

EMERGENCY SHELTER

NFI CLUSTER



Bariga Bossaso Shelter Project:

Land Tenure Issues

April 2012

EXECUTIVE SUMMARY

This report is in response to concerns within the Emergency Shelter/NFI Cluster over the long-term planning of the Bariga Bossaso IDP settlement on the outskirts of the town of Bossaso, Puntland.

While there is inconsistency of approach between the Cluster members, a good opportunity presents itself to harmonize methodologies and goals and to work closely with emerging and supportive government institutions. Key to this is good information collection and management which is currently lacking.

From a land tenure perspective, the present situation offers little protection for IDPs from future landlessness and further relocations. In order to provide a stable, sustainable future for IDPs and to protect the investment of the Cluster members, longer-term land tenure security for settlements needs to be obtained. Any future investments in shelter need to have long-term land tenure agreements at the core of the plan.

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1 INTRODUCTION AND BACKGROUND

To date, the majority of IDP relocations in Somalia have failed due to issues related to land ownership and tenure. In late 2010, the local authorities in Bossaso requested assistance with the relocation of IDPs from Bulo Elay to a new site on the outskirts of town called Bariga Bossaso.

The humanitarian community seized the opportunity to design a 'model' relocation that was supported by all actors and was adequately financed. Planning started in late 2010 and by April 2011 the relocation was imminent. The plan was to relocate 1,314 IDPs to a new site in accordance with UNHCR/OCHA's framework for IDP relocations. However, between the 24th and 28th May, 15,000 IDPs moved to the site and the surrounding land without prior notice. This derailed the relocation process and created a new unplanned settlement.

Ten months after the first IDPs arrived at Bariga Bossaso, new households continue to arrive in search of land and shelter. Driven by poor and congested conditions in town, the chance of improved shelter and rent-free land continues to attract new IDPs. In total 1,300 new Corrugated Galvanised Iron (CGI) shelters were built and hundreds more are planned in response to the continued influx.

It is estimated that Bariga Bossaso hosts more than half the IDP population in Bossaso and the continued construction of new shelters is attracting more IDPs. Due to the speed of the displacement in May 2011, very little long-term planning has been undertaken regarding the future of the new settlement and what is type of settlement is being created. Therefore, UNHCR and the Emergency Shelter/NFI Cluster has engaged the services of a consultant to examine the current situation from a land tenure perspective, and make recommendations for the next steps. These recommendations should inform a long-term strategy for developing and maintaining secure and sustainable IDP settlements at Bariga Bossaso and elsewhere in Somalia. The consultant's recommendations will address the following objectives:

1. Protect IDPs from future landlessness and further displacement
2. Ensure a more sustainable future through greater tenure security
3. Improve housing conditions (or create conditions for access to improved housing)

Research will be based on interviews with key informants, workshop discussions with principle stakeholders including state and local government, implementing agencies, local traditional elders, and a focus group discussion with IDPs from Bariga Bossaso.

The '*Key Findings*' section reports the key issues discussed at these interviews and workshops. In addition, two case studies of existing IDP settlements operating under more secure tenure regimes are described. Section 4 identifies operational issues specific to the Emergency Shelter/NFI Cluster.

The '*The Discussion and Recommendations*' section discusses the key findings and suggests both fixed recommendations, and recommendations for consideration. The '*Conclusions*' section summarises the findings and discussions with respect to the three objectives above.

Annex 1 defines the key terms related to land tenure that are used throughout the document.

At the time of writing tentative returns to South Somalia have started and may continue as country stabilises. However, for the purposes of this report, the focus is on durable solutions for the protracted IDPs that will not return home in the foreseeable future.

2 KEY FINDINGS

This section describes the key findings of discussions with stakeholder agencies, authorities, IDPs and the host community. While these discussions support the recommendations to follow, the principal reason for recording them here is that this section may function as a reference point for future discussion, decision-making, and negotiation of future land tenure related issues.

Findings from agency stakeholders and authorities

These findings are based on formal meetings with senior representatives from UNHCR, NRC, Puntland Ministry of Interior, The Governor of Bossaso, DRC, Mercy Corps, UNHABITAT, as well as informal discussions. The comments below reflect the understanding of these high-level stakeholders, but are often contradictory and do not necessarily represent the facts.

Long-Term Tenure Agreement for IDPs

- It was emphasised that local government does not have public land and that communal land have been grabbed for private use.
- All agreed that more land was required for future settlements, particularly given the pressure on existing settlements due to ad hoc settlement of new IDPs.
- Two approaches to gaining access to land were put forward:
 - 1) Obtain land permanently as a donation from the community or from individuals. This would be held by the municipality under freehold and user agreements made with IDPs. The last time this was successful in Bossaso was in 2007, when land was acquired for use as a UNHABITAT settlement for permanent shelter. The Ministry of Interior facilitated this request. A World Vision settlement near Garowe in 2012 (see case study) was mentioned as another example of this.
 - 2) Obtain land temporarily from local landowners under a leasehold agreement. This approach was considered to be easier than obtaining permanent land, but was also considered to be less secure.
- In both cases, it was considered wise to approach landowners during Ramadan when the principles of Islamic generosity are at the forefront of their minds.
- The Ministry of Interior considers itself to have power of expropriation over land, and it was alluded to that some of the land allocated to IDPs in Bossaso may have been expropriated. However, there seems to be little political will to expropriate land in order to settle IDPs as this may cause friction within the local host community. Expropriation, with some compensation, is being used to clear land for the expansion of Bossaso airport and harbour.
- The payment of rent by IDPs was the source of some confusion. Some agencies were under the impression that a rent of approximately \$4 or possibly \$5 per month per plot was being paid in Bariga Bossaso (resulting in gross income of approximately \$65,000 p.a. for the land owner). The authorities rejected this, stating that no rent is paid on land at Bariga Bossaso. Landowners are prepared to donate land for free for a fixed period of time in line with the principles of Islamic generosity.

- It was later confirmed that IDPs at Bariga Bossaso are not paying rent, but that rent is paid at other settlements closer to the town. This made the Bariga Bossaso settlement an attractive option for residents of other settlements.
- In cases where landowners donate land temporarily, they can experience difficulties with the local authorities over the payment of land taxes. While the land owners themselves do not derive any income from the land, it may be considered to be developed and subject to tax. Local authorities need to make special exemptions in these cases to protect the land owner.
- Land owners tend to favour short-term leases when donating land in the Bossaso area (such as the 5 year lease model employed at the Bariga Bossaso settlement). This is because they anticipate more profitable use for the land in the future as Bossaso expands and peripheral land holdings become more attractive to investors and developers. Local authorities have attempted to negotiate for longer lease periods in the past, but have been unsuccessful for this reason.
- DRC protection advisor suggested the best way to secure land is for IDPs to purchase it from landowners. These new IDP landowners might then be supported by the agencies in terms of investment in their shelter and infrastructure. However, these households would unlikely be the most vulnerable IDPs.
- There was uncertainty over whether customary laws could be used to leverage longer lease terms, but it was considered worthwhile to explore this option. Sharia law is used as the ultimate legal point of reference.
- When seeking to acquire land for settlement, agencies normally approach the local Mayor and the IDP focal point of the Ministry of Interior.
- When seeking land to settle IDPs, the Ministry of Interior representatives strongly advised agencies to approach state officials at higher levels who would have more influence.
- Further out of Bossaso free land could be made available by the state and offered to IDPs. The Deputy Governor asked if it was possible to construct IDP settlements over 10 km from Bossaso. It was generally agreed that this would be impractical as IDPs would have no access to markets and livelihood opportunities.

Recognition of land tenure by authorities

- It was acknowledged by all parties that some IDPs have been unfairly evicted from the land and that there is a real danger that landowners will renege on current agreements.
- There was some consensus that both state and local authorities would try to support the IDPs currently settled at Bariga Bossaso in the event of a landowner attempting to force an eviction before the end of the current lease term.
- Government has an important role to play. The Ministry of Interior should be witness to every agreement with landowners – this will ensure that they will not retreat from specific agreements.
- Formerly this was the Mayor's responsibility, but this has now been taken away from the municipal level and is now the responsibility of the Ministry of Interior, though the Mayor should still be a witness. Government representatives maintain that if an agreement between a landowner and a tenant is signed by the Ministry of Interior, the Mayor and the Islamic court, then it is stronger.

- Government representatives gave examples of how this is done in Garowe, and maintained that without all the above parties acting as witnesses, agreements cannot be considered binding and can be easily undermined.
- Government representatives requested that Agencies present a plan so that the Government can advise on what needs to be done and facilitate the process of acquiring land and securing tenure.

Investment in quality permanent housing

- The key to quality permanent housing is ownership of the land. This would encourage investment and development in the land. According to a key NGO, even 50 years is not acceptable – it should be freehold.
- IDPs would be unlikely to invest permanently as they do not have access to credit or funds.
- IDPs at Bariga Bossaso had no documentation proving their ownership of the shelter materials (these documents have subsequently been issued to IDPs at Bariga Bossaso).

Protection of vulnerable groups within IDP population

- Government officials insisted that there was no discrimination towards minority clans, but there was some disagreement on this. From the Government's perspective, it is compulsory for them to protect all IDPs regardless of clan affiliation.
- Clans tend to cluster in IDP settlements. Minority clans have experienced problems.
- It is clear that there is no easily accessible information on the identity of the IDPs in terms of clan affiliation, or particularly vulnerable groups.
- It was acknowledged that the continued support of IDPs would lead to some rumours and questions among the urban poor and landless people in the host community.
- At present, investment in IDP settlements follow an 80/20 split, with 20% of resources going towards shelter and services for the host community. It was suggested that this be changed to 70/30 split.

Community Land Trusts:

The concept of Community Land Trusts was outlined to the representatives of the authorities. Their response was positive and they considered that it may be a way out of the current situation. They could see parallels with the approach taken in Garowe. Government officials stated that they should maintain control of the land, or at least have a stake in its management.

Community Land Trusts would be dependent of the support of traditional and religious elders both inside the IDP settlement and within the host community.

Findings from meeting with local traditional and religious elders

These findings are based on a formal meeting with three elders from the host community. The group included an Islamic scholar and a former judge, and all three elders owned land privately in the town.

The Elders had a good understanding of the procedures required for purchasing or transferring land, as follows:

- Ownership documents and a sale/gift agreement should be presented to a notary who verifies their authenticity.
- These documents are subsequently presented to the Sharia court. Each party should present at least one witness who knows the land.
- The agreement is authorised by the court.
- Local authority representatives are only occasionally present.
- Government does not guarantee the agreement.
- The extent of the land is recorded according to the agreed boundary with the neighbours (similar to the general boundaries principle).
- Even after an agreement of sale is made, little protection is offered by the state against the land being grabbed by the original owner or by other parties.
- In order to better protect the land against land grabbing, the owner must demarcate it (with stones or stakes). No tax is paid on this demarcated land. If the owner decides to establish a building, they must notify the local authorities who charge a building fee (similar to a building permit) and impose taxes on the building.

With regard to IDPs

- The elders agreed that state government should play a leading role in establishing agreements between landowners and IDP communities.
- The first step is for government to reassure owners that they will not be forced to pay tax on lands used by IDPs from which they derive no income.
- Any leasehold agreements on land to be used by IDPs should be agreed first by an IDP committee (these already exist), the Municipal authority at Governor level, and the landowner. These agreements should then be endorsed by the Ministry of Interior and the Islamic court.
- The elders warned that existing IDP committees are not always representative of the general IDP population, with minority clans being under-represented.
- It was considered that faith is the principle driver for most landowners donating land for IDP settlements.

Community Land Trusts:

The elders were interested in the concept of the Community Land Trust and could see the immediate parallels with the Islamic Waqf system (a Sharia equivalent of a trust). They encouraged further study of Community Land Trusts with respect to the principles of Islam.

Findings from meeting with IDPs

A focus-group discussion attended by approximately 60 men and women, including community leaders, was held at the Bariga Bossaso 2 IDP settlement. The discussion was lively and inclusive. The comments below reflect the understanding of the IDPs, but not necessarily the facts.

- The group confirmed that no IDPs were known to privately own, or have a formal tenancy agreement over their land.
- The group understood that the land has been donated to the municipality for a period of 5 years by private landowners. The IDPs hold a user agreement for 5 years.
- It was believed that land use agreements could be inherited and sold.
- The municipal authorities, specifically the Mayor's office, were considered to be able to offer a guarantee that the 5 year agreement would be honoured. Despite this, there was some fear that the landowners may wish to evict them earlier if the expansion of Bossaso town pushes up the utility and value of the land for other developments.
- While the IDPs stated that they would prefer the user agreement to be renewed after 5 years, they also accepted that it might not be, and expressed gratitude toward the landowner for allowing them to use the land for 5 years.
- Despite believing there are no restrictions on the private purchasing of land at the settlement, those present at the meeting expressed no desire to purchase their plot, or make improvements to the land. They do not have access to the capital or credit required. While the group did not rule out the possibility that IDPs with financial means may wish to purchase land, they prioritised returning to their indigenous lands in the South Central region over permanent settlement in Bossaso.
- Residents of Bariga Bossaso are not required to pay rent. This attracted new IDPs formerly from the Shabelle settlement, where rent was required. Possibly, landless urban poor from Bossaso were also attracted.
- The current Bariga Bossaso settlements were considered to be too distant from markets, well equipped health centres, and employment and livelihood opportunities. The group showed a strong preference for short-term tenure, or a short-term user agreement on land closer to the town than permanent ownership over land further away.
- Nobody in the group had received any information on their land rights from agencies or other sources. One of the elders present stated that he had received some training in this regard (but could not recall when, or from who), but had not had time or the right incentives to disseminate this information within the wider community.
- The group understood that they owned their shelter, specifically remarking that they 'own the building materials'.

While the findings from this meeting cannot be considered strong baseline evidence, they may help inform a more rigorous quantitative survey instrument aimed at profiling IDP settlements and gaining a better understanding of the perceptions and expectations of IDPs with regard to land tenure and property rights.

3 SETTLEMENT CASE STUDIES

These two case studies describe IDP settlements considered to have taken a successful and credible approach towards securing better land tenure deals for IDPs. While all informants were fairly consistent in their description of events, further information and fact checking of documentation is required.

UNHABITAT Bossaso

UNHABITAT acquired land in 2007 through the local authority. This took 6-8 months. The land was donated to the municipal government by private owners under the principle of land sharing (Islamic generosity). The land was subsequently donated to the IDPs (with priority for vulnerable female headed households) under a user agreement for 3 locations offering permanent shelter. The title for the land is held by the municipal government, though it is unclear whether this is a freehold or a 15 year leasehold. Some documents proving the purchase of plots by IDPs have apparently been issued by the municipal government, though these were not seen by the author. Presumably, these plots have been purchased by the IDP from the municipal government

Representatives from Bossaso local authorities and the Ministry of Interior regarded the approach used by UNHABITAT as having a lot of credibility.

According to DRC, IDPs from South Central Region without any local affiliation received a smaller share of the donated land.

The DRC protection advisor suggested that the best way to secure land for IDPs is to purchase it directly from landowners.

World Vision Garowe

World Vision approached the Ministry of Interior with a request for two plots of land, one in Garowe and one in Burtinle, south of Garowe on which to construct 1,200 permanent houses each split between the two sites.

The Ministry of Interior discussed the request with elders in the community. An agreement which referred to Islamic law was made with landowners. Permanent houses are now being constructed at this site, at a cost of US\$1,556 per unit (Source: DG IDP Ministry of Interior).

The initial offer made for the second plot of land consisted of a temporary land agreement for 10 years. World Vision did not accept this, asking the Ministry of Interior and the Elders to attempt further negotiations. After 10 days the elders obtained the land under freehold title (with the state acting as the freeholder, and IDPs under a long-term user agreement with the state). The Islamic high court and the Ministry of Interior were acting as witnesses. World Vision will start construction on this site soon. The houses will be occupied by IDPs from South Central region, who will not pay any rent.

The plots are situated approximately 3.5km from Garowe. Plots are 10m x 10m in size. Total land area is 150 x 1000m (given the plot sizes, and assuming this area will be used for 600 plots, this leaves 20% of the total area for access and communal facilities).

4 OPERATIONAL ISSUES

At present, the available data on IDP settlements in the Bossaso area and further a field is somewhat inchoate. While a great deal of documentation, maps, and data exist, they are not yet collectively managed. The absence of this basic information in an easily accessible and consistent form has led to agencies and other stakeholders having a different understanding of the situation on the ground. An example of this is the confusion over whether or not rent was paid by IDPs in Bariga Bossaso.

A thorough understanding of what information is or is not available, and a reliable resource of correct and current information is required if the agencies and state government are to continue to move towards defining standards and guidelines for planning and implementing new IDP settlements.

A Settlement Information Management System (SIMS) has been developed by NRC to assist the Emergency Shelter/NFI Cluster and other stakeholders in managing their data. This system is not yet fully operational or populated with data. SIMS includes a summary of the key statistics and facts about settlements, with a map showing their location.

Below SIMS there does not appear to be a consistent, systematic approach to managing documents and data relating to settlements across the agencies involved in the Cluster.

5 DISCUSSION AND RECOMMENDATIONS:

Fixed Recommendations:

These recommendations should be regarded as the basic starting point for any future work on improving the land tenure arrangements for IDPs in Bari and Nugaal regions and elsewhere.

Information gathering

There is a clear need for up-to-date information on the composition of IDP settlements, both in terms of the number of people and households, and regarding the composition of those households (with particular emphasis on female-headed households and other vulnerable groups). The lack of understanding of the demographics of the settlements and livelihoods of the population reflects a lack of community engagement and a sense that efforts to date had been on building and improving shelters rather than creating the conditions for sustainable settlements.

Any data collection exercise should attempt to profile the inhabitants of the settlements. It was clear from the focus group discussion that the settlements are occupied by old case IDPs, sporadic IDP settlers, Ethiopian refugees and asylum seekers, and even landless urban people from Bossaso. These groups should be quantified if possible. In addition, it may be worthwhile attempting to identify any different clans present in the settlements.

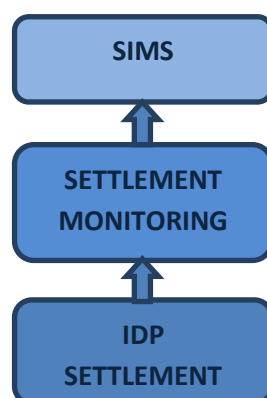
The findings from the focus group discussion may form the basis for a more rigorous quantitative survey of attitudes and perceptions within the settlement, particularly with regard to relocation.

Existing IDP committees which can help facilitate information gathering should be identified. Their representatives should be established as contacts and their affiliations recorded.

Information Management

The present SIMS provides an excellent starting point for an information management mechanism. It could be improved by the inclusion of a date for version control and the addition of dates to some of the data fields (e.g. Number of Households: 400 at 16th April 2012).

SIMS should form the top tier in a three-tiered information management system, with information feeding upwards on a regular basis.



The lowest tier should comprise an *IDP Settlement Compendium* for each settlement held by the relevant implementing agency. This should contain all documentation (such as user agreements, correspondence, contacts, studies etc) held in standardised chapters, a site plan, location map, and any photographs of the settlement. Most importantly the top page of the Compendium should contain a narrative description of the settlement, to be added to each time a change occurs in the compendium or at the site.

The *IDP Settlement Compendium* should feed into a shorter document called an *IDP Settlement Monitoring Fiche*. This fiche will contain a summary of the Compendium and narrative, with the most recent events relating to the settlement highlighted. The fiche should contain all the information required by SIMS and should be updated monthly if required.

With the co-operation of implementing agencies, there is the potential for SIMS to include IDP settlements established by agencies outside of the Emergency Shelter/NFI Cluster. This wider sharing of information would enable better sharing of experiences and ideas.

UNHCR should be responsible for maintaining the SIMS at the summary level, and for delegating responsibility for the maintenance of the *IDP Monitoring Fiche* and *IDP Settlement Compendium* to the most appropriate agency in each case. The advantage of this is that the information is held in one place by a leading but essentially neutral agency. In addition, UNHCR via the Cluster Co-ordinator is in a better position to co-ordinate reporting efforts in different regions of Somalia and across agencies.

Shelter Ownership Agreement

While IDPs understand that they are the owners of the construction materials given to them for their shelter, except for the ownership documents there is no formalised agreement between the IDP and the implementing agencies.

In order to protect IDPs against the possibility of having their shelter asset forcibly removed by a landowner at the end of their user agreement (or indeed before the end of the agreement), an agreement should be drawn up between the shelter donor and the IDP family acknowledging the transfer of ownership of the materials. This process has begun in Bariga Bossaso, but urgently needs to be extended to other IDP settlements. This agreement can also attach conditions to the transfer. The agencies may wish to make clear that IDPs who sell their building materials might have limited access to future shelter support from the agencies.

These agreements should be witnessed by the local authorities, a court representative, and also the landowner or his representative. This would help to ensure the landowner's recognition that the shelter materials belong to the IDPs.

While the decision to issue these agreements and what conditions to attach is the individual responsibility of each agency, it is recommended that issuance of these documents at the point of construction be *standard written policy*. It would be worthwhile to maintain a database of these agreements that can be shared between agencies through the Emergency Shelter/NFI Cluster. This would help to identify duplication of efforts and prevent abuse of the system.

The systematic roll-out of such a program might also present an opportunity to simultaneously gather some of the data required for the SIMS and to undertake a profiling exercise.

Recommendations for Consideration:

In commissioning this work, the Emergency Shelter/NFI Cluster is already taking the first steps towards decoupling shelter issues from land tenure. Land tenure needs to be properly considered before planning IDP settlements and must be given equal importance alongside the selection of the shelter typology. The Ministry of Interior and also the office of the Mayor of Bossaso have made it clear that they are willing to receive plans for settling IDPs from the agencies and support them in acquiring land and tenure agreements that suit their needs. However, before any plans can be made it is essential that the agencies have a clear idea of what their long-term vision is. The following recommendations outline some options for further consideration and exploration by UNHCR and the Cluster members.

Attempt to properly document the processes involved in acquiring land tenure.

In order to understand how best to acquire secure land tenure agreements for IDP settlements it is worth reviewing current good practice in detail by examining each step in the process of agreeing tenure arrangements. This would include identifying the key documents required at each stage, and categorising which parties are responsible at each stage.

The cases studies on the UNHABITAT settlement near Bossaso and the World Vision settlements in Garowe are a starting point for this. A short workshop, aiming to map out these processes, would bring together the key players in the land acquisition process, including the Mayor and Governor's offices, international agencies and NGOs, IDP committees, elders, court officials, the Ministry of Interior, and any landowners wishing to participate.

Ultimately this would lead to the development of a handbook, containing model examples of documents and agreements for use when establishing new IDP settlements.

Possible models for improved land tenure arrangements

The recent discussions concerning land tenure in relation to IDP settlements in Bossaso have highlighted the importance of decoupling the issue of land tenure from housing and shelter. Future settlements should ensure that land tenure security issues are satisfactorily resolved prior to making investments in shelter. This is important not just in terms of protecting IDPs from forced eviction¹, but also in terms of protecting the investment of UNHCR and other agencies in the IDP settlements.

At the very least, future short term lease agreements (usually 5 years) between municipalities and landowners should be properly validated by the Ministry of Interior and the courts to better guarantee the rights of the municipality and ultimately the IDPs.

¹ NRC in collaboration with Shelter Cluster will be working with Ministry of Interior (MOI) for the introduction of minimum notice period of 6 months prior to evictions of IDPs by landowners from any land they currently live on and to strengthen any existing lease agreements by obtaining endorsement of local courts wherever necessary

Agreements between landowners and the municipality or state should clearly define the terms of the agreement, with specific reference to:

- Notice of eviction
- Obligations of the tenant to maintain the land
- Restrictions on the construction of latrines or other developments
- Rent payments
- Right to purchase
- Ownership of shelter

Landowners should also be exempted from the payment of taxes on lands where they do not derive any income. This can be guaranteed by government through a separate contract if necessary.

User agreements between the municipal government / state should also be clarified according to the same criteria as above. In addition, rights and obligations regarding sub-letting, and inheritance by IDPs should be clearly stipulated.

Where existing settlements are concerned, an attempt should be made to amend the current agreements to incorporate the above clarifications. At the very least, an attempt should be made to have any existing agreements not currently guaranteed by the Ministry of Interior and the courts checked for compliance and validated by the appropriate officials.

Strategically, it may be worth considering longer term forms of tenure. This depends to an extent on the needs of IDP communities (to be assessed as part of the wider data collection exercise).

Freehold tenure or long-term leasehold held by the state or local government, together with long-term user agreements for IDPs would provide a more sustainable solution that is underwritten by government.

Obtaining land for such purposes relies on engagement with the elders who would appeal to land owners to observe the principles of their faith and donate land accordingly. This process is best handled by the government, with assistance from agencies in the form of clear, unambiguous planning and terms for settlement.

As Bossaso and other towns grow, the extent of the city will gradually encroach on IDP settlements, increasing the market value of the land settled by IDPs. Government could consider selling all, or a portion of the land to developers, compensating IDPs with the proceeds. Another option might be to invite developers to purchase the land at a discount price in exchange for building multi-storied housing which would be used to house IDPs, as well as for commercial sale or rental. This has the potential to benefit the developer, the IDPs and the government.

Finally it may be possible to build something similar to a Community Land Trust around existing institutions. While IDPs are unlikely to be able to raise the capital to purchase land, it may be possible to attract investment in a Community Land Trust through donors. UNHCR has a clear policy of not purchasing land, but NGOs and some bilateral agencies such as DFID² may be more flexible.

² While there are no specific examples of cash transfers being deployed to support Community Land Trusts, conditional and unconditional cash transfers have been widely used by DFID, UNHCR, and other agencies, notably for meeting property rental expenses by DG-ECHO:

The Land Trust would be Community owned with a board of trustees consisting of elders, agencies, and possibly local authorities. While this option is certainly impractical given the present situation, it may be worth bearing in mind in future if encouraging progress is made on current tenure agreements and the state institutions demonstrate their authority and influence over land rights.

http://ec.europa.eu/echo/files/policies/sectoral/ECHO_Cash_Vouchers_Guidelines.pdf

Other resources of interest include:

<http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/Documents/publications1/cash-transfers-evidence-paper.pdf>

<http://www.odi.org.uk/resources/docs/4813.pdf>

<http://www.fmreview.org/FMRpdfs/FMR32/70.pdf>

http://sheltercentre.org/sites/default/files/20.03.2012_cash_shelter_workshop_module_interaction_08mar2012.pdf

6 CONCLUSIONS

To date, the different agencies involved in providing shelter to IDPs have an inconsistent approach to agreeing land tenure and rights at settlements. The participation of the Ministry of Interior in the discussions informing this report, and their commitment to supporting agencies in addressing the problems of HLP for IDPs, gives cause for optimism that Puntland Government is emerging as a more stable and empowered entity. There is now an opportunity for the Cluster members to adopt more harmonised methodologies and goals.

Key to this is improved management of information regarding settlements. The Emergency Shelter/NFI Cluster does not have complete, current information about the settlements and their occupants. There is no consistency in data collection or in the management of data and information resources. Such an information resource would facilitate better inter-agency sharing of ideas, and good and bad practice. It would also form the starting point for collaboration with the government to establish guidelines for IDP settlement.

The efforts of the Emergency Shelter/NFI Cluster to date appear to have focussed largely on the construction and improvement of shelter units. There have been considerable innovations and achievements in this respect, and housing conditions have been improved for many IDPs. However, weak, short-term tenure agreements put the long-term sustainability of these shelters at risk. Land tenure issues need to be decoupled from the shelter construction process and should be given specific consideration when planning settlements.

The tenure agreements currently in place at Bariga Bossaso do not protect the investment of UNHCR and other Cluster agencies. There is a risk that landowners may change their minds about the terms concerning their donated land and insist that IDPs move elsewhere. Local government may be too weak to prevent this from occurring. The Cluster members should consider whether it is in their long-term interest to be forced to establish replacement settlements and rebuild shelters for thousands of IDPs.

Poorly defined, short-term tenure agreements do not provide adequate protection to IDPs from future landlessness and further displacement. This does not have to be the case, as demonstrated by an example of a World Vision implemented settlement close to Garowe where the government holds freehold title to the land, granting IDPs indefinite, inheritable user agreements.

To ensure the long-term sustainability of any settlement it is essential to obtain guaranteed, long-term tenure security. This principle should be applied to all future settlement planning. CGIs may represent the cutting edge of shelter design, but without security of tenure they are easily susceptible to the bulldozer's jaws.

The recommendations of this study are summarised as follows:

- Up-to-date settlement information is collected.
- Settlement data is managed in a three-tier Settlement Information Management System.
- All future property related agreements should be validated by relevant state representatives and the courts.

- Every effort should be made to secure long-term tenure and user agreements for IDP settlements.
- UNHCR and Cluster agencies should provide IDPs with documents proving the transfer of ownership of shelter construction materials. These should be witnessed by the appropriate authorities and a representative of the landowner. This process has begun in Bariga Bossaso, but urgently needs to be extended to other IDP settlements. Issuance of these documents at the point of construction should be *standard written policy*.
- The processes involved in obtaining secure land tenure, documentation required, and the responsible institutions should be mapped at a workshop. A handbook should be developed for future reference.
- Future lease and user agreements should be more clearly defined, with an emphasis on the rights and obligations of the IDPs, state / local government, and the landowners.
- An attempt should be made to validate existing lease agreements at the state level.
- UNHCR and Cluster Agencies should work with government to develop a clear and unambiguous plan for settlement. They should set out their expected standards for tenure, with preference for long-term tenure subject to funding.
- Dependent on the demonstrated ability of government to guarantee tenure and land rights, UNHCR should examine opportunities for developing ownership models based around community land trusts.

Annex 1: Land Tenure – some applicable terms

The following terms are widely used when discussing land tenure. They are described here in simple terms for clarity and so that the associated rights and obligations may be understood when considering the recommendations of this document.

Freehold:

Considered the securest form of tenure, freehold involves the ownership of land and associated immovable property (houses, trees) for an indeterminate duration. These ownership rights are recognised and guaranteed by the state. Land held under freehold title may be bought, sold, gifted and inherited. In some cases it may be subject to compulsory purchase (see below) by the state in the public interest, for example for national development or environmental protection.

Leasehold:

Under a leasehold agreement, a tenant holds the right to occupy land and/or property for a fixed term agreed with a landowner. The terms of the agreement between the tenant and landowner are usually described in a contract, and may include rent, restrictions on construction or land use change, and in some cases an eviction notice period. Depending on the terms of the agreement, leasehold property may be sold, gifted and inherited.

The length of the agreement may be variable (99 years leases are common in the United Kingdom). Under long-term land leases, tenants may choose to develop the land by constructing houses or investing in other immovable property. In many African countries land is held by the state and leased to the population, typically for 50 or 99 years. Where the state seeks to evict tenants prior to the expiry of the lease agreement (theoretically for developments in the public interest), they should compensate the tenant for the fair value of the land under the present lease and the value of any immovable property belonging to the tenant.

Compulsory Purchase

This is sometimes referred to as compulsory acquisition or, when an element of force is involved, expropriation. Leasehold and freehold property may be seized by the state for public use (or for private development benefiting the public good), with fair compensation paid to the owner and users. Expropriation generally refers to land seized by the state without fair compensation, or to land held under leasehold seized by the landowner or another party without fair compensation.

Community Land Trust:

UNHABITAT defines a Community Land Trust as follows: *In its most basic form, the Community Land Trust is a community-based NGO with non-profit tax-exempt status, chartered to own land in a given community so that low-income or middle-income local residents can afford to own or rent decent housing, establish small businesses, practice sustainable agriculture or forestry, or other ecologically-sound uses of the land without having to own the land or pay an unreasonable rent for the land. In place of owning land, residents enter into an affordable, long-term (often 99-year) land lease with the CLT which can be renewed, or passed on to their heirs. A land stewardship plan administered by*

the CLT governs the overall use of the land for the long-term, no matter who owns the homes or businesses. The CLT ensures that the housing remains affordable for future buyers through a mutually-agreed upon limit on resale value, and through the option to purchase the housing from the seller.(UNHABITAT,2012, Community Land Trust: Affordable Access to Land and Housing, UNHABITAT Global Urban Economic Dialogue Series , Nairobi)