia

WARDHIIGLEY

21 October Road

HAWL
WADAAG

Bakaaro Market

Maka al-Mukarama Rd

Balcad Road

WAABEERI

Aden Adde International Airport

KM-4

HODAN

Afgooye Road

KM-6

KM-7

Ex-US Embassy

WADAJIR

DAYNIILE

KAHDA

KM-13

Afgooye Road

DHARKENLEY

INDIAN OCEAN

'Rapid urbanization, population increase, migration, Diaspora, IDPs, informal settlements and wild competition over access to land and land-grabbing since the collapse of the Somali State has generated clan conflict and proxy wars, complicated by the historical legacy of colonial rule and post-independence governments' land laws … This study on Mogadishu is a balanced approach to the difficult subject of land that grips the city and is influencing the direction of post-conflict state building in Somalia. The report shows the importance to carry on comparative research on integrated national land use planning.'

—PROF MOHAMED ABDULKADIR AHMED, LECTURER IN
ARCHITECTURE AND URBAN PLANNING JAMHURIYA
UNIVERSITY OF SCIENCE AND TECHNOLOGY

'This report identifies and analyses a critical issue that has been a core element of many of the. Some of these attempts have added to the complexity of the problem, others have held out some promise. Carrying out this research in a city like Mogadishu is challenging to say the least. This is an impressive piece of work that should provide the basis of an informed public debate about how to move forward towards a more coherent and functional policy of land ownership.'

—DR RICK DAVIES, EVALUATION CONSULTANT
AND PAST RESIDENT OF MOGADISHU

Mogadishu has for more than two decades been one of the most highly contested cities in the world. Since the collapse of President Siyad Barre's government in early 1991, it has been the object of both military and political struggles almost without interruption. This report considers the current state of land governance and the nature of continuing land disputes in Mogadishu, which remains one of the most difficult and sensitive issues of the capital's long process of recovery and normalization. Land disputes are not simply a result of the conflict that engulfed the city following the 1991 state collapse—land administration was weak and open to abuse long before the outbreak of conflict, and poor urban planning had prompted the disorderly growth of the city since the colonial period. *Land Matters in Mogadishu* argues for a sustainable, long-term and holistic approach to land and property rights. It concludes that, while there are no quick fixes, there are immediate steps that can be taken.

Rift Valley Institute
Taasisi ya Bonde Kuu
معهد الأخدود العظيم
Machadka Dooxada Rift
የስምጥ ሸለቆ የጥናት ተቋም
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