



# DISPLACEMENT AND HOUSING, LAND AND PROPERTY DISPUTES IN **PUNTLAND**

March 2015

**NRC**

NORWEGIAN  
REFUGEE COUNCIL

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### **The Norwegian Refugee Council**

The Norwegian Refugee Council (NRC) is an independent, humanitarian non-governmental organisation, which provides assistance, protection and durable solutions to refugees, internally displaced persons and returnees worldwide. To learn more about the NRC and its programmes, please visit our website: [www.nrc.no](http://www.nrc.no)

### **NRC in Somalia and Horn of Africa**

The Norwegian Refugee Council (NRC) has been present in Somalia since early 2004 and has since expanded its Horn of Africa Programme to Kenya, Ethiopia and Djibouti, Yemen, South Sudan and Uganda. The region is hosting more than 2 million refugees and the total number of IDPs in the region and Yemen is estimated to 3-3.5 million.

Puntland State of Somalia hosts many IDP populations who have been displaced for more than 10 years. The IDPs reside in temporary settlements, usually without security of tenure. There have been a number of initiatives in the past year to allocate land to resettle IDPs and in some instances IDPs have purchased land themselves. Secure land tenure is an important step toward integration and a durable solution, especially for those IDPs who will remain in their area of displacement for the long term.

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NORWEGIAN MINISTRY  
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## TABLE OF CONTENTS

|                                 |           |
|---------------------------------|-----------|
| LIST OF ACRONYMS                | 4         |
| EXECUTIVE SUMMARY               | 5         |
| <b>1.0 INTRODUCTION</b>         | <b>6</b>  |
| 1.1 Structure                   | 6         |
| 1.2 Background                  | 7         |
| <b>2.0 METHODOLOGY</b>          | <b>8</b>  |
| 2.1 Literature Review           | 8         |
| <b>3.0 TYPOLOGY OF DISPUTES</b> | <b>9</b>  |
| <b>4.0 PREVENTION</b>           | <b>13</b> |
| <b>5.0 RESOLUTION</b>           | <b>17</b> |
| <b>6.0 CONCLUSIONS</b>          | <b>21</b> |
| <b>7.0 RECOMMENDATIONS</b>      | <b>22</b> |
| BIBLIOGRAPHY                    | 24        |
| ANNEXES                         | 25        |
| LIST OF RESPONDENTS             | 29        |

## LIST OF ACRONYMS

**ADR:** Alternative Dispute Resolution  
**CDR:** Collaborative Dispute Resolution  
**HLP:** Housing, Land and Property  
**ICLA:** Information, Counselling and Legal Assistance  
**IDP:** Internally Displaced Person(s)  
**ISO:** International Organisation for Standardisation  
**JPLG:** UN Joint Programme on Local Governance and Decentralised Service Delivery  
**LAW:** Legal Action Worldwide  
**LDT:** Land Dispute Tribunal  
**PSU:** Puntland State University  
**NRC:** Norwegian Refugee Council  
**UNDP:** United Nations Development Programme  
**UNHCR:** United Nations High Commission for Refugees

# EXECUTIVE SUMMARY

This study was commissioned by NRC to develop a typology of land disputes impacting upon IDPs in Puntland and to examine the different mechanisms available to resolve these disputes. The original scope of the study was expanded to include an exploration of existing and possible dispute prevention strategies as well as dispute resolution mechanisms.

The study comprised of a desk review of available literature and a 12 day field mission to Garowe, Bossaso and Nairobi in December 2014. The field mission included key informant interviews with over 30 government, civil society and international respondents and focus group discussions with IDP beneficiaries.

The typology identified 3 main categories of HLP disputes in Puntland. These were 1) landowner disputes; 2) landlord-tenant disputes and 3) IDP internal disputes. Key disputes included contested land ownership and boundaries; attempts to reclaim leased land before the end of the term due to increases in land value; and increased rent demands. Attempts to increase rent were often related to site improvements provided by Non-Governmental Organisations (NGOs) that had not been specifically articulated in the lease agreements. It was also found that many lease agreements were only verbal and not written. The main result of most disputes were increased rents and / or forced evictions.

The study found that although a wide range of local dispute resolution avenues existed – namely municipal authorities, customary courts, sharia law, statutory courts and NGO initiated collaborative dispute resolution services – these were largely unable to prevent evictions<sup>1</sup>. These institutions and mechanisms were ineffective in preventing evictions because IDPs were frequently not given any notice period and evicted with immediate effect.

The study suggests that eviction prevention may be more effective than dispute resolution in safeguarding IDP land tenure. It recommends that NRC and partners support a wide range of prevention mechanisms including the formation of informal landlord-tenant platforms or forums for awareness raising and training for landlords and gatekeepers. These could later develop into more formal associations depending upon the interests and needs of the participants. Activities for such platforms could include the development of a landlord charter and standards; a certification process for prospective landlords; and the piloting of an eviction insurance scheme. An examination of insurance mechanisms from other conflict affected contexts will help to inform the application of this model in Puntland and highlight potential partnerships for implementation. It recommends that these initiatives are implemented through clan elders to maximise the potential for local ownership and compliance.

The study further concludes that the most effective way of ensuring security of tenure for IDPs in Puntland will be through supporting the durable solution process, especially the local integration option that is locally endorsed as the strategy of choice by the Puntland authorities as indicated in their policy documents, presentations at the recent NRC facilitated durable solutions workshop and reinforced through the interviews conducted for this study. The study recommends that NRC realigns strategy in Puntland to strengthen key aspects of this process – namely site procurement, contracting and investing in IDP livelihoods to increase resilience and reduce dependency. This would have the additional benefit of strengthening synergies with the food security and livelihoods components of NRCs programme in Puntland.

<sup>1</sup> Collaborative Dispute Resolution refers to services providing facilitated negotiation, mediation and arbitration. There are currently two forms of this in Puntland. One is being initiated by NRC. The other by UNDP with local customary court elders using the term Alternative Dispute Resolution.

# 1 INTRODUCTION

There is a saying in Somali, “Ku qabso ku qaadi maaysid” which means, “If you claim it, you will not go without”. Examining the causes of land-related disputes and their corresponding resolution mechanisms this study will show that challenges to land ownership are endemic in Puntland. They present a major barrier to realising Internally Displaced Persons (IDP) housing, land and property rights and an obstacle to the establishment of a durable solution. This report will demonstrate that land grabbing and attempts to renege upon tenancy agreements with IDPs are pervasive practices. It will highlight how such practices are enabled by weak institutions, inadequate documentation, the negative impacts of humanitarian investment, corruption, clan power politics and the lack of harmonisation between the pluralistic legal framework of traditional or customary law (xeer), religious law (Sharia) and secular justice. Despite the challenges this study will show that the negotiated gifting or purchase of private land offers the best opportunity for local integration as the durable solution of choice for IDPs, Municipal and State Governments in Puntland. However, such gifting or purchase can only work when brokered and endorsed by the national and municipal governments in close collaboration with traditional elders and religious leaders, and in concert with other local and international stakeholders. The report also carries a cautionary note. Even if permanent land is provided for IDPs, ownership challenges may endure alongside other issues such as gatekeeper interference, future land speculation and the impact of marriage, divorce and inheritance rights. The later issues are particularly pertinent to the security of tenure for women. To negotiate satisfactory outcomes for such issues, the recent introduction of collaborative dispute resolution methods is a potentially enabling and transformative one that could help strengthen the role of customary and Sharia courts in resolving IDP land related disputes. These seek to integrate traditional court mechanisms with religious jurisprudence underpinned by municipal documentation and secular law. When approached as a community-based process of negotiated settlement these models seek to replace traditional win-lose adversarial approaches with the possibility for more equitable outcomes. At the same time they aim to retain and combine the wisdom, popular acceptance and safeguards of the existing legal plurality.

This study, commissioned by the Norwegian Refugee Council (NRC), examines the causes of land disputes and maps their associated dispute resolution mechanisms in areas affected by internal displacement in the Puntland State of Somalia. The findings from this study aim to support the Housing, Land and Property (HLP) work of NRC's Information, Counselling and Legal Assistance (ICLA) programme in promoting and strengthening housing, land and property rights for people affected by displacement in Puntland<sup>2</sup>.

Specifically, the objectives of the study are threefold: 1) to inform and provide relevant recommendations for the ICLA programme on strategies to implement collaborative land dispute resolution activities in Puntland; 2) to identify the most important stakeholders as far as land conflicts are concerned; and 3) to inform humanitarian actors on the linkages between humanitarian intervention, land conflicts, peace building and durable solutions (Annex 9.1: Terms of Reference).

## 1.1 STRUCTURE

This report is structured over seven sections. Section 1: Introduction sets out the background to the study, presents an overview of the IDP situation in Puntland and identifies the key challenges that they face in relation to housing, land and property rights. Section 2: Methodology describes the methods of inquiry used in the study and covers the findings from the literature review. 3: Typology of Disputes groups the main types of land related disputes that displaced people face in Puntland. It describes the impact of these disputes on displaced people and highlights the possible preventative actions and dispute resolution mechanisms and strategies that are explored in more detail in Sections 4 and 5. Section 4: Prevention looks at the options available for reducing the risk of disputes occurring in the first place, whilst Section 5: Resolution examines the available mechanisms for resolving disputes when they have occurred. Section 6: Conclusions brings together the key findings and provides a meta-analysis linking humanitarian action, peace-building, land related conflict impacting upon displaced people and the quest for durable

<sup>2</sup> NRCs ICLA programme and HLP work in Puntland are detailed in the ToR and further reading of NRC publications (see bibliography)

solutions. Section 7: Recommendations draws upon the study's findings and analysis to present a range of policy and practice recommendations aimed at strengthening the dispute prevention and resolution strategies of NRC's ICLA programme.

## 1.2 BACKGROUND

The Norwegian Refugee Council's ICLA programme, which focuses on Housing, Land and Property (HLP) in Puntland was established in 2012 and spans the State's three regions of Bari, Nuugal and Mudug. There is a particular focus on the large urban IDP concentrations in each of these regions, namely in Bossaso, Garowe and Galkayo respectively. These urban areas account for the majority of Puntland's IDP population. Although there are a small percentage of IDPs from within Puntland, the vast majority are from South-Central Somalia. In both cases the IDPs have become forcibly displaced as a result of conflict, insecurity, drought and subsequent loss of livelihoods. Puntland is regarded by IDPs as relatively safer and more stable environment with a reasonably effective and reliable humanitarian infrastructure capable of providing assistance.

NRC's initiatives on HLP correspond with a critical juncture in the search for durable solutions in Puntland. The Puntland State Government published a draft IDP policy<sup>3</sup> in 2012 that affirms the rights of internally displaced people as citizens of Somalia to live permanently in Puntland. The policy states that IDPs are entitled to enjoy the same rights as the local host population. The policy further endorses local integration as the State's preferred durable solution for its IDP communities. This endorsement recognises the protracted nature of the IDP situation and the fact that many displaced people from the South-Central region have been resident in Puntland for the past two decades.

During the last 20 years, IDPs in Puntland have endured a succession of local resettlements. Although the government has negotiated a series of 5-year rent-free leases from private landowners, these agreements have been repeatedly broken. The development of IDP leasehold land by local and international humanitarian actors has increased its market value. This has occurred in conjunction with rapid urbanisation that has expanded city limits into IDP camps which were originally located on the

periphery. This expansion and the demand for urban business and residential construction sites further increased the value of IDP leasehold land. Where once landowners were happy to provide unutilised land for IDPs at no cost, they subsequently realised the increased income potential whilst lamenting the loss of revenue from rent-free lease agreements. Legal ambiguities in the tenancy agreements, corruption in the municipal administration and the IDPs' lack of local clan backing make these agreements vulnerable to arbitrary annulment or the imposition of rent demands by the landowners. The result has been a cycle of increased poverty, evictions and repeated local displacement for the affected IDPs.

It is within this context that the Puntland Government with the support of the United Nations High Commission for Refugees (UNHCR) and the international NGO community is currently embarking upon an innovative yet challenging process of local integration. At both a state and municipal level, the Government is involved in seeking to secure permanent land for displaced people in Garowe, Galkayo and Bossaso. The process of permanent land acquisition is complex but so far appears to involve orchestrating multiple stakeholders, particularly the traditional elders and religious leaders, to appeal to the charity of the landowners to cede lands to the government for allocation to IDPs. Although the outcome of such appeals, (described in more detail in Section 4), have generated the successful gifting of lands in Garowe, Galkayo and Bossaso the devil, as they say, is in the detail. As the following sections reveal, serious questions remain over just how secure the tenure of permanent land will be for IDPs in the long-term and what legal loopholes might still be exploited. In this context the equitable resolution of land related disputes will be a key factor in determining the sustainability of local integration as a durable solution. This study's mapping of land related dispute typologies, prevention and resolution mechanisms will help NRC's programme in Puntland to position itself more effectively in strengthening the durability of local integration through building the capacity of supporting institutions during the anticipated final phase of IDP relocation to permanent land.

3 Although this is a "draft" policy it has already been endorsed by the Ministry of Interior but is yet to be officially ratified by the Parliament in Puntland.

## 2 METHODOLOGY

The methodology comprised of two main components: a literature review and a field study. The literature review examined the project related documents of NRC, such as baseline surveys and commissioned research or consultancy reports; documents from other local and international organisations operating in or conducting research upon Puntland. Documentation on housing, land and property rights pertaining to other parts of Somalia (Somaliland and South Central) were also included in the literature review both to identify any significant areas of difference or best practices between the different regional models, but also recognising the similarities in the application of customary, sharia and civil law that exist across Somalia. The literature reviewed was obtained from three sources: from NRC in response to a request for available relevant documents; through an Internet trawl; and from documents supplied or recommended by respondents during the field component.

The field component comprised of 7 days in Garowe and 2 days in Bosasso. Although the terms of reference also proposed a field visit to Galkayo this was not possible due to security concerns. However, Galkayo was included through a key informant interview with the NRC ICLA officer from that region. During the field visits informal interviews were held with 30 respondents either individually or in small groups according to institutional affiliation (e.g. 4 traditional elders were interviewed as a group). Focus group discussions also took place with members of the IDP community in Garowe and Bossaso. There were focus group discussions in 2 locations (Jawle 2 IDP camp in Garowe and Bariga in Bossaso). In these discussions 7 men and 16 women were interviewed in separate groups to maximise participation. Acting as a research assistant with preparatory instruction the translator for this study conducted the focus group discussions with the women IDPs whilst the consultant facilitated the male group discussions with translation from NRC team members.

A value addition to the process was participation in a consultative meeting entitled “Housing, Land and Property Rights (HLP) and Durable Solutions for Internally Displaced Persons in Puntland” organised and facilitated by the Norwegian Refugee Council in Garowe on December 14th and 15th, 2014. The participants at this meeting included representatives

from Puntland’s municipal and state government together with local and international NGO and civil society actors (Annex 9.2 List of Respondents).

### 2.1 LITERATURE REVIEW

There is an extensive literature on Housing, Land and Property related issues in Somalia. The majority of this literature is humanitarian agency generated and includes a significant body of work that has been commissioned by the Norwegian Refugee Council as part of its operations in Somalia. A key text is Norton, G. (2008) Land, Property and Housing in Somalia. Norton comprehensively covers all of the main aspects of HLP across South-Central, Puntland and Somaliland, detailing the historical background of land legislation and interlinking the main aspects of secular, customary (xeer) and Sharia law as they relate to land tenure. A more detailed description of xeer and the role of customary law is provided by the Puntland Development Research Centre (2003) Somali Customary Law and Traditional Economy. Since Norton’s text there have been significant developments in both Somalia in general and in Puntland specifically. These include an increasing stabilisation of the Federal Government and Puntland State Governments, the development of an IDP policy for Puntland and the adoption of a durable solutions strategy that favours local integration. Relevant HLP current status and developments are covered in the NRC / LAW collaboration (2014) Housing, Land and Property in Somalia: Persons of Concern in Somaliland and South-Central Somalia. Puntland however is not covered in this report. In Puntland there have been significant developments in establishing permanent housing provision as well as the creation of new dispute resolution mechanisms. That these developments are neither consolidated nor covered in detail in the available literature points to the importance of this study to help address this gap.

# TYPOLGY OF DISPUTES

The table on the next page summarizes the different land and resource related disputes or conflicts that involve displaced people in Puntland. The table is divided into 4 columns: 1) Type: the type of dispute and who the main protagonists are in the dispute; 2) Impact: the impact that the dispute has on the displaced people who are living on the land or using the resource; 3) Prevention: preventive measures that could help reduce this risk of this type of dispute occurring; and 4) Resolution: the main mechanisms that are used to resolve this type of dispute.

The table identifies 4 broad types of land disputes involving displaced persons in Puntland: 1) landowner disputes; 2) tenant-landlord disputes; 3) IDP internal disputes; and 4) State-IDP disputes. This section describes each of these dispute types and the impact that they can have on displaced people. Issues of prevention and dispute resolution are dealt with in the following sections.

## LANDOWNER DISPUTES

### Boundary conflicts between landowners:

Conflict between neighbouring landowners over the demarcation of boundaries was cited by municipal government respondents as the most common form of dispute impacting upon the lives of displaced persons. The demarcation of individual boundaries is often unclear but in the case of unutilised neighbouring lands the lack of clarity is unlikely to be contested as neither party has an immediate interest in pursuing it. It is only when the land is cleared for IDP settlement that questions relating to the demarcation of boundaries tend to emerge. Boundary disputes can impact upon the displaced community in a number of ways. Disputes between neighbouring landowners at the land clearance stage can result in the suspension of the land being allocated to the displaced people. Disputes occurring after settlement has taken place could result in the IDPs being evicted



| TYPE                                                                              | IMPACT                                                                           | PREVENTION                                                                                                                                                                                                                                   | RESOLUTION                                                                                         |
|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| Disputes Between Landowners / Ownership Disputes                                  |                                                                                  |                                                                                                                                                                                                                                              |                                                                                                    |
| Boundary conflicts between land owners                                            | Leased land may not belong to landowners and IDPs have no right of tenure        | Land boundaries clearly demarcated in lease agreements; pre agreement discussions with neighbour owners; neighbour owners sign agreements attesting to demarcation based on formal surveys or informal methods; allocation of permanent land | Traditional courts;<br>Statutory courts                                                            |
| Disagreements between multiple owners of land                                     | Rent increases or eviction                                                       | Vetting of land owner prior to renting                                                                                                                                                                                                       | Traditional courts<br>Secular courts                                                               |
| Fraudulent lease                                                                  | Lease agreement invalid. Insecurity of tenure and risk of eviction               |                                                                                                                                                                                                                                              |                                                                                                    |
| Landlord-Tenant Disputes                                                          |                                                                                  |                                                                                                                                                                                                                                              |                                                                                                    |
| Tenant breaks lease agreement                                                     | Eviction; increased rent demands from landlord; additional payment               | Stronger contracts with additional provisions (e.g. to accommodate introduction of utilities without penalty)                                                                                                                                | IDP Camp Committee;                                                                                |
| Landlord breaks lease agreement                                                   | Eviction; increased rent; additional payment                                     | Stronger contracts<br>Rapid response by mediators or for emergency payment                                                                                                                                                                   | Host community traditional court;                                                                  |
| Landlord tries to increase rent                                                   | Eviction if unable to pay; financial hardship; risk of violence                  | Stronger contracts<br>Rapid response                                                                                                                                                                                                         | Municipal government;<br>NRC ICLA team;                                                            |
| Gatekeeper issues                                                                 | Extortion, control, eviction, financial hardship, risk of violence, sexual abuse | Greater awareness of rights; Rapid response                                                                                                                                                                                                  | Legal aid                                                                                          |
| IDP Internal Disputes                                                             |                                                                                  |                                                                                                                                                                                                                                              |                                                                                                    |
| Tenant /owner dies                                                                | Uncertainties over inheritance                                                   | Stronger contracts / deeds; awareness of rights; gender sensitive deeds/contracts                                                                                                                                                            | IDP Camp Committee;                                                                                |
| Tenant / owner divorces                                                           | Uncertainties over who has tenure; increased vulnerability of woman              |                                                                                                                                                                                                                                              |                                                                                                    |
| Tenant / owner takes another wife                                                 | Complicates rights of tenure and inheritance                                     |                                                                                                                                                                                                                                              |                                                                                                    |
| Disagreements within IDP community over community issues such as garbage disposal | Risks of being marginalised within community; community led eviction.            | Greater awareness of community membership responsibilities                                                                                                                                                                                   | IDP community traditional court;<br>NRC ICLA team;<br>Legal aid                                    |
| State-IDP Disputes                                                                |                                                                                  |                                                                                                                                                                                                                                              |                                                                                                    |
| State requires land for development                                               | IDP forced evictions                                                             | Increased communication between State and IDPs; increased government awareness of IDP rights; IDP contracts with State parties                                                                                                               | IDP Camp Committee mediation with municipal government or ministry; Secular courts; ICLA mediation |

on the grounds that they are settled on land that the supposed owner did not in fact own and therefore had no right to lease out.

**Disagreements between multiple owners of land:** Land in Puntland can sometimes be owned by multiple parties. It is not uncommon for members of a large family to each have a stake in a piece of land, often as a result of a shared inheritance. In the event that one or more of the parties disagrees with the others over the utilisation of the land, there may be a dispute over which party has the stronger right to determine how the land should be used. If the land is inhabited by IDPs, either for free or as rent paying tenants, such disputes may have a negative impact upon their continued tenure. The most likely outcomes for tenants in this scenario are rent increases or evictions.

**Fraudulent lease:** This occurs when the person claiming to own the land and entering into a lease agreement with a tenant was not in fact the real owner of the land. Respondents cited cases of employees, neighbours and others taking advantage of an owner's absence in order to make a claim on the land. There were also cases where a third party had claimed to act on behalf of the owner but it later transpired that the owner had no knowledge of this and had not approved any agreements. Such incidents are beyond the control of the IDP tenant who is in all probability acting in good faith that the person they are dealing with is either the owner or his representative. Strategies for preventing such fraudulent dealings could include the verification of ownership or representative authority prior to entering into an agreement. The lack of historic official title deeds held with the Municipal authorities and the ease of obtaining such deed through fraudulent means complicates the verification process. In theory, verification through community inquiry and perhaps using traditional courts could help reduce this risk. In reality though it is unlikely that prospective tenants would have the time, resources or inclination to pursue such checks. However, such a service could be usefully provided by NRC's ICLA programme, perhaps as registry of pre-verified and approved IDP friendly landlords.

## TENANT-LANDLORD DISPUTES

**Landlord breaks lease agreement:** Land provided to the IDPs in Puntland through municipal government negotiation with private landowners is supposed to enjoy temporary security of tenure guaranteed under a 5-year rent-free arrangement. In practice however this requirement is regularly flouted. There are multiple reported examples of landlords demanding rents or a return of the land before the end of the 5-year period. In cases where IDPs have entered into private housing agreements there are also cases where landlords have cancelled tenancies or hiked rents arbitrarily and without consultation or due notice. All of these actions constitute a breaking of the lease agreement by the landlord. However, the IDP tenant invariably has little scope to object due to the lack of adequate documentation setting out the precise terms of the lease. There may in fact be no lease documents with some agreements being only verbal ones. Corruption within the municipal government and other authorities favour the landowner who is able to seek advantage through bribery. Disadvantageous power differentials also exist between the landlord and the IDP tenant, especially in cases where the IDP is from a weak or minority clan, is a female or is otherwise vulnerable. In the vast majority of cases the IDP tenant, due to these factors and a lack of awareness of their rights or avenues for assistance, does not formally complain or pursue any other course of action but instead defers to the wishes of the landlord by accepting either eviction demand or rent increase.

There are strong incentives in Puntland for landlords to break rental agreements. Land originally agreed with the municipal government for rent-free lease to IDPs was generally located on the periphery of urban areas in Garowe, Bossaso and Galkayo. Although at the time of the lease such land may be marginal and of little worth, the value of the land can quickly increase as a result of increasing urbanisation and humanitarian agency investment. Areas once located on the outskirts of town can, within a few years, become part of the main town itself. This increases the value of the land and the owners may believe that they are missing out on the potential for higher returns by providing land for free or leasing it out for low rents.

Humanitarian investment contributes to increasing the value of the land by providing physical infrastructure inputs and upgrades to the IDP sites. These could include the construction of housing foundations, sanitation facilities, drainage, water points and

solar electricity. In many cases school and health clinic buildings have been constructed. The provision of housing materials to IDPs such as corrugated galvanised iron sheeting also increases the value of the land and can be subject to appropriation. The ownership of housing materials is often not clearly defined in agreements or subject to certification. Landlords therefore are provided with the opportunity to repossess highly valuable urban areas that have been developed for them at no cost. They are able to repossess or increase rents on such properties with little or no risk of recrimination and can make returns far higher than they were enjoying under the previous arrangements.

**Tenant breaks lease agreement:** Default on rental payments and the construction of structures or additional utilities not specified in the lease agreement are the most common ways in which a tenant is deemed to have broken a lease agreement. Many of the IDPs are unemployed or engaged in just seasonal / sessional labour. Their security of regular income is therefore weak. In such circumstances default on rent payments are common and invariably result in immediate evictions. As noted above the development of sites by humanitarian agencies may be construed by landlords as breaking the agreement if such inclusions were not negotiated in advance as a part of the lease.

**Landlord tries to increase rent:** A frequent source of IDP-landlord conflict occurs when the landlord attempts to increase the amount of the rent due on a property. Such rent hikes can be arbitrarily imposed with little or no notice. They may occur when an additional rental period is being negotiated, when a landlord perceives that the value of the land has increased or when humanitarian agencies have developed the property.

**Gatekeeper issues:** Gatekeepers are persons empowered by the owner to supervise the property sites. Their duties can include maintenance, security, dealing with complaints, tenant relations, organising new leases and collecting rents. The gatekeeper may be the landowner themselves, relatives or employees. The position is a powerful one and open to abuse. Incidents of gatekeeper related corruption, extortion are common and physical and sexual abuses have also been reported. The gatekeeper is generally the main agent involved in informing tenants of rent increases and carrying out forced evictions.

## IDP INTERNAL DISPUTES

**Inheritance, marriage and divorce:** When an IDP tenant or permanent householder dies, marries a second wife or divorces there can be family disputes concerning who is entitled ownership and / or tenancy of the property. Women can be particularly disadvantaged in such circumstances. Both customary and Sharia law have limitations for women seeking to pursue claims. The impact of such disputes can include loss of tenure, evictions and disinheritance.

**Community disputes:** Disputes between community members over issues such as garbage disposal and neglect of community responsibilities can result in community enforced eviction. This was noted by respondents as a risk where marginal IDP community members who have weak or no clan representation are in dispute with the majority members.

## STATE-IDP DISPUTES

**Forced evictions:** Disputes between the state (national or municipal) authorities and IDPs appear to be rare in Puntland. However, a recent incident in Bossaso in February 2015<sup>4</sup> saw the long term IDP residents of Enji settlement forcibly relocated by government officers to a different site in Bariga following a series of eviction notifications which many IDPs appear to have ignored. The reason for the eviction appears to have been the earmarking of the Enji site for urban development. Although further analysis of this case is required it does demonstrate a need for greater government awareness of IDP rights as well increased communications between government and IDPs together with civil society and INGO intermediaries when urban development strategies impinge on IDP settlements.

<sup>4</sup> This incident occurred after the research and 2nd draft of this study had been completed. It has been added at the 3rd draft phase but requires further investigation and analysis.

# PREVENTION

This section explores existing and potential dispute prevention measures that could mitigate the risk of disputes arising in the first place, especially in relation to the main IDP concerns of arbitrary rent increases and forced evictions.

## PERMANENT LAND ALLOCATION

The main mechanism to prevent disputes arising in relation to security of land tenure by displaced persons in Puntland is the durable solutions strategy of local integration through the allocation of permanent land. This is the preferred strategy of the Puntland Government as well as local municipal administrations. The allocation of permanent land with permanent housing is also the preferred solution expressed by the displaced people themselves.

Achieving local integration through permanent land allocation is however complicated by the problem that no land is actually owned by the Puntland Government. Any permanent land allocation to displaced persons in Puntland first requires that the land be acquired by the State. As the right of the State to exercise eminent domain and compulsorily purchase land does not appear to exist in Puntland there are only two viable alternatives. These are, either the State purchases the land in the same method as a private party, or negotiates the gifting of the land from the landowners. In practice, due to the limited budget that the Puntland Government has at its disposal, the only realistic option is the negotiated gifting of land.

The Puntland Government's approach to the negotiated gifting of land is an innovative process that offers the possibility of a win-win outcome for the landowners, displaced persons and government alike. It involves an interwoven set of incentives for compliance and disincentives for non-compliance offered to landowners by the Puntland Government. The process commences with a meeting of large landowners called together by the national and municipal government authorities. Government respondents noted that many of the landowners they called control thousands of hectares. Most of these were believed to have acquired their lands illegally

as a result of land-grabbing during the early 1990s after the collapse of Barre's central government. The negotiated gifting process involves government representatives reminding landowners of how they originally obtained their properties and the complications that this could cause to their continued ownership in the future as a result of possible legislative and land reforms in Puntland. The implication for landowners being that those who do not agree to the allocation of a portion of their land as permanent settlements for displaced people could later face state initiated legal proceedings that may ultimately result in the loss of all of their lands. However, as an incentive for the allocation of permanent land for displaced people the Government of Puntland offers compliant landowners tax breaks on their remaining land as well as the provision of secure titles to this land endorsed by the State. Although this is a pragmatic approach based on the realities of the ground situation, there is a risk that it could legitimise land grabbing practices and reinforce existing inequalities in land tenure and land ownership.

This offer and barely veiled threat appears to have generated some initial successes in the recent gifting of permanent lands at Jilab and Burtinle which have been used to create permanent settlements for 600 displaced families apiece. Negotiations in other areas appear to have appealed more to the landowner's sense of charity. Charitable works are integral to Islam and particularly prevalent during the period of Ramadan. Approaches to landowners by elders and Muslim clerics working in concert with the municipal authorities during the Ramadan period was reported to be the most effective in leveraging the donation of permanent land. In Galkayo a site was gifted for further 600 families and in Bossaso, a large site adjacent to the airport has been recently allocated to IDPs for permanent use. The beneficiaries of that land are yet to be identified.

The gifting of land to the government is not however a transfer of ownership to the government. Instead the local government holds the property in trust for the displaced people who are to be its new owners. Once beneficiaries are selected to occupy the permanent land, the local government organises the division of the property into smaller individual family units with title deeds being provided to each. This gives the displaced people the permanent security



of tenure that they have lacked under previous leasehold agreements on privately owned lands. The title deeds can however come with a number of caveats to help safeguard the properties as a durable solution through local integration for displaced people. For example, the new owners in Garowe are reportedly given non-release titles that prohibit them from selling their properties for 10 years. The new owners will also have the right to will the property to their dependents as inheritance. In the case of divorce the property is awarded to the party who has custody of the children.

There can, however, be complications. In Galkayo it was reported that an owner donating permanent land was reluctant to counter-sign title deeds to individual units. There were suspicions that the owner may be planning to stake some future claim on the land. In Bossaso the planned allocation of permanent lands near the airport appears to be located in an

area of prime future business and residential development potential. This gives rise to concerns that the municipal government may be using the excuse of humanitarian needs to leverage prime private land for other future purposes without paying for it. Beneficiary selection for permanent land in Bossaso also requires further scrutiny. Regional government respondents reported that any permanent land allocation may be divided between Puntland's own displaced community and those who were originally displaced from South-Central Somalia. It was also suggested that this could be expanded to include vulnerable and disadvantaged members of the host community. Such a provision could ease possible tensions within the host community over the allocation of permanent land to IDPs. The local government argue that it would help maximise local integration and prevent the creation of an enclave of former IDPs from a different clan affiliation.

## EVICTIION INSURANCE

One of the most common reasons for eviction is default on rent. Most IDPs are amongst the poorest segment of society in Puntland. Those who work – estimated by community respondents as approximately 30% of IDPs – tend to be employed as unskilled labour often on a sessional or seasonal basis. Wages in Somalia are low and the reported range of monthly rents (USD 3-5) for private leases represents a significant part of an IDP's income. For the more vulnerable members of the displaced community such as the sick, elderly, single headed householder or large non-income or single income generating families this expense can be an onerous one.

Evictions are often immediate upon a tenant being unable to pay. A possible strategy for preventing this would be the establishment of a community insurance scheme to provide instant rent payment for families facing imminent eviction. Such a system could operate like a revolving loan scheme. Each family unit could contribute USD 0.20 cents per month into the fund. For a displacement site of 100 families this would provide an accrual rate of US 20 per month. Funds would be held communally for disbursement to families unable to pay their rent and facing eviction. The family would then have an extended period in which to repay the fund with no threat of eviction. Such a scheme could also be extended to strengthen resilience against other shocks such as medical or funeral expenses. Although there does not appear to be any culture of community saving schemes in Puntland the system could be piloted and adapted to the local context.

## TENANT-LANDLORD PLATFORMS (ASSOCIATIONS)

Increased communications between landlords and tenants could help both parties understand the issues, needs and dynamics that affect each of them. The development of tenant-landlord platforms or fora for regular meetings and exchange of issues could improve dialogue between IDPs and landlords on wide range of tenancy related concerns. The inclusion of municipal government and NGO representatives or observers in such associations would aid transparency, accountability and governance as well as provide a valuable connection between the local authorities, NGO site development providers, tenants and landlords. Such a platform can organically evolve

into an association or a community based organisation depending upon the interests and needs of those involved.

## LANDLORD CERTIFICATION

There are currently no clear locally agreed guidelines for landlords on good-stewardship roles and responsibilities in relation to providing land for IDPs. The platform model described above could provide a useful framework through which to develop a Puntland specific charter of best practice for the landlords of IDP sites to adhere to. This could be developed in collaboration with local, government, NGOs, elders and clerics to ensure integration of international humanitarian law, customary and Sharia law and practices. Landlords could receive awareness training on this charter and sign up to it as a public demonstration of their intent towards implementing minimum standards. An international NGO such as NRC could play the role of providing landlord certification through International Organisation for Standardisation (ISO) type monitoring for compliance or could support a local entity to undertake such a service. An ownership verification service would be a valuable addition to such certification in order to reduce the risk of IDPs entering into agreements with parties who do not have ownership of the land.

## GATEKEEPER / LANDLORD / GOVERNMENT OFFICIALS TRAINING

Increased awareness raising and training for gatekeepers, landlords and government officials on global best practices could help increase understanding of IDP rights and reduce the risk of evictions and other deprivations. Topics including the rights of IDPs under all aspects of international law and the local legal plurality, together with the responsibilities of a landlord would help to provide a basic knowledge of expected behaviours and practices for gatekeepers, landlords and government officials alike. Ideally such training should be provided through the clan elder and religious clerics in order to maximise acceptance, local ownership and compliance. These topics are already being provided to gatekeepers and other actors by NRC but integrating them with certification provision and conducting regular follow-ups would further strengthen the impact of such trainings.

## RAPID RESPONSE

The capacity to respond immediately to imminent evictions before they are effected is crucial in preventing them being carried out. The provision of community eviction insurance as described above could help provide the financial resources to prevent or delay evictions, but a delivery mechanism is required to enable this. Various rapid response mechanisms are possible ranging from community level organisation to third party interventions such as those envisaged by NRC's ICLA programme. Whichever model is preferred the main components include a 24/7 communications link so that families facing imminent eviction can immediately contact for support. Given the excellent mobile phone coverage and high density of mobile phone ownership amongst the IDP community the infrastructure to enable this is already in place. The support providers then need to be able to respond immediately and be on the site within a very short period of time. As most of the urban IDP sites are located within a short distance of the centre of town, a response time of 30 minutes should be practicable if a physical presence is required. However, given the extent of e-commerce available in Puntland (there is actually very little physical cash being circulated) mobile money transfers for rent advances and payments should be possible to provide urgent cash to those facing eviction.

## STRONGER CONTRACTS

The securing of stronger contracts is likely to be one of the most effective ways of preventing disputes arising and swiftly countering claims if they do arise. Such provision could usefully link to the training, certification and platform/association formation strategies described above. Contracts need to be written and not verbal. They should include provision for all possible eventualities and circumstances. This may include provisions to enable NGO site development without penalty, clear demarcation of boundaries, clear articulation of the rent due and the terms of any municipal council provision for rent free arrangements; the length of the rental period; notice of eviction periods and clauses for the mediation of disputes through CDR or other mechanisms. Contracts need to be witnessed by the appropriate authorities and ideally this would be the customary court elders as they are the most respected authority with the further endorsement and registration by the municipality. Further research on the penetration of written contracts and the cultural norms and values related to both verbal and written forms is also required.



# RESOLUTION

# 5

This section describes the main mechanisms through which IDP HLP related disputes can be resolved. The mechanism of choice will differ according to whether the dispute is between landowners or between IDPs and landlords. Parties may also resort to using successive dispute resolution mechanisms where one or more method fails to achieve a satisfactory outcome.

## DIRECT APPEAL

Most cases involving IDP rent increases and evictions that can be resolved through direct appeal to the landlord or his appointed gatekeeper for more time or less of a rent increase. This is negotiated on an individual level or through the local community IDP committee. However, as rent and eviction demands are often immediate the individual family generally has little option but to comply or leave. Successful appeals to the largess of the landlord are uncommon. The majority of rent and eviction cases do not end up being presented for further mediation because the IDP party invariably has insufficient time to respond. Furthermore they lack the resources to pursue other resolution mechanisms and frequently have little awareness of their rights and options for seeking justice. Evictions that have occurred are generally not appealed and the affected IDP simply relocates to another site.

## IDP COMMITTEES

Where there are disputes within the IDP community itself, between the IDP community and the landlord or host community, or where individual families have sufficient time to seek support, the IDP committee is often the first level mechanism for resolving conflict. Each IDP site has its own committee comprising of respected elders. The IDP committee and the IDP community's traditional court mechanism are likely to be closely intertwined. In some sites the gatekeeper or owner is appointed – or self-appointed – to chair the IDP committee. This particular situation presents serious challenges to impartiality in relation to IDP tenant disputes with the landowner.

IDP committees can resolve a wide range of daily disputes satisfactorily for the parties concerned, particularly where the disputes are of an internal community nature – such as one household not disposing of their garbage appropriately. However, clan dynamics within the IDP community can also impact upon the fairness of IDP committee decisions. Committees are generally dominated by whatever the majority clan composition of IDP community happens to be, thus disadvantaging those of a minority clan or without any clan representation on the site.

## NRC'S ICLA TEAM

The ICLA team maintains a daily presence in the IDP settlements. Their monitoring team and legal aid interns from the Law Faculty at Puntland State University are able to receive and act upon requests and complaints from the IDP community. Services provided by the team include legal advice, awareness-raising on property rights, referrals to other authorities and mediation (this is likely to be expanded as team members become more competent in collaborative dispute resolution techniques – see below). The ICLA team's capacity is however limited by having insufficient human resources to provide a full time presence in all of the IDP settlements. This can be resolved through either increasing the team numbers – additional interns would be the most cost effective way of achieving this – or by establishing an emergency call centre / hotline. This is already operating on an unofficial basis with ICLA staff providing their mobile numbers to community leaders. NRC is exploring the possibility of expanding this with a dedicated number manned around the clock. Such a service will enable the ICLA programme to provide the rapid response service proposed above and help resolve or at least mitigate disputes on the spot by third party intervention and mediation, witnessing and referral support for the parties involved to take their issues to the most appropriate authorities.

## ELDERS / TRADITIONAL COURTS

Traditional or customary law, also known as Xeer, is by far the most utilised and trusted form of justice in Puntland. Closely interconnected with the clan system, the traditional courts comprise of a panel of “judges” (minimum of 4) all of whom are males. These are respected clan or sub-clan elders. They have knowledge of sharia and customary law but have not received formal judicial training. The elders consider a wide range of land related disputes. Traditional court elders reported that land cases accounted for their largest caseload. The service is provided for free and the average time taken to investigate a case, conduct a hearing and issue a judgement was reportedly just 7 days.

There are however limitations to this system. The clan composition of the court lends an inherent bias in cases where an unrepresented or minority clan member is in dispute with the member of majority or powerful clan. This presents a serious disadvantage for the minority disputant. IDPs tend to be from minority or unrepresented clans. Court elders claimed that the risk of bias was eliminated in such proceedings by balancing the composition of the panel between IDP and host community elders. Other respondents reported that such attempted balancing is only cosmetic and that significant power differentials remain, which can have a bearing on the judgement. The traditional courts are also comprised exclusively of male elders. Women are allowed to bring cases to the court but have to do so through a male interlocutor. Women may therefore be disadvantaged in cases involving the division of property through inheritance, divorce and re-marriage.

Despite the limitations, traditional justice remains the preferred mechanism for tenant IDPs and their respective landowners to resolve disputes. Disputes settled through traditional courts are widely respected as they have clan elder backing. Judgements are also announced publicly with the parties expected to publicly accept the decisions. This makes it difficult for parties to later challenge the decision of the traditional courts although they can appeal to a statutory court if the land has been built upon. Traditional courts are particularly efficient and effective in determining boundary and ownership disputes. They appear to be less effective in resolving rent increase and eviction related disputes. Because of the immediate nature of rent increases and evictions it is difficult for the IDPs to bring such cases to the attention of the court in sufficient time.

## RELIGIOUS COURTS

Housing, Land and Property rights are an integral aspect of Islamic / Sharia law. Sharia law contains a large body of jurisprudence dealing with the process of deliberating upon land and property related cases. Key Islamic principles such as *mawat* (dead or unused land) and *waaf* (charitable land) have already been identified as potential avenues through which Sharia law help IDPs secure permanent land (UN Habitat 2005; NRC 2013). Land cases can be brought before Sharia courts who will hear ownership disputes over built plots (Norton, 2008) where the person who has developed the land is deemed the owner. The hearings are conducted in a similar fashion to those of the customary courts but the judgements will be rooted in Islamic doctrine and jurisprudence – albeit with some flexibility for local customs and a high degree of judicial interpretation. Although Sharia law ascribes certain rights and duties according to gender, the Sharia courts are a male domain and women are at a distinct disadvantage bringing claims through this institution. Conservative customs, local social norms and misinterpretation of Sharia law can lead to women being viewed as the “possession” of their husbands or fathers which may limit their ability to access fair treatment through the Sharia system.

Besides the formal hearings in Sharia Courts, the religious authorities are also able to engage in mediated dispute resolution in a process known as *tahkim* or arbitration. Further research is required to ascertain the extent and scope of this practice in Puntland.

## SECULAR COURTS

Secular courts were established in Puntland under the Italian colonial administration and further institutionalised under Said Barre's administration. Following the collapse of the central government, the secular courts were abandoned and the entire secular justice system fell into decay. Puntland is currently in the process of reconstructing this system under the Ministry of Justice. Legislation is being re-written, judges appointed and new lawyers trained. The endeavour remains a work in progress and for the majority of the population the notion of seeking justice through the secular system is widely unfamiliar and unpopular. The institution does not yet have the resources or authority to act as a credible source of justice. Seeking justice through the secular courts is time consuming and expensive compared with the traditional and religious alternatives. It was



reported that prior to taking up property dispute cases the secular courts conduct a valuation of the property and require that each party pay a fee of 10% of the value. The secular courts are also limited in their scope for land cases as they are only empowered to hear cases that involve land upon which there has been construction.

The secular courts are therefore of little current relevance to IDP land related disputes. This could change in the future especially in relation to the provision of permanent lands under the durable solutions strategy and any claims of ownership that might arise. The secular courts are also likely to have a role in regularising land ownership through the endorsement of deeds as well as interpreting Puntland State legislation pertaining to IDP rights and land tenure.

## LAND DISPUTE TRIBUNAL

Since 2010 the UN's Joint Programme on Local Governance and Decentralised Service Delivery (JPLG)<sup>5</sup> has supported a Land Dispute Tribunal (LTD) in Hargeisa, Somaliland. There are plans to extend this model to Garowe, Puntland in 2015 where enabling legislation has already been drafted for consultation and review. The LDT functions as a quasi-judicial body. In Somaliland the LDT comprises of a 7-member committee that includes representatives from the Ministry of Public Works (who acts as the chair), Ministry of Interior Affairs (responsible for administration), Ministry of Agriculture, Ministry of Endowment and Religious Affairs, Ministry of Rural Development, the Local Municipal Government (who host the LDT) and a local councillor.

The scope of the LDT is very specific and relates only to urban land that is included under the master plan for urban development and any land that falls under the jurisdiction of the Municipal Government. Within this purview there are a number of major exclusions including: urban land not covered by the master plan, pastoral lands, land already adjudicated upon by the courts, land related criminal cases, land in the designated old part of the city and others. Cases that the LDT have heard in Somaliland have included land grabbing, re-selling and re-claiming, registration of lands to multiple parties, urban migration and settlement issues, and disputed borders of adjacent plots.

Support for establishing the LDT in Somaliland has included the development of legislation, office premises and equipment, case management software and training for the officials involved. The major constraints for the LDT system have been the pre-existing legal plurality and the preference among disputants for cases to be heard through the customary courts. In Somaliland the Government has not allocated budgetary support to the LDT. The functions are divided between multiple government agencies and there is no unified administration for the initiative. The system currently lacks linkages to the judicial system and is not widely supported or understood by either the government or the public.

An evaluation of the LDT programme in Somaliland will be undertaken in 2015 and the findings will help

<sup>5</sup> The JPLG is a partnership between UN-Habitat, UNDP, UNICEF, ILO and UNCDF with UN-Habitat as the lead agency and institutional home for the LDT component. It is implemented in partnership with the Federal Government of Somalia and the Governments of Puntland and Somaliland.

inform the development of the system in Puntland. Based on the initial internal mapping of constraints outlined above it appears as though the LDT model will require significant re-working with additional support in organisation, financing, awareness raising and integration with the existing legal plurality if it is to be sustainable. Ideally the Puntland application of this model will address the lessons learned from Somaliland whilst adapting to the local legal and administrative contexts.

## MUNICIPAL ADMINISTRATION

The municipal government is responsible for the administration of urban land and is a key actor in the provision of settlements for IDPs. The role of the municipal authorities in relation to lands and responsibilities for IDP settlements are however contested with both the Ministry of Public Works and the Ministry of Interior staking claims over these sectors. This interagency rivalry appears more prevalent in Garowe as the seat of Government than in Galkayo and Bossaso. These rivalries have emerged because of ambiguities in legal authority with respect to land combined with the increasing value of urban properties and the role of IDP settlements as potential income generating centres for local government, national government and landowners alike. The conflicting relationship between the municipal and state governments further limits the capacity of the municipal authorities to resolve land related disputes.

Land ownership registration, the issuance of title deeds and the brokering of IDP tenancy agreements is administered through the municipality. The municipal government houses an IDP unit and is willing to receive and investigate complaints from IDPs. However, the municipality lacks the judicial authority to enforce rulings and relies instead on using its political muscle or moral weight to resolve land disputes. An added complication for municipal dispute resolution is the tenuous legality of the land ownership documents issued by them. Although the municipal government is able to register ownership prior investigation to established bona fides is cursory and susceptible to corruption. These factors mean that disputes resolved by the intervention of municipal authorities are likely to be remedial, temporary and subject to judicial challenge.

## COLLABORATIVE DISPUTE RESOLUTION

Norwegian Refugee Council's main in-house tool in supporting dispute resolution in Puntland is collaborative dispute resolution or CDR. The CDR tool is a product of CDR Associates (USA) who have developed a suite of design, mediation, facilitation and capacity building training approaches specifically for NRC's work on HLP work in Asia, Africa and the Middle East.<sup>6</sup> It was introduced to ensure a standardised, streamlined and coherent approach across the NRC programmes. The CDR Associates approach is well grounded in mediation theory and builds upon NRC extensive global experience of HLP. NRC currently uses CDR tools in 12 country programmes around the world. However, the implementation of collaborative dispute resolution with NRC in Puntland is still in its inception stage. NRC staff in the three main field offices are still in the process of being instructed in the use of this tool. The CDR model is compatible with the consultative approach used by the traditional court of elders in Puntland in resolving disputes as well as the arbitration process of the Sharia Courts.

Indeed, the recent establishment in December 2014 of the "House of Traditional Justice" in Garowe as a Centre for Alternative Dispute Resolution echoes the CDR model and highlights the synergies between these approaches and traditional dispute resolution practices. Initiated by UNDP in partnership with the Puntland State Government's Ministry of Justice, ADR seeks to "develop the relationship between traditional aspects of Sharia and Xeer systems with the formal criminal justice system"<sup>7</sup>.

Both CDR and ADR offer a less formal approach to resolving disputes. These may be particularly applicable in cases where more adversarial alternatives could be counter-productive. These models will have value in strengthening agreements that have already been made by providing a mechanism for clarifying any outstanding ambiguities or closing potential loop-holes. However, given the importance of elders and traditional courts in endorsing agreements in order for them to be accepted by all parties, these customary provisions will need to be incorporated into any final settlement.

6 CDR Associates website: <http://www.mediate.org/services/mediate/>

7 UNDP (10 December 2014) A House for Traditional Justice <http://www.so.undp.org/content/somalia/en/home/presscenter/pressreleases/2014/10/a-house-for-traditional-justice/>

# CONCLUSIONS

# 6

There are three main types of land related disputes involving IDP communities in Puntland. These are landowner disputes, landlord-tenant disputes and IDP internal disputes. Each of these disputes can result in evictions. Besides evictions the other major concern for IDPs is arbitrary rent increase. The two issues are frequently connected with an inability to pay rent linked to forced evictions.

There is a wide range of institutions with resolution mechanisms available to accommodate the different types of disputes in Puntland. These include the existing legal plurality of customary, Sharia and secular law. In addition there are the offices of the local municipal authorities and an emerging provision of collaborative and alternative dispute resolution services initiated by the international community. Currently the most popular resolution mechanism is the traditional / customary courts. Being clan based and elder led they are the most respected and trusted. They are also the quickest and least expensive. IDPs are however at a disadvantage in any legal system. This is due in part to their lack of finances, awareness of rights and recourse mechanisms and little local clan affiliation and a pervasive undercurrent of host community racism towards IDPs from South and Central Somalia who are perceived as ethnically inferior because of their closer ethnological links with the Bantu people. Most of all however they are mainly unable to access any legal recourse because the main issue of forced evictions are generally unexpected and immediate.

IDPs are unable to act swiftly in the event of impending eviction to access preventative mechanisms or to delay actions long enough to access resolution services. Respondents reported that eviction often occurred without any notice whatsoever. This was particularly prevalent in cases where tenants were unable to pay rent demands. Physical violence by the landlord or his employees and the demolition of the property were reportedly common occurrences during such evictions. Most eviction related cases do not therefore present themselves for mediation and resolution. In the majority of cases the evicted party will just accept their fate, leave and relocate to another IDP site.

However, in those instances where the tenant had sufficient time between being served a notification of eviction and the actual eviction, the outcome was often more positive. In such circumstances the tenant was more likely to be able to appeal to the municipal authorities either directly or through an interlocutor such as the Camp committee, NRC's ICLA team or the Legal Aid Clinic which is a pro bono service of the law faculty at the Puntland State University.

The study found that although strengthening resolution mechanisms is an approach able to support IDPs housing, land and property rights, a greater focus on preventive measures may yield more effective and sustainable results for security of tenure. The key gaps that were apparent in the preventative architecture were a lack of standards amongst landlords; insufficient awareness by local authorities, landlords, gatekeepers and IDPs alike of property rights in relation to displaced people; insufficient avenues for safe and regular communication between landlords, IDPs and other interested parties on tenancy issues and the lack of strong written contracts to protect tenants. Measures to develop these gaps and prevent evictions and tenancy agreements from being broken by landlords are outlined in the recommendations.

The final conclusion from this study is that permanent land allocation (and the subsequent permanent housing) for IDPs in Puntland is by far the most effective way of securing tenure, preventing abuse, avoiding disputes and thus facilitating durable solution achievement. In pursuing this, as well as in strengthening preventative measures and resolving disputes it was further found that the utilisation of customary courts and the inclusion of host community clan elders in endorsing any permanent, temporary or transitional housing agreement is imperative in ensuring its acceptance and reducing the risk of such agreements being contested. Any opportunity to integrate Puntland's legal plurality together with municipal government endorsement, public witnessing and civil society monitoring and advocacy would further strengthen such agreements and the IDPs security of tenure.

# 7 RECOMMENDATIONS

This section provides a set of recommendations for NRC's ICLA programme, as well as any other NRC's partners interested in implementing one or more of these recommendations. The key recommendation relates to strengthening the ICLA programme's role in promoting security of tenure, reducing significantly forced eviction as well as contributing to the achievement of durable solutions, through the provision of permanent land for IDPs and facilitation of local integration. Further recommendations recognise that despite the current commitments in Puntland towards fully achieving this durable solution, it will take time. These recommendations therefore relate to measures that the ICLA programme can initiate in the interim period during which IDPs will continue to require the provision of transitional but secure land and housing rights. The emphasis is particularly on reducing the risk of eviction and preventing disputes arising as well as opportunities to strengthen dispute resolution mechanisms.

**Focus on permanent land and housing:** NRC should re-orient their strategy in Puntland to fully align behind the government priority of achieving local integration as the preferred durable solution for IDPs. The scope for this goal is wide. There are opportunities to engage with strengthening permanent land allocation agreements to ensure that they are free from future challenge; mobilising the key clan, customary, government, religious and civil society institutions to identify and obtain appropriate land for permanent settlements. Strengthening the gender aspects of land tenure for permanent housing on permanent land will be important, especially with respect to marriage, divorce and inheritance. A key aspect of the sustainability of local integration as a durable solution will be the development of associated livelihoods. A greater emphasis upon the development of sustainable livelihoods for IDPs is critical for resilience and reducing the risk of continued IDP dependency on humanitarian aid.

**Facilitate the establishment of an IDP landlord-tenant platform:** The formation of an IDP Landlord-Tenant platform is recommended as a forum through which IDP, Landlord, Government and Traditional/Religious leader representatives and other civil society members can discuss and formulate a code of practice, awareness raising and exchange

of best practices for landlords renting to IDPs. It is recommended that NRC's ICLA programme take a leading role in promoting such an association.

**Facilitate the development of an IDP landlord charter:** In order to help landlords understand the special responsibilities and duties of being a landlord for IDPs it is recommended that NRC's ICLA programme in collaboration with local stakeholders through the above mentioned platform develops a set of best practice criteria for landlords to adhere to that can be enshrined in an IDP landlord charter that landlords are required to sign if they wish to rent to IDPs.

**Support a landlord certification system:** There are good landlords and bad landlords. The establishment in Puntland of a registry of pre-approved and certified landlords is recommended to enable prospective IDP tenants determine the reliability and IDP-friendliness of a landlord before committing to a lease agreement. The certification process could involve a vetting procedure and check against adherence to a set of best-practice criteria.

**Conduct training courses for authorities, landlords, gatekeepers and civil society:** All of the key actors involved in land tenure for IDPs need to have a better understanding of roles, rights and responsibilities. It is recommended that such trainings are developed and conducted through local clan elders to maximise ownership and compliance. Such trainings could be developed as a product of the association envisaged above and used to raise awareness and reinforce the content of the proposed charter.

**Conduct further research on discrimination towards IDPs:** How are South Central communities perceived in Puntland? What are the stereotypes, attitudes and assumptions? How do these inform land negotiations and disputes? Are some IDPs inherently disadvantaged because of their clan and ethnic affiliation? NRC recently conducted a pilot mapping of IDP disputes and evictions. Clan / ethnic identity was not one of the factors mapped in this pilot. However for future research it would be useful to map the ethnic identity of those being evicted and those doing the evictions and to determine whether

there is any correlation or increased frequency likelihood based on certain clan configuration between IDP / host, tenant / landlord etc.

**Pilot an eviction insurance scheme:** The notion of an eviction insurance scheme is completely new in the Puntland context. It could be usefully piloted on a number of IDPs sites to see if it is acceptable and results in a reduced incidence of forced evictions.

**Establish a rapid response eviction prevention service:** The establishment of a 24/7 emergency response / call-out service or with instant rent payment loan provision is recommended to cover all high eviction risk areas. Different models for this could be piloted and compared.



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# ANNEXES

## 9.1 TERMS OF REFERENCE

|                      |                                                                                                                               |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------|
| <b>Consultancy:</b>  | Research on the causes of land disputes and land disputes resolution mechanisms in areas affected by displacement in Puntland |
| <b>Country:</b>      | Puntland State of Somalia                                                                                                     |
| <b>Commencement:</b> | 24 October 2014                                                                                                               |
| <b>Duration:</b>     | 8 weeks                                                                                                                       |

## INTRODUCTION

Since the collapse of its central government in 1991, Somalia has been affected by insecurity, political instability and the collapse of socio-economic infrastructures. More than 20 years later, the continuous fights between different warlords, militia activities and inter-clan conflicts are still fuelling internal displacement. Despite this state of affairs, the situation is improving and the Somalia Government and its partners are looking forward to normalization of business. From the humanitarian perspective, relevant stakeholders are looking at durable solutions programming.

While return is the preferred form of durable solution for many stakeholders, it is not the only option, and many IDPs in Somalia, some displaced for decades or born within IDP settlements, are likely to prefer to integrate locally rather than return.

However, lack of land and land disputes are a major obstacle to durable solutions both in areas of displacement and in areas of return. Most land in Somalia is privately owned and therefore, there is not enough public land available that could be allocated to IDPs by local authorities. As a result, IDP communities rely on agreements with private landowners and often have insecure and weak land tenure, with frequent forced evictions. Land and insecurity of tenure are some of the major causes of conflict and disputes in Somalia in general, and particularly in Puntland State. Unclear ownership is also a major impediment to humanitarian assistance and development related interventions, as this often results in multiple competing claims once project activities commence.

Land disputes and their impact on prospects of durable solutions are aggravated by the complexity of the land resolution mechanisms. Somalia has a plural legal system consisting of the customary or traditional ("Xeer"), the religious or moral ("Sharia") and the secular or statutory systems. After two decades without a central government the secular system has suffered, and government institutions are not fully functioning. The three legal systems mainly rely on Sharia law. Furthermore, some of those mechanisms are male-dominated with potentiality to discriminate against women. For example, female-headed IDP households often face multiple layers of discrimination and are therefore more exposed to forced evictions, protection risks and disruption of livelihoods. The presence of IDPs in Puntland adds more complexity as the traditional mechanisms need to be adjusted to the diversity of clans and traditions present in the areas. Moreover, as the security situation stabilizes, urbanization continues and the value of land is increasing considerably. This trend is likely to continue, resulting in sustained land grabbing and increased land conflicts.

The situation is compounded by a general lack of knowledge on IDPs rights, more specifically those related to housing, land and property rights.

In Puntland, the Norwegian Refugee Council (NRC) has been implementing an ICLA (Information, Counselling and Legal Assistance) programme since 2012. Through this programme, NRC is providing information and counselling services on Housing, Land and Property rights to IDPs in 3 regions (Bari, Nuugal and Mudug). The programme is also offering training on Housing, Land and Property (HLP) rights for humanitarian and governmental institutions, developing tools and guidance notes on HLP rights promotion and offering assistance to people affected by displacement to obtain land tenure security. Land conflicts resolution is an aspect which is being explored and this consultancy is meant to inform strategies to undertake that aspect, among other objectives.

## PURPOSE OF THE CONSULTANCY

NRC's ICLA programme in Puntland aims at strengthening its intervention on land disputes resolution. It is therefore important to better understand the root causes of land disputes, the types of land conflicts as well as the existing land disputes mechanisms available in Puntland, by focussing on those used in situations of displacement or involving people affected by displacement.

The purpose of this consultancy assignment is to analyse and comprehensively document:

- ▶ The different causes of land disputes related to displacement or affecting displaced people in Puntland;
- ▶ The types and typologies of land disputes in areas of displacement or return;
- ▶ The different systems/mechanisms used to settle or prevent land conflicts and highlight the strengths and weaknesses of each of those mechanisms.

It is important to mention that the term “land disputes” is also encompassing disputes over other natural resources, including water.

The analytical report produced under this consultancy shall be used to:

- ▶ Inform and provide relevant recommendations for the ICLA programme on strategies to implement Collaborative Land Dispute Resolution activities in Puntland;
- ▶ Identify the most important stakeholders as far as land conflicts are concerned;
- ▶ Inform humanitarian actors on the linkages between humanitarian intervention, land conflicts, peace building and durable solutions.

## OBJECTIVES

The overall objective of the programme is that people affected by displacement in Puntland are able to claim and exercise their rights and attain a durable solution.

The specific objective for NRC is to improve its ICLA intervention on land dispute resolution and prevention through increased understanding of the dynamics of land conflicts in areas affected by displacement within Puntland.

## SCOPE OF WORK AND METHODOLOGY

The research will be conducted in Puntland, especially around areas hosting IDPs populations, including Bossaso, Garowe and Galkaio towns and surroundings.

The Consultant shall use various tools (from NRC existing tools or/and other tools) to carry out the analysis of

the land conflicts in displacement situations and to identify possible responses and implementation modalities. The common methodologies that can be used are focus group discussions, semi-structured interviews, structured interviews, participatory mapping, informal conversations, etc.

By using such tools it is expected that the Consultant conduct the following:

- ▶ Literature review and stakeholder consultation on key challenges for people affected by displacement in terms of access to land, land disputes, forced evictions, forced relocation and housing, land and property rights in general
- ▶ Consultation with affected IDPs (particularly women, minority groups and other vulnerable persons) to identify main land disputes and various remedies used to overcome or resolve the disputes.
- ▶ Consultation of ICLA cases on land disputes resolution and/or observation of ongoing land disputes resolution process by NRC's ICLA team.
- ▶ Documentation of structural challenges, potential stakeholders and their capacities to resolve and prevent land disputes involving displaced persons

Research should include:

1. A desk review of relevant documentation including various ICLA tools such as the CDR Handbook and HLP training manual.
2. Meetings/emailing of different actors in the land sector:
  - a. Relevant governmental institutions/bodies
  - b. Humanitarian and development actors in Puntland including civil society, beneficiaries, etc.
  - c. Norwegian Refugee Council

The Consultant will be supported by NRC staff (or contracted enumerators if necessary), in order to:

- ▶ Support and facilitate research (before, during and after the Consultant's travel to Puntland);
- ▶ Provide translation in meetings if necessary, focus group discussions and key informant interviews.

## **CONSULTANCY ADMINISTRATION**

The Consultant reports to the Information, Counselling and Legal Assistance (ICLA) Project Coordinator in Puntland.

A steering committee will be established to support the consultant. The members of the steering committee will be involved in the process (recruitment, report review, etc.). The steering committee will be composed of NRC staff from the Puntland Programme, Horn of Africa Regional Office and technical section from Oslo.

## **TIMEFRAME**

This consultancy is scheduled to take place over eight (8) weeks, beginning 24th of October 2014. A detailed work plan and budget will be discussed after the consultant is hired.

## **REQUIRED QUALIFICATIONS**

- ▶ Relevant professional experience in displacement context, programme development including experience of working as a researcher. The experience in working in Somalia or in Horn of Africa is a high added value.
- ▶ Experience working in complex and volatile contexts, and ability to work independently in a result oriented, multi-cultural environment and manage conflicting priorities;
- ▶ High level of professional expertise/knowledge in land and natural resources related disputes, conflict management, and on housing, land and property rights;
- ▶ Experience in developing and implementing policy/strategic guidance, and developing practical tools and resources;
- ▶ Fluency in English, knowledge of Somali is an asset.

## **PERSONAL QUALITIES**

- ▶ Good analysis capacity and excellent ability in report writing
- ▶ Ability to work under pressure, independently and with limited supervision
- ▶ Ability and willingness to work and live under difficult circumstances
- ▶ Willingness to travel to the above mentioned areas of Puntland

## 9.2 LIST OF RESPONDENTS

| NRC                                                                                                           | NGOs                                                                                                |
|---------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| Ali Saleban Jaxla: ICLA Officer, Garowe                                                                       | Mercy Corps: Mohamed Hevsi (Programme Manager), Garowe                                              |
| Elias Taolesse: Acting Area Manager                                                                           | Puntland Research Development Centre (Director), Garowe                                             |
| Steve Ndikumwenayo: ICLA Manager                                                                              | Puntland Legal Aid Centre: Farah Gama Boss (Legal Aid Counsel), Garowe                              |
| Mohamed Ahmed Said: 3rd year law student at PSU / ICLA intern, Garowe                                         | Puntland Legal Aid Centre: Eli Said Ahmed Farah (Legal Aid Counsel), Garowe                         |
| Shamso Bile Said: Recent law graduate from PSU / ICLA intern, Garowe                                          | Puntland Legal Aid Centre: Mahamed Muse Ismail (State Counsel), Garowe                              |
| Bisharo Ali: ICLA Officer, Galkayo                                                                            | Puntland Legal Aid Centre: Y. H. N. Ahmed (Executive Director), Garowe                              |
| Kareema Hassan: ICLA Officer, Bossaso                                                                         | Danish Refugee Council: M. M. Ahmed, CDRC National Coordinator                                      |
| Badriya Farah: Field translator for this study on contract to NRC                                             | Danish Refugee Council: Abdiaziz M. Hamud, Protection Coordinator                                   |
|                                                                                                               | Danish Refugee Council: Ahmed Esse Mohamed, OIC                                                     |
| GOVERNMENT                                                                                                    | OTHER                                                                                               |
| Ministry of the Interior: Abdikadir Abdimalik Mohamud (Director of IDP Affairs)                               | Jawle Camp 2 (Garowe): 5 male and 9 female displaced persons                                        |
| Ministry of Justice: Abdirisak Nuh Mohamed (Director General)                                                 | Bariga Camp (Bossaso): 2 male and 7 female displace persons                                         |
| Ministry of Planning: Naima Abdi Mohamed (Volunteer intern / Somali diaspora living in Puntland for 6 months) | Traditional Court Elder (Garowe): Said Maxed Nuur                                                   |
| Municipal Government Garowe: Halumo Abduliqadir Barre (Director of Women and Villages)                        | Traditional Court Elder (Garowe): Xib Daahir Muuse                                                  |
| Municipal Government Garowe: Radumo Yusuf Al Raxman (Member of Sanitation Department)                         | Traditional Court Elder (Garowe): Nabedoa Ahmed Maxed                                               |
| Municipal Government Garowe: Abdirashimael Isse Abdi (Social Development Director)                            | Traditional Court Elder (Garowe): Khalaat Askar Maxuul                                              |
| Ministry of the Interior: Abdi Ahmed Mohamud (Director General)                                               | HLP and IDPs Workshop Participants<br>(Garowe: approximately 20 government and NGO representatives) |
| Governor – Bossaso: Abdidamed Mohamed Gallan                                                                  | UNHCR: Martijn Goddeeris, Shelter Cluster Coordinator, UNHCR Somalia (Nairobi)                      |
| Governors' Office – Bossaso: Mohamed Khurshe (Regional Projects Coordinator)                                  | UN-Habitat: Emrah Engindeniz, JPLG Programme Manager (Nairobi)                                      |

