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LAND TENURE POLICY AND REGISTRATION IN SOMALIA:
AN ACTION PLAN FOR LEGISLATIVE AND ADMINISTRATIVE REFORMS

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EXECUTIVE SUMMARY

Background

- (1) The preparation of an Action Plan to improve land tenure policy and administration of irrigated lands in Somalia has been set as a pre-condition to the second tranche of the Agricultural Sector Adjustment Programme II (ASAP II), financed by the World Bank (IDA). This report is a working document intended to assist the Ministry of Agriculture (MOA) in the preparation of that Plan.
- (2) The World Bank and the Government of the Somali Democratic Republic (GSDR) plan to meet in November/December 1989 to exchange views on the extent to which this pre-condition has been met. Two outputs will need to come out of this meeting: (a) an agreement that the GSDR has prepared an Action Plan satisfactory to the Bank (IDA); and (b) clear indication that the Plan has the official approval of the GSDR.
- (3) The criteria for an acceptable Action Plan, as agreed upon by the GSDR and the World Bank, are that it: (i) adequately safeguards traditional rights; (ii) provides security of tenure; (iii) enhances transferability and liberalizes access to land; (iv) protects the rights of spouses; (v) is enforceable; and, (vi) prescribes an administrative framework.
- (4) The GSDR considers a program of land registration to be an important precondition for economic development in Somalia's two river valleys. The criteria for an acceptable registration program, constituting the administrative framework, are that it: (vii) is simple, rapid and easy to understand; (viii) provides landholders with clear title to land; (ix) is cost effective and can be funded from the ordinary budget; and, (x) provides records and information which are easily accessible to landholders and others with bona fide interest.
- (5) This mission was funded by USAID/Somalia to assist the MOA with the following tasks: (a) Make specific policy recommendations on changes to Land Law 73 and associated legislation pertaining to land policy on irrigated lands. (b) Make specific policy recommendations on changes in land registration legislation and registration procedures. (c) Design a program for assisting the GSDR with drafting and implementing the new or revised land legislation including registration. (d) Outline in brief terms an ongoing program of adjudication and registration following the enactment of the new or revised legislation. (e) Outline in brief terms a program of research for evaluating impacts of the above reforms on beneficiaries and land markets. (f) Outline in brief terms a program of research on land tenure in rainfed areas and rangelands to serve the basis for drafting new legislation and for new land policy reforms in these areas.
- (6) This report proposes:
 - a. Major strengthening of the rights of concession holders.

- b. Major revisions in land policy and land legislation to improve the efficiency and equity of land use and allocation under statutory law.
- c. Systematic adjudication and registration of land holder rights in irrigated schemes to resolve competition and conflict over high value riverine land.
- d. recognition of customary land tenure rules in areas beyond the domain of registered concessions, as in forests and rangelands.

Land Tenure Policy Review

- (7) Most cultivated land and nearly all pastoral land in Somalia in practice is governed by customary tenure arrangements. Yet, land tenure based on statutory law and state ownership of all land is expanding, particularly in Somalia's Shabelle and Jubba river valleys. Land legislation passed in 1975 officially transferred control of all Somali lands to the GSDR. Provisions in the Law enable various categories of land to be registered as concessions, although less than 5 percent of Somalia's total land area has been registered to date.
- (8) Many farmers do not register land because the procedures are too tedious and complicated, they are unaccustomed to dealing with government administration and bureaucracy, and/or registration is too expensive. Since most of the costs to the farmer are on a per parcel basis, registration entails economies to size, with large farms paying lower costs per hectare than small farms.
- (9) Limited resources of the MOA for salaries, vehicles, fuel, supplies, and essential facilities have required registries to shift part of the burden of these expenses to landholders, and have imposed constraints on the number of concessions that registries can effectively issue. Because of these constraints, concessions are usually acquired by larger farmers, the more affluent, or government officials more knowledgeable about administrative procedures.
- (10) Land registration has also been saddled with competing objectives. The purpose of land registration is to record the rights and limitations in land. But, the 1975 Land Law does not mention, or in any way recognize, customary rights in land. Under the Law, any Somali citizen has the right to apply for a concession whether they are using farm land or not. Thus registration has also been used as a means to gain access to land.
- (11) Conflicts between state tenure and customary tenure were relatively innocuous as long as demand for land remained low, and land resources remained relatively abundant. However, demand for land, particularly high quality land in Somalia's river valleys, has been rapidly rising ever since the early 1980s due to: (a) inflation and uncertainty in the Somali banking system which have eroded the expected real value of liquid assets; (b) an increase in real cereal prices since the early 1980s; (c) the imposition of livestock quarantine measures on exports of Somali livestock, decreasing returns in the livestock sector; (d) capital investment by donors in the riverine areas, increasing expected returns to

land; (e) low returns in manufacturing and service sectors; and (f) low pay scales in the public sector. The outcome has been a shrinkage of unclaimed land, growing scarcity of higher quality land, and increasing land value.

- (12) The combination of the above factors--small farmer constraints in registering land, the necessity for the MOA to occasionally find land for Somali citizens, concession rationing constraints, and the sharp increase in demand for land--have sometimes resulted in registration reallocating land rights rather than simply recording them. Smallholders in the Shabelle and Jubba areas have lost land to outsiders through this process. Land holders who have lost land can take their claims to court, but without explicit recognition of customary rights, they have tenuous legal grounding in the claim. The MOA points out that in many of the cases of land holder displacement, land was not cultivated, or use rights were ambiguous.
- (13) At the time the Agricultural Land Law was passed in 1975, it would have been very difficult for lawmakers to foresee the land pressures and tenure problems that Somalia is facing today. It is not surprising that land legislation is weak in dealing with problems of land scarcity, or that it has become outmoded with time. The GSDR has recognized this problem and is now committed to changing its land tenure policies in accordance with current social and economic realities.
- (14) The 1975 Land Law prohibits any form of land transfer except in situations of inheritance or incapacitation. Land ceilings are imposed on the size of concessions, depending on the type of land and use. But concessions granted to private companies and cooperatives have no limits. Concessions for private use are only valid for 50 years. Although renewable, uncertainties exist whether the term of lease is adequate to capture the full stream of income from fixed place investments. Only one concession per family is allowed, even though the spatial distribution of land holdings is important for minimizing ecological risk, and for food security. The provision in the Law requiring that concessions be cultivated within two years of issuance to demonstrate land use is discouraging fallow and cultivation of forage crops, and encouraging permanent cultivation and deforestation to demonstrate use rights. Farmers are reluctant to temporarily lend or rent out land for fear that it may be claimed by the renter as unused land.

Sporadic Registration

- (15) Registration in Somalia is sporadic. The MOA has established district and regional registries to facilitate registration of land, but it is up to the landholder to initiate the application process, to follow through on the various procedures, and to pay the various costs involved.
- (16) While registration procedures have been followed energetically, there are a number of defects in the system:
 - a. Adjudication procedures have not been complete and thorough, occasionally resulting in certain landholders losing rights in land.

- b. The administrative procedures are tedious, exacting and protracted, and there is considerable duplication of effort. Registers are maintained at district, regional and central levels containing exactly the same information. Outside of the Middle and Lower Shabelle, the forwarding of documents from district to regional to central offices is very difficult due to poor communications, long distances, and limited resources within the MOA for transport, causing long delays in registration.
- c. The cost to the State of each registration cannot be calculated easily, but is likely to be substantial. All MOA officials taking part in the process, and the Minister himself who signs the certificates, are involved in the paper work of registration to the detriment of their proper and more useful duties. The police too are involved in this paper work. The cost to applicants for registration is substantial.
- d. The procedures are not cost effective. In earlier registrations, plans (maps) were often inadequate to define the boundaries of the parcel or even to establish its location. More recently, more elaborate plans are being produced by private technicians, with costs borne by the applicants. Even these improved plans are of doubtful value as they are not tied-in to any form of survey control. Consequently, as registration proceeds in any locality, it will be impossible to fit the various plans to each other; there will be overlaps and the areas of parcels may have to be later adjusted.

**An Action Plan for Implementing Reforms
in Land Legislation and Registration**

- (17) An Action Plan is proposed to improve land tenure policy and registration of land in the irrigated areas of Somalia. The Plan includes three main components to achieve this purpose: (a) conduct a review of land tenure policy in Somalia; (b) propose and implement reforms in land legislation and registration based on the recommendations of this review; and (c) propose a system of land registration that satisfies the conditions specified in paragraph (4).
- (18) Three pieces of legislation are recommended: a new or revised Agricultural Land Law, a new Land Adjudication Law, and a new Land Registration Law. It is up to the GSDR to decide the specific changes to make in the legislation and the process for implementing this Action Plan. The reforms below are thus provisional and subject to the approval of the GSDR:

Security of Tenure and Safeguarding Traditional Tenure Rights

- (19) Concerning the criteria that the Action Plan should (i) safeguard traditional rights in land, and (ii) provide security of tenure, the following revisions in the Agricultural Land Law should be undertaken:
 - a. Provisions should be explicitly written into the Law stating usufructuary rights as the basis for determining concession rights.

- b. Terms of compensation should be established for farmers losing land as the immediate result of state expropriation for establishment of State farms, Cooperatives, autonomous agencies, or for Municipal use.
 - c. The sporadic method of land registration, which has enabled outsiders the means to gain access to land, should be stopped, and replaced by a system of systematic registration.
 - d. Until such time that systematic adjudication and registration takes place, land use and allocation should be the prerogative of customary authorities in accordance with customary law and practice. Settlement of any disputes over rights to land should be the responsibility of local authorities with ultimate recourse to the Courts.
 - e. Taxes should be increased on all land to increase the costs of idle or unproductive holdings, and to provide greater disincentives to land grabbing. Increasing taxes would strengthen the GSDR's fiscal position. But, if the tax is sufficiently big so as to discourage speculation in land, it is also likely to become oppressive for the small family farm unless implemented on a progressive basis. Stricter enforcement of repossession in the event that taxes are not paid should be provided.
 - f. Although all land is the property of the state, concession holders should be given exclusive rights of occupancy for their land with all rights in that land for an unlimited term, subject to conditions provided by the Agricultural Land Law, thus eliminating the 50 year term of concession.
- (20) One cannot put into the law specific powers for traditional authorities to control land allocation as a means to curb land grabbing, as has been suggested by some during the course of this mission. Nor should statutory tenure be abandoned completely. As population and land value increase, customary tenure systems can weaken, resulting in more disputes and litigation, declining tenure security, land over-use and erosion from communal management, and increasing fragmentation. Some villages or authorities may try to reserve more land than they are entitled under the guise of communal or ancestral lands, or restrict transfers of land to outsiders even on remunerative terms. Traditional authorities can also be corrupted. This by no means implies that all customary tenure systems in Somalia share these characteristics. They do illustrate the difficulties inherent in trying to merge customary and statutory systems of tenure.

Enhanced Transferability and Liberalized Access to Land

- (21) Concerning the criterion that the Action plan should (iii) enhance transferability and liberalize access to land, the additional following revisions in the Land Law are recommended:
- a. Restrictions on the number of parcel holdings should be removed allowing a family to cultivate as many parcels as it wishes.

- b. Ceilings on most agricultural lands should be eliminated except in frontier areas until such time that the settlement phase has passed. Decisions on whether ceilings are needed should be made on a case by case basis.
 - c. All restrictions on transfers and leases in land should be eliminated.
 - d. Current provisions allowing for mortgage of land as collateral for credit should be retained and facilitated. Consideration should be given to ways to ensure that these mortgages get recorded on the register.
 - e. All restrictions on partitioning of land that would provide the mechanism for larger, unproductive farms to disintegrate over time as a result of taxation, or otherwise, should be eliminated.
 - f. The two year provision on land use cultivation should be eliminated and powers of expropriation used cautiously to preserve or increase the tenure security of landholders. Use rights should be redefined to include fallow, forage, bush reserve and forest land in order to establish a broader definition of use rights.
 - g. The right to bequeath and inherit land, in principle, should be provided for in the Land Law, in accordance with the rights of inheritance under the general Law.
- (22) These changes are not exhaustive; other reforms may be adopted during the drafting process. Further, certain provisions such as land ceilings, levels of compensation, tax rates and rate structure will only finally be determined in the actual drafting phase of the Action Plan.

- (23) A tentative time schedule for incorporating these legislative changes into a new or revised Agricultural Land Law follows: MOA deliberation over land tenure policy review and recommendations (July/August 1989); MOA preparation of the Action Plan (September/October); Formation of a special advisory committee to assist with drafting the legislation (December); Drafting of the legislation (January-April 1990); Submission of draft legislation to the State Attorney (May); Submission of draft legislation to the Council of Ministers (May-June); Approval of the legislation by the National Assembly (June-July); and Official promulgation (August). Each of these steps is expanded on in the report, and procedural options are proposed that will require decisions by the MOA.

Simplicity, Speed, and Ease of Understanding

- (24) The program of systematic adjudication and land registration, described in Chapter 3, is a well-tried system implemented in many countries in Africa and elsewhere. The systematic approach: (a) implies an orderly sequence in which all parcels are brought onto the register area by area; (b) ensures maximum publicity regarding who holds what rights within the area and has the benefit of direct evidence from owners of adjacent parcels; and (c) is infinitely quicker and more cost effective per parcel

than sporadic adjudication. Because systematic adjudication is compulsory and well advertised, smaller farmers are not at a disadvantage in terms of cost or information.

Records and Certificates

- (25) Land is brought onto the register through systematic adjudication by process of law. Land parcels must be adequately surveyed and mapped and each parcel must be accorded a unique reference. Each parcel is then cross-referenced to the Register containing written details relevant to the parcel and the name of the person having the rights and limitations in the parcel; a register bears the same unique reference as the parcel reference. The maps of the parcels and all the registers together constitute the Land Register. The Land Register will ultimately be established and maintained in a number of offices, one in each land registration district.
- (26) The Land Registration Law will confirm that registration of a person as proprietor of his parcel of land will give him an exclusive right of occupancy of that land, with all rights in that land, but subject to conditions provided by the Agricultural Land Law. Thereafter, it is the entries in the register that alone provide authority for the current rights in any parcel at any particular time. There is no need for certificates, but provisions will be included that allow applicants the option to obtain certificates from the Registry, should they want them.

Cost Effective but Cannot be Funded from the Ordinary Budget Alone

- (27) Two sources of revenues are established or strengthened by these reforms: registry fees to cover the operation of the registries; and, tax revenues from levying and enforcing taxes on land. The establishment of the land registries and the program of systematic adjudication and registration cannot be met from the ordinary budget (par. 40). However, the land registries, once established with say 100,000 parcels per registry, should be self-financing through collection of fees paid by the public for registry services, particularly fees for land transactions. In the interim, until a sufficient number of parcels are recorded in the registry, operating deficits will need to be funded out of the ordinary budget.
- (28) Taxes on land should be increased, although tax rates and the choice of tax system--fixed rate taxes or progressive taxes--will need to be decided during the implementation of the Action Plan. Ways must also be discovered to increase enforceability of tax payments and to optimally allocate tax revenues. These additional taxes should help augment government revenues, although higher administrative costs will be required for tax collection. The net difference will depend on the efficiency of the tax system and compliance.

Protection of Rights of Spouses

- (29) It is generally not practical to record all the rights of all rightholders on the register. For this reason, the general marital law is used to preserve the rights of a spouse to land in the case of

divorce. Any right of a wife to use of land owned by a deceased husband should be guided by the general inheritance law. The outcome of these laws should not be affected by the spouse's name not being shown on the register. A review of marital property law and inheritance law is needed to ascertain womens' rights in land in de jure and practice.

- (30) The Adjudication Officer should see that a woman's claim is recorded if it is raised during the process of adjudication. Meetings with women's groups should be arranged along with the meetings with the leading members of the community, prior to adjudication and registration, to explain to women the purpose and implications of the adjudication and registration process. But, it is unreasonable to expect the Adjudication Officer to actively search out women that for whatever reason, do not come forward to state their claims, or that are reluctant to assert their customary rights.
- (31) Liberalizing land markets at the same time as registration does increase the risk that land will be sold by the man, leaving the wife or wives of the man destitute. There are several options for dealing with this problem: (a) Put formal provisions into the Agricultural Land Law stating that registration does not take away any of the rights that are granted under the general law. (b) Include women as joint holders of the concession and include their name(s) in the registry. (c) Provide some mechanism (e.g. Land Boards) for reviewing transfers when conflicting claims arise. While Land Boards may help protect other family members rights in cases where claims are brought to the attention of the Boards, they also impose added restrictions and costs on transfers, and increase demands on the budget.

Enforceability

- (32) Outside areas of systematic registration, the Courts not the MOA should be responsible for land disputes. The MOA neither has the jurisdictional powers for such areas, the expertise to deal with problems of dispute resolution, or the resources to handle such problems. The Courts and the MOA both have tried to handle such disputes in the past, leading to jurisdictional conflicts and increased tenure insecurity for landholders. Giving authority to the Courts will reduce administrative costs and increase legal certainty (at least over which institutions have jurisdiction). Further, the Courts are the ultimate authority for interpreting and enforcing the Law. The fact that legal processes may be weak suggests that further programs and regulatory reforms may be needed to improve the judicial process.
- (33) Many of the policy reforms, i.e. facilitating land transfers, will make policing easier because the provisions more closely conform with land use practices under customary tenure. Basing the program of registration on systematic adjudication will help eliminate the problems of tenure insecurity arising from overlapping boundaries and loss of rights from poor adjudication procedures that sometimes have resulted from sporadic registration. However, the size of area covered by systematic adjudication will largely depend on the resources available to the MOA, and this in turn will depend on budget allocations within the GSDR, and technical assistance by donors.

Costs and Benefits

- (34) Costs of undertaking legislative reforms are contained in the section entitled "Technical Assistance". The determination of costs of the systematic land adjudication and registration program and the design of a Central Land Registration Project are left for a follow-up mission (par. 44.b).
- (35) The benefits of legislative reforms are derived from reducing the economic costs imposed by restrictions on land use and allocation:
- a. Lengthening the term of concession should reduce the tenure insecurity arising from concerns whether the lease will be renewed, and provide a more secure planning horizon for those investments--terracing, irrigation infrastructure, wells, buildings, and mango, grapefruit, and lemon trees--with productive lives greater than 50 years.
 - b. Relaxing restrictions on land transfers in the land law should: (a) provide more efficient users with a less costly means to acquire land, and less efficient users with the means to dispose of it on mutually agreeable terms; (b) provide farmers greater flexibility to meet seasonal or temporal land needs through borrowing or renting-in, or to employ seasonally idle land through giving or renting-out; (c) permit parents greater flexibility to acquire land for their sons' and daughters' inheritance; (d) provide landholders with greater flexibility to adjust the size of their landholdings according to economic forces; (d) to facilitate mortgage for credit. In the short to intermediate term, registration of land is not likely to have a large effect on the supply of credit in agriculture, until such time that land markets emerge and land values rise to enable conversion of land as a fixed asset into a financial asset.
 - c. Eliminating the two year provision on land use cultivation and redefining use rights to include fallow, forage, bush reserve and forests, to establish a broader definition of use rights, should reduce needless deforestation, increase the security of adopting traditional soil resting strategies (fallowing and forage crops), and facilitate leasing and renting of land.

The net impact of these benefits is very difficult to quantify.

- (36) The theoretical benefits to land registration are widely recognized. In the last thirty years many developing countries, including a number in Africa, have established new registration systems or have overhauled earlier systems. The main benefits to holders of land are: (a) Security of tenure provided by the formal identification and recognition of the rights of the holder through a process known as "adjudication," and by the State guarantee of those rights in the land register; (b) Reduction of land disputes and court cases with a consequent saving in time and money; (c) Simple, quick and effective methods of dealing in land on the register; (d) Security for credit; and (e) Increased investment and agricultural output as the result of (a) to (d) above.

- (37) The main benefits to the State are: (a) Facilitating land reforms (e.g. consolidation of fragmented holdings, redistribution of land, redevelopment) which can be expedited by the available information on the register; (b) Management of State land available for dispositions by the State, including public acquisition of land; (c) Monitoring of the land market; (d) Support for land taxation; and (e) Statistical information (e.g. land prices, parcel sizes, outstanding credit).
- (38) The extent to which the benefits to holders of land are realized will depend on a number of conditions: (a) Whether security of tenure is increased will depend on the level of tenure insecurity present under customary tenure, and the value of the State's guarantee to honor concession rights; (b) Security of credit is increased only if the Law permits in a flexible way transfer and mortgage of land, and land can be converted into a liquid asset at reasonable costs; and (c) investment and output response depend on the presence of technological options for investment in land, on farmers' access to market information and knowledge about these technological options, and on functioning credit and input markets free of rationing constraints.
- (39) In situations, as in Somalia, where agricultural technology research, technological options and input markets are weak or non-existent, measuring the potential benefits to land registration is very difficult. Yet, the expected returns from future investment may depend crucially on the institutional framework of property rights and the freedom to exercise those rights, particularly if situations of rapidly rising land value and moderate to rapid technological change emerge. Waiting for these changes will pose problems of timing, since technological change can proceed quickly, while land registration programs require a long planning horizon.

Implementation of a Systematic Registration Program

- (40) The present system of sporadic registration should be stopped, and replaced with a system of systematic adjudication and registration. However, the first priority is to draft and enact a Land Adjudication and a Land Registration Law, which along with the Agricultural Land Law is expected to be promulgated by August 1990. No further progress can be made until that stage is completed.
- (41) From the MOA's perspective, administrative costs in managing and coordinating a program of land registration increase with accountability requirements and earmarking of funds by donors. Costs and inefficiencies increase proportionally with the number of donors involved, unless attempts to coordinate financing and accountability through a centrally funded project are successful. In principle, having one central source of funding and one set of program objectives is more efficient, and easier for the MOA to administer, than multiple sources of funds and objectives.
- (42) Four different options are presented for establishing land registries: (a) initially establish one land registry in one land registration district to hold all parcels registered in the Shabelle valley; (b)

initially establish one land registry in each of three administrative regions of the Shabelle valley; (c) initially establish one land registry each in the Shabelle and Jubba valleys; and (d) establish one land registry in each of the administrative regions of the Shabelle and Jubba valleys. Which option is the most cost effective will depend on the nature, location and timing of the adjudication and registration program.

(43) A number of donors are implementing or considering the implementation of land registration programs in specific donor funded projects: USAID Shabelle Water Management Project, The World Bank Farahanne Irrigation Rehabilitation Project, EEC Dar es Salam Busley Development Project, GTZ--multiple projects, and the Ministry of Jubba Valley Development and GTZ Jubba Valley Development Project.

(44) There are several ways of implementing a land registration program:

a. Site by Site Registration. Implement the registration program on a site by site basis, the sites determined by donor projects. Since four of the registration programs now planned by donors (USAID, World Bank, EEC, and GTZ) fall within the Lower Shabelle region, it is logical to begin registration in this zone (it in fact is about to begin under the USAID Shabelle Water Management Project). Donor projects would cover all variable costs associated with registration within their project. A Central Land Registration Project would be needed for fixed costs of establishing a registry, and coordinating donor activities.

b. Registration by "Registration District" in the Shabelle Valley. Implement the registration program on a district by district basis within the Shabelle valley. Since four of the registration programs now planned by donors fall within the Lower Shabelle region, it is logical to start in the Qorioley/Genale area, then proceed upstream towards Afgoi. The campaign could then be extended to the Middle Shabelle with time. A centrally managed project would be needed to cover the above fixed costs, and to fund the adjudication and registration activities outside the sites of registration funded by other donors.

c. Registration by Site or "Registration District" in the Shabelle and Jubba Valleys. Implement the registration program also in selected regions of the Jubba where cultivation has taken place. Since registration is preceded by adjudication, and adjudication depends on clear usufructuary rights having been determined, "registration districts" will be more difficult to establish and entail higher costs. Program costs will need to be met by projects involved in the development of the Jubba Valley, or the Central Land Registration Project.

The mission recommends initially establishing one land registry in the Shabelle valley, and implementing land registration by either project site (a) or registration district in the Shabelle valley (b).

(45) The current registration system in Somalia is very basic. Registries at present are very poorly equipped with facilities for managing and storing

maps and documents. Rather than seeking general registration, attempts should be made to prioritize and focus registration efforts. Implementing reforms only for the irrigated areas is an important priority. Targeting systematic adjudication and registration towards those areas where economic forces are driving up land values, and increasing payoffs to land speculation, such as in project areas, should further focus registration efforts. However, even if registration is done on a site by site basis, a centrally funded project would still be required to assist the GSDR with the establishment and operation of the Registry.

- (46) Donors must realize that any future program of land adjudication and registration will require donor funding. Land registration cannot effectively proceed under the tight budget constraints of the past. It is difficult to imagine the MOA coordinating and administering a standardized program of land registration given the piecemeal approach now being pursued by donors. Also, the MOA wants and needs to look beyond the demands of current donor funded projects to a more comprehensive and coherent program of land registration. A Central Land Registration Project should be established with funds from a consortium of donors (e.g. USAID, the World Bank, EEC and GTZ) and the GSDR to provide central administration and coordination.
- (47) USAID among donors has been on the forefront of land policy work and land registration in Somalia. They continue to be interested in playing a substantive role in a future land registration project. However, issues of land rights are sometimes very sensitive and political. The GSDR may thus prefer to have the project implemented by a multi-lateral donor, which from the viewpoint of Somalis, is not as influenced by country-specific aims and politics. In this event, the World Bank would be the appropriate institution to head the project, although other donors could maintain substantive roles.
- (48) Along with the legislative reforms and a program of land registration, there will be an ongoing need for research and land policy analysis. These research needs are grouped into two broad categories: land policy analysis in irrigated areas; and land tenure research in rangelands and forests. A long list of research issues are presented for consideration. Many effects of the proposed reforms in land legislation and registration will not be felt until years (e.g. 5-10) following enactment. However, baseline studies will be needed in early years to provide the bench mark for comparing effects in subsequent years. There are also program impacts that should be carefully monitored and evaluated beginning with the inception of legislative reforms and systematic land registration:

Technical Assistance

- (49) The MOA, knowing its resources and capabilities, must make the decision on the level of technical resources it needs to implement the Action Plan for legislative reforms. The following are various options for providing technical assistance:

- a. Recruit an expatriate Legal Draftsman to assist the MOA on drafting the Legislation. S/he will work with the special committee drafting the three pieces of legislation. The Legal Draftsman will have no responsibility for helping choose among land policy options (e.g. determining land ceilings, levels of compensation, tax rates and rate structure). (\$81,150 including MOA expenses).
 - b. In addition to the legal draftsman under option (a), a land policy adviser is hired to assist the MOA in choosing specific land policy options. The Legal Draftsman has the same scope of work as under option (a). (\$18,050).
 - c. Hire a Land Tenure Policy Adviser with a wider role of coordinating program activities from the inception of the drafting phase (January 1990) through official promulgation (August 1990). The adviser would be responsible for assisting the MOA on making specific policy and legislative changes, working with the Legal Draftsman on coordinating the drafting phase of legislation, organizing a workshop, serving as the liaison between the MOA and donors, and in all other ways coordinate and facilitate program implementation. This option supplements the position of Legal Draftsman under option (a), and replaces the land policy adviser under option (b). (\$105,400).
- (50) It is impossible under the time frame of this consultancy to prepare the plans needed for a future land registration program. The MOA and donors should reflect on the recommendations in this report in order to establish the guidelines for planning a future program. Once these guidelines are set, the following options for technical assistance may be considered:
- a. Recruit a Land Survey Advisor to: advise on appropriate methods and costs of survey aspects of an adjudication/registration program, explore methods of training to upgrade the standards of technician surveyors and draftsmen, recommend essential equipment and stores for surveying and mapping and calculate their costs, establish liaison with donors interested in land registration, and provide general advice to the MOA on all survey and mapping aspects of the adjudication and registration program. These requirements will need to precede any program of land registration. (\$144,725).
 - b. Provide a follow-up mission to design the Central Land Registration Project, and to organize a Department of Survey and Lands within the MOA. Some preliminary indication of donor interest and funding is needed a priori to provide general guidelines on the scope of program to be designed. (\$85,200).
 - c. Provide a follow-up mission to organize the program of land tenure and land policy research. The mission will need to design a 3-5 year research program including objectives, issues, policy relevance, approach, research requirements and costs (\$18,050).

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CHAPTER 1

INTRODUCTION

I. Background

Land tenure in Somalia is in a state of transition. Most cultivated land and nearly all pastoral land is governed by customary tenure arrangements. Yet, state tenure based on statutory law is becoming more widespread, particularly in Somalia's Shabelle and Jubba river valleys. Land legislation passed in 1975 officially transferred control of all Somali lands from traditional authorities to the Government of the Somali Democratic Republic (GSDR). Provisions in the Law enable various categories of land to be registered.

Today, less than 5 percent of Somalia's land area has been registered. Many farmers do not register land because the procedures are too tedious and complicated, they are unaccustomed to dealing with government administration and bureaucracy, or registration is too expensive. But, these factors alone do not entirely explain the low level of registrations to date. Limited resources within the Ministry of Agriculture (MOA) for salaries, vehicles, fuel, supplies, and essential facilities have required registries to shift the burden of these expenses to landholders, and have imposed constraints on the number of concessions that registries can effectively issue. Because of these constraints, concessions are usually acquired by larger farmers, the more affluent, or government officials more knowledgeable about administrative procedures.

The 1975 Land Law does not mention, or in any way recognize, customary rights in land. Any land that is not registered can be allocated by the state to an applicant for a concession. Other provisions in the Law give any Somali citizen the right to apply for a concession, whether s/he currently farms land or not. Proper adjudication procedures have not always been followed when granting concessions in practice, and consequently have not fully protected rights of the existing landholders. Thus, registration has sometimes resulted in landholders losing land to new applicants. The tenure security of non-concession holders has declined, particularly in situations where high registration costs and constraints on the number of concessions that registries can issue, prevent landholders from acquiring a concession.

Compared with customary systems of tenure, statutory tenure is more restrictive. The 1975 Land Law prohibits land transfers except in situations of inheritance or incapacitation. Only one concession per family is allowed. Land ceilings are imposed on the size of concessions, depending on the type of land and use. But concessions granted to private companies and cooperatives have no limits. A provision in the Law requiring that concessions be

cultivated within two years to demonstrate use of land is discouraging fallow and cultivation of forage crops, and encouraging permanent cultivation and deforestation. Farmers are reluctant to temporarily lend or rent out land for fear that it may be claimed by the renter as unused land.

Conflicts between state tenure and customary tenure were relatively innocuous as long as demand for land remained low, and land resources remained relatively abundant. However, demand for land, particularly high quality land in Somalia's river valleys, has been rapidly rising ever since the early 1980s. Meanwhile, the supply of higher quality land is being depleted as land use is pushed nearer the limits of potential irrigable land. The outcome has been a shrinkage of unclaimed land, growing scarcity of higher quality land, and increasing land value.

At the time the Agricultural Land Law was passed in 1975, it would have been very difficult for lawmakers to foresee the land pressures and tenure problems that Somalia is facing today. It is not surprising that land legislation is weak in dealing with problems of land scarcity, or that it has become outmoded with time. The GSDR has recognized this problem and is now committed to changing its land tenure policies in accordance with current social and economic realities. It is moving rapidly to review its existing land legislation, and to prepare an Action Plan for implementing these reforms for irrigated lands.

II. Tenure Reforms Conditional Under ASAP II

The preparation of an Action Plan to improve land tenure policy and administration of irrigated lands has been set as a pre-condition to the second tranche of the Agricultural Sector Adjustment Programme II (ASAP II), financed by IDA. The Bank and the GSDR now plan to meet in November/December 1989 to exchange views on the extent to which this pre-condition has been met. Two outputs will need to come out of this meeting: (1) an agreement that the GSDR has prepared an Action Plan satisfactory to the Bank (IDA); and (2) clear indication that the Plan has official GSDR approval.

III. Criteria for an Acceptable Action Plan

The criteria for an acceptable Action Plan, as agreed upon by the GSDR and the World Bank, are that it:

- i. adequately safeguards traditional rights;
- ii. provides security of tenure;
- iii. enhances transferability and liberalizes access to land;
- iv. protects the rights of spouses;

- v. is enforceable; and,
- vi. prescribes an administrative framework.

The GSDR considers a program of land registration to be an important precondition for economic development in Somalia's two river valleys. Land registration will also be important for rangeland areas where conflicts over land rights, particularly over areas being enclosed for grazing and cultivation, are increasing due to population growth, rising land values, and borehole development (Behnke 1988). The criteria for an acceptable plan are that it:

- vii. is simple, rapid and easy to understand;
- viii. provides landholders with clear title to land;
- ix. is cost effective and can be funded from the ordinary budget; and,
- x. provides records and information which are easily accessible to landholders and others with bona fide interest.

IV. Composition of Team and Program of Mission

As an initial step towards preparing the above Action plan, the GSDR asked the U.S. Agency for International Development (USAID/Somalia) for technical assistance in advising the GSDR on land policy reforms. USAID/Somalia and the Science and Technology (ST/RD) and Africa Bureaus of USAID/Washington have been funding a program of research on land tenure security and registration in Somalia since January 1987. This research program has been carried out by the Land Tenure Center, University of Wisconsin. Based on its past investment in land policy research, USAID/Somalia was well positioned to assist the GSDR with its request.

USAID/Somalia in cable 03378 to the ST/RD Bureau of USAID/Washington in March 1989, inquired about the availability of Mr. Michael Roth from the Land Tenure Center for a mission to Somalia. Because of the need to identify specific policy reforms by June 1989, the mission would need to complete the in-country portion of its work in May. A return cable from ST/RD (State 092813) in March, confirmed the availability of Mr. Roth. In addition, because of the nature, urgency and importance of the work, ST/RD in consultations with the Land Tenure Center, suggested that the mission also include an expatriate adviser with strong background in land legislation and registration, and a Somali lawyer for assistance in legal translations and for work on procedures required for enacting legislative reforms.

The mission as finally composed comprised three members:

Mr. Michael Roth, chief of party and land resource policy specialist, is an agricultural economist with the Land Tenure Center, University of Wisconsin. Mr. Roth has supervised the Land Tenure Center's research on tenure security and land registration in Somalia since January 1987.

Mr. J.C.D. Lawrance, land legislation and registration adviser, was formerly Land Tenure Advisor, Overseas Development Administration. He has served as land tenure adviser on missions for the World Bank in Kenya, Ethiopia, Zambia and Thailand.

Mr. Ahmed Sheikh Mahamood, Advocate, was formerly State Attorney of Somalia and is now a private lawyer.

In addition, a number of other individuals deserve special mention. Mr. Mark Marquardt, currently adviser to the MOA on the design and implementation of a land registration program under the USAID Shabelle Water Management Project, and employee of the Land Tenure Center, provided valuable and substantive comments on all aspects of this mission's work. Mr. Michael Fuchs-Carsch, Agriculture Office, USAID/Somalia and Vice Minister Noor of the MOA, deserve special credit for helping to organize the work of this mission, and for comments on preliminary drafts of this report. Valuable comments and suggestions were also provided by Catherine Besteman of the University of Arizona, and Peter Hazell and Jack van Holst Pellekaan of the World Bank.

Mr. Roth and Mr. Lawrance arrived in Somalia May 12 and departed May 31. This final report was completed July 7 and copies sent to USAID/Somalia immediately thereafter. During the time spent in Somalia, the mission visited the offices of USAID/Somalia, Vice Minister of Agriculture, Minister and Vice Minister of Finance, Directorate of Irrigation and Land Use within the MOA, the Central land registry, the district land registry at Qorioley, the regional land registry at Genale, the EEC, Somali Development Bank, Ministry of Jubba Valley Development, the FAO, and FAO National Water Center.

Visits were also made to the World Bank and GTZ. The World Bank Resident Representative was away from the country at the time of this mission, although personnel from the Land Tenure Center consulted with Jack van Holst Pellekaan, the team manager for ASAP II in the World Bank/Washington, both before and following the mission's visit to Somalia. Attempts were also made to visit with personnel from GTZ because of their interest and involvement in land registration in Somalia. Unfortunately, representatives from GTZ were away from Mogadishu during most of this mission's visit to Somalia, and were fully occupied with a workshop during the last few days of this mission's stay in Somalia. A schedule of meetings and contacts is provided in Annex A. It is of course not a complete list as a number of informal discussions were held with officials throughout the consultancy.

V. Terms of Reference

The three tasks identified by USAID/Somalia as the terms of reference for this mission are contained in Annex B. However, after consulting with Michael Fuchs-Carsch of USAID/Somalia, these tasks were redefined as the following:

1. Make specific policy recommendations on changes to Land Law 73 and associated legislation pertaining to land policy on irrigated lands;

2. Make specific policy recommendations on changes in land registration legislation and registration procedures;
3. Design a program for assisting the GSDR with drafting and implementing new land legislation including registration under (1) and (2);
4. Outline in brief terms an ongoing program of adjudication and registration following enactment of land legislation and registration legislation under (3).
5. Outline in brief terms a program of research for evaluating impacts of the above reforms on beneficiaries and land markets;
6. Outline in brief terms a program of research on land tenure in rainfed areas and rangelands to serve the basis for drafting new legislation and for new land policy reforms in these areas;

Chapter 1 of this report is introductory. Chapter 2 contains a review of land tenure policy and recommendations for legislative changes in the Agricultural Land Law. In Chapter 3, an assessment is made of provisions related to registration of concessions under the Agricultural Land Law, and of registration procedures. It further explains a well-tried system of land registration based on systematic adjudication which is recommended for the future. In Chapter 4, an Action Plan is proposed for drafting and enacting a new or revised Agricultural Land Law, an Adjudication Law, and a Land Registration Law, based on the recommendations put forward in Chapters 2 and 3. This Action Plan covers the period May 1989 to August 1990. Chapter 5 briefly outlines a longer term program of research and land registration for 1990 and beyond. Its only intention at this point is to provide the MOA and donors with an idea of the longer term direction of current legislative reforms and possibilities for donors assistance. A subsequent mission will be required for the design of this activity. Annex C contains English translations of all agricultural land legislation and Circulars cited in this missions report.

CHAPTER 2

RECOMMENDED POLICY REFORMS IN LAND LEGISLATION

I. Introduction

This chapter first presents an overview of the agricultural land legislation of Somalia and some of the Circulars that have been issued to implement that legislation. Reasons are then presented to explain the persistence of land use and allocation patterns under customary tenure, despite certain restrictions on those patterns under statutory law. In the final section, land tenure policies and issues related to the existing land legislation are reviewed and evaluated. These are grouped under the subject areas: (A) Inconsistencies between law and circulars; (B) Loss of customary rights under statutory tenure; (C) Fixed term concessions; (D) One family-one concession; (E) Land ceilings and allocation; (F) Land transactions and mortgage; (G) Land taxes; and (H) Fallow and natural resource management. The specific recommendations and options for policy reform made within each of these sections comprise the legislative reforms in the proposed Action Plan in Chapter 4.

II. Overview of Land Legislation and Circulars

The principal legislation governing agricultural lands in Somalia today is the Agricultural Land Law No. 73 of 21 October 1975 (Annex C). This Law belongs to a generation of land statutes passed by African states of moderate socialist persuasion in the late 1960s and the 1970s (Bruce 1989).¹ Article 1 of the Law provides definition of terms. Land means any land that is farmed. Concession means the permission to use agricultural land. Certificate is a document certifying the right to use the land. Family refers to a household comprising the husband, wife and children who have not reached the age of maturity. The Family refers to the person responsible for management of the farm under concession and for the payment of taxes on the farm.

The Law asserts state ownership of all agricultural land (Art. 2), but provides for the issuing of concessions to Cooperatives, State Farms, autonomous agencies, Municipal governments and private farmers, whether an

1. Bruce, John, "The Agricultural Land Law, 1975: Review and Policy Issues." Land Tenure Center memorandum. March 8, 1989.

individual, family or company (Art. 4). Responsibility for administering land in accordance with the Law is vested in the Minister of Agriculture (Art. 3). Those holding concessions prior to this Law were given six months from the date of enactment to reregister the land as a new concession. Any concession not reregistered within this six month period was cancelled (excluding Cooperatives established under Law No. 40, 10 April 1973) (Art. 5).

Concessions are limited under Article 6 to one per family or individual; no concessions can be granted to absent persons. The duration of a concession for private farmers is 50 years renewable, but Cooperatives, State Farms, autonomous agencies and local governments have no time limits (Art. 7). Land "ceilings" on concessions are also imposed (Art. 8). An individual or family can obtain a concession up to 30 hectares of irrigated land and 60 hectares of rainfed land. The ceiling increases to 100 hectares for an individual or family with a banana plantation. State farms, Cooperatives, autonomous agencies, Municipal governments and private companies are exempted from these "ceilings."

The concession holder under Article 13.A is given the right to cultivate the land, build a home or other buildings on the land, raise livestock, or contribute the land to an agricultural cooperative upon joining the cooperative. The concession guarantees a person's rights to production from the land, and the right to defend these rights in the courts and other state offices (Art. 13.B). Concession holders may borrow money from banks based on the value of the farm (13.B.4) and repatriate earnings from the farm in the case of foreign ownership (13.B.5). Concessions cannot be transferred, sold, or leased, unless the concession holder suffers permanent injury, in which case land can be transferred to the State or heirs (Art. 12 and 14). Upon death of the concession holder, the concession devolves to those entitled to inheritance (Art. 16). However, Articles 12 and 14 explicitly prohibit partitioning of a concession.

Every user of land, whether a concession holder or not, is obliged to pay land taxes (Art. 17).² Such taxes are to be levied on a per hectare basis according to fertility of the land.

The government reserves the right of eminent domain allowing for expropriation of excess land (Art. 9) and expropriation for the general good (Art. 10). The state also stipulates conditions for revoking a concession, in effect expropriating land: (a) when the user contravenes the Law or government regulations; (b) when the inheritor of the concession holder has no desire to cultivate the land; (c) when the concession holder fails to cultivate the land for two years after obtaining the grant; (d) when the concession holder transfers, sells or leases the land to another; or (e) when the concession holder otherwise fails to fulfill the conditions of the concession (Art. 15).

2. In Article 1, the land is defined as any type of land that is farmed. It would appear then, by this provision, that idle or unused land, or land used for ranching, is not taxable, depending on how land use is defined.

The Law empowers the Chairman of the Supreme Revolutionary Council, after consultations with the Secretary of the Ministry of Agriculture, to issue Government regulations further explaining the Law. One decree of 16 October 1976 concerning agricultural land has been issued. The Minister of Agriculture has also issued a number of Circulars that define and clarify operating procedures for implementing the Law (see Annex C).

The Decree of 16 October 1976, specifically stipulates that any land not used for farming or livestock rearing for a period of two years can be expropriated and redistributed by the state (Art. 6). Upon repossession, the Decree provides for compensation, but only for improvements in the land (Art. 7). Taxes for ordinary farmers and Cooperatives are Sh. 5 per hectare per year for rainfed concessions, and Sh. 10 per hectare per year for irrigated land (Art. 12). Special companies and individuals who grow perennial crops must pay taxes of Sh. 30 per hectare for rainfed land and Sh. 50 per hectare for irrigated land. Tax revenue from Cooperatives and individual farmers is earmarked to go to the Municipal Treasury. Tax revenue from all other sources is earmarked for the Central Treasury (Art. 12).

Circular of 24 May 1987, Guidelines for the Giving of Farm Land, in reference to two other Circulars (WB/XW/F-95/157/87 of 16 February 1987 and WB/XW/F-95/541/87 of 12 March 1987) reiterates that priority will be given to registering small scale farmers with land up to 12 hectares (Para. 15). It adds the condition that bush land cannot be held in reserve for a village, community or person unless in accordance with Land Law No. 73 (Para. 19). It further stipulates new guidelines for registration of farmland, elaborated in Chapter 3. Land "ceilings" under Land Law No. 73 are retained, with one minor alteration: the 100 hectare restriction for banana plantations is expanded to include fruit trees as well. Concessions are prohibited on Rangelands because of threat of desertification (Para. 14), although special provisions are given for concessions of up to 0.5 hectares within town limits for vegetable production. Paragraph 17 relaxes restrictions on land transfers; concessions may be transferred by the Ministry of Agriculture once two parties reach an agreement on terms of transfer and provide a notarized agreement. Settlement of claims over farmland is the responsibility of claims committees that already exist at district, regional and national levels (Para. 16), although it is not clear how this provision relates to similar powers given to ordinary courts under Article 24 of Land Law No. 73.

III. Persistence of Customary Patterns of Land Use and Allocation

An apparent inconsistency underlies much of the contemporary literature on land tenure in Somalia. Land Law No. 73 has the aim of replacing customary tenure with statutory tenure, and the Law forbids transactions in land and multiple parcel holdings. Yet, the majority of land in Somalia today is de facto customary tenure; multiple parcel holdings are pervasive; and many farmers engage in selling, renting, giving and borrowing of land.

Farmers disregard the Law because the above provisions fail to accommodate the economic and social realities of land use and allocation in Somalia: (1) The cost of failing to abide by the Law has been minimal because

of the predominance of customary tenure, and because of high costs incurred by the State in monitoring and enforcing the Law. (2) There are incentives to disobey the Law because restrictions on land use and allocation--single concession per family or individual, limited term of concession, restrictions on land transactions, and the two-year provision stimulating cultivation of land to demonstrate use--impose economic costs that reduce household food security and income. (3) An awareness is also emerging within the GSDR that current land legislation is too restrictive. Subsequent Circulars have attempted to relax some of these restrictions as in the case of land transfers (e.g. Circular of 24 May 1987).

The greatest problems arise at the interface of the statutory and customary systems of tenure when, as discussed later on, land registration has been used by outsiders as a means for gaining access to land. This problem is most severe in areas of commercial agriculture, and areas of high agricultural potential, including most of the Shabelle and Jubba river valleys. Most of the problems discussed in this paper pertain to these two regions. Yet, land tenure is dynamic, and tenure problems will spill over into rainfed and pastoral areas as land scarcity and land values in irrigated areas continue to increase, as urban centers grow, as capital investment and improvements in agricultural technology increase returns in dryland areas, or as improved incentives in the livestock sector increase returns to ranching.

IV. Review of Land Policy and Recommendations for Legislative Reforms

This section deals with land tenure problems and issues, primarily in the irrigated areas of Somalia.

A. Inconsistencies Between Land Law No. 73 and Subsequent Circulars

Even though Land Law 73 makes provisions for the Ministry of Agriculture to pass regulations to qualify or explain the law, the legality of Circulars in the eyes of the courts remains in question. Under Land Law 73, for example, registration of concessions applies to all agricultural lands; all land transfers with the exception of inheritance are prohibited (Art. 12 and 14); land ceilings of 30 hectares of irrigated land and 60 hectares of rainfed land are imposed on private landholders (Art. 8); and the courts are given authority to adjudicate on suits where the state is not a party (Art. 24). The Circular of 24 May 1987, however, prohibits giving of concessions in the area of rangelands (Para. 14); makes provisions for transfer (i.e. sales) subject to the approval of the Ministry of Agriculture (Para. 17); imposes special ceilings on lands under vegetable production in cities and towns outside irrigated areas (Para. 14); and gives district, regional and national claims committees the authority to settle claims over farm land (Para. 16). It is perfectly normal for the MOA to issue circulars from time to time as long as they do not conflict with provisions in the Law. However, in the event that future legislative reforms are undertaken:

1. Any new or amending legislation should resolve ambiguities and inconsistencies between Land Law 73, Decree of 16 October 1976, and subsequent Circulars.

B. Loss of Customary Rights Under Statutory Tenure

Registration in Somalia is sporadic. The MOA has established district and regional registries to facilitate registration of land, but it is up to the landholder to initiate the application process, to follow through on the various procedures, and to pay the various costs involved.

Research by the Land Tenure Center (see Roth et al. 1987, and Besteman and Roth 1988) indicates that many farmers do not register land because the costs of registration are too expensive, the procedures are too tedious and complicated, or they are unaccustomed to dealing with government administration and bureaucracy. While the costs of registration are in principle free, the farmer in practice must pay for typing of the application, for transport to take various officials to the field, for the formal drawing of a plan (map), and sometimes for trips to Mogadishu to follow up on the application. The cost of registration is difficult to estimate, but the cost for the plan alone can reportedly be as high as Sh. 10,000 to 15,000. Since these costs are levied on a parcel basis, registration entails clear economies to size, with large farms paying lower costs per hectare than small farms.

But, these factors alone do not entirely explain the low level of registration among small to medium farmers. The limited resources of MOA registries impose constraints as well. Low pay scales within the MOA have provided inadequate incentives to get sufficient numbers of well trained staff into the field.³ Because of lack of vehicles, fuel, paper, stationery, and essential facilities, registries have had to shift registration costs to landholders. These resource constraints prevent the MOA from undertaking systematic and widespread registration. Effectively, the MOA is constrained in the number of concessions it can issue, resulting in rationing of concessions. Concessions are allocated to those who are best able to pay the economic rents associated with constraints faced by the MOA. Not surprisingly it is the larger farmers, the more affluent, and officials more knowledgeable about administrative procedures that normally obtain concessions (Besteman and Roth 1988).

Land registration has also been saddled with competing objectives. Registration should only serve to record the rights and limitations in land, not to alter those rights. But any Somali citizen has the right to apply for a concession whether they are using farm land or not, by contacting the District Coordinator (Para. 1, 24 May 1987 Circular). Sometimes, persons have contacted the central office or Minister directly, and an order was issued to the District Coordinator to find land. The few Coordinators we have spoken with are sensitive to landholders' customary rights. But the level at which

3. At the time of this writing, the MOA and the Ministry of Finance (MOF) had worked out an agreement for raising pay scales within the MOA.

persons have requested land, and political pressures, have made it difficult for Coordinators sometimes to refuse allocations of land that rightfully belong to another.

These problems would not be severe if the effective demand for agricultural land were low. However, demand for irrigable land has risen sharply in recent years due to: (a) inflation and uncertainty in the Somali banking system which have eroded the expected real value of liquid assets; (b) an increase in real cereal prices since the early 1980s; (c) the imposition of livestock quarantine measures on exports of Somali livestock, decreasing relative returns in the livestock sector; (d) capital investment by donors in the riverine areas, increasing expected returns to land; (e) low returns in manufacturing, and service sectors; and (f) low pay scales in the public sector. Agricultural land, simply stated, is the best investment in Somalia today.

The combination of the above factors--small farmer constraints in registering land, the necessity for the MOA to occasionally find land for Somali citizens, title rationing constraints, and the sharp increase in demand for land--have sometimes resulted in registration reallocating land rights rather than simply recording them. Effectively, the law enables a shift in property rights from landholders under customary tenure to those (often outsiders) seeking to acquire land by obtaining a concession. There is clear evidence in both the Shabelle and Jubba areas that smallholders have lost land to outsiders through this process. Land holders who have lost land can take their claims to court, but without explicit recognition of customary rights, they have tenuous legal grounding in the claim. Further, under current law, the most that landholders can hope for in compensation is the value of labor in clearing the land plus the value of capital investments made in the land.

This mission has been informed by the MOA that many of these problems have now been corrected. Directives to allocate concessions are no longer issued by the MOA to the Coordinators. The rights of farmers actually cultivating the land are now being protected. The Circular of 24 May 1987 gives priority to the registration of farms up to 12 hectares in size. However, these steps only validate the rights of farmers to land having been registered under statutory tenure. No provisions are contained in the Law or subsequent decrees that ensure the rights of those who do not register their land. The fact that problems of land grabbing have occurred in the past suggests that reforms are needed to prevent future reoccurrences. The following policy changes are recommended:

1. Explicitly write into the Law provisions stating usufructuary rights as the basis for determining land rights.
2. Establish or confirm (current language in the Law is unclear) terms of compensation for farmers losing land as the immediate result of state expropriation for establishment of State farms, Cooperatives, autonomous agencies, or for municipal use. Compensation should be based on some measure of assessed land value (use value of land and capital assets in land discounted by an appropriate interest rate) rather than simply the value of investments having been made in the land as the Law now reads.

3. Provide land registration henceforward only on a systematic basis, and eliminate sporadic registration completely (see Chapter 3). Registration of land should be decoupled from GSDR policies to allocate land to applicants. Augment the resources of the MOA to enhance systematic land adjudication and registration. Raise pay scales within the MOA to enable it to recruit and retain qualified personnel, and to increase work incentives.
4. Increase the direct cost of holding wealth in land by increasing land taxes (see section G).
5. Increase the opportunity cost of holding wealth in land by relaxing financial market imperfections (improve reliability of banking institutions, increase the real rate of return on financial assets) and by increasing the returns on investment in manufacturing and service sectors. These reforms are beyond the MOA's capacity to change by itself. Yet, these policy changes are crucial to lessening the speculative demand for agricultural land that will act to undermine the reforms in (1) to (4) above.

Once land has been systematically registered, control of land rights is transferred to the MOA under statutory law. Yet given that land registration will require years until completion, an important question remains. How should land rights be determined outside areas having been adjudicated in the interim? It is recommended that:

6. Until such time that systematic adjudication and registration takes place, land use and allocation should be the prerogative of customary authorities in accordance with customary law and practice. Settlement of any disputes over rights to land is the responsibility of local authorities with ultimate recourse to the courts.

One cannot put into the law specific powers for traditional authorities to control land allocation as a means to curb land grabbing, as has been suggested by some during the course of this mission. Nor should statutory tenure be abandoned completely. As population and land value increase, customary tenure systems can weaken, resulting in more disputes and litigation, declining tenure security, land over-use and erosion from communal management, and increasing fragmentation. Some villages or authorities may try to reserve more land than they are entitled under the guise of communal or ancestral lands, or restrict transfers of land to outsiders even on remunerative terms. Traditional authorities can also be corrupted. This by no means implies that customary tenure systems in Somalia share these characteristics. But they do illustrate the difficulties inherent in trying to merge customary and statutory systems of tenure.

C. Fixed Term Concessions

Concessions for private use are valid for 50 years and renewable, while concessions for Cooperatives, autonomous agencies, and Municipalities have no time limit. Two problems are apparent: (a) tenure insecurity arising from concerns whether the lease will indeed be renewed; and, (b) some of the most

profitable investments in agriculture--mango, grapefruit, and lemon trees--have productive lives greater than 50 years. If there are uncertainties over renewal of a concession (this could not be ascertained), the term of lease for private landholders is inadequate to capture the full stream of income from these investments. Other investments requiring long planning horizons include terracing, irrigation infrastructure, wells, and buildings. The language in the Law concerning when concessions start and finish is unclear. For example, does the lease last 50 years from the date of issue, regardless of whether the parcel changes hands during the period, in which case purchasers of land after issuance of lease face an even shorter planning horizon? Or, does the lease recommence after each transfer? Three policy options may be considered when re-drafting land legislation:

1. Although all land is the property of the state, give concession holders exclusive rights of occupancy for their land with all rights in that land for an unlimited term, subject to conditions provided by the Agricultural Land Law.
2. Lengthen the term of the concession, for example to 99 years, to provide a longer planning horizon.
3. Start the term of the concession anew after each transfer.

Option (1) is preferred because it provides the greatest security of tenure and reduces the potential administrative costs of the GSDR in managing terms of concessions.

D. One Family-One Concession

Article 6 of Land Law No. 73 allows only one registered concession per household, despite the fact that the combined area of all parcels for the majority of smallholders is less than the 30 or 60 hectare restriction specified in the Law.⁴ In the Lower Shabelle, for example, farms average 1.4 parcels of land with a mean farm size of 2.2 hectares (Roth et al.). Farmers in the Middle Jubba farmed 3 parcels, maintaining holdings on dhasheeg land, river bank land, and upland soils to manage the risks associated with frequent drought and floods (Besteman and Roth 1988).

The one family-one concession restriction, although not enforced, fails to recognize the importance of the spatial distribution of land for minimizing ecological risk, and for food security. It restricts a family from gaining access to land to meet seasonal needs (e.g. dhasheeg land during droughts, or upland soils during floods), and to meet the needs of a growing family. It also provides a legal loophole allowing outsiders to gain access to land if

4. There is some ambiguity on this point. Concession is poorly defined in the Law, and one could interpret a concession as a farm comprised of multiple parcel holdings. Nevertheless, the fact that there is ambiguity suggests that clearer language is needed to explicitly allow for multiple holdings.

surplus parcels are expropriated and reallocated under provisions in the Land Law (Articles 6 and 15.b). It further risks reducing the farm to an uneconomic unit in the case that surplus parcels are expropriated by the state.

Smallholders have been circumventing the Law through lack of disclosure, or registering parcels in different family members' names. In principle, the one parcel restriction combined with land ceilings provides some disincentive against excessive land speculation and accumulation. But, in practice, the State incurs very high information costs in monitoring allocations and in curbing such problems, to such an extent that enforcement at current resource levels is impossible. The following options would help relax the above constraints, improve efficiency of the land market, and reduce the future administrative costs of the MOA that would arise from having it enforce the provision:

1. Remove restrictions on number of parcel holdings, in effect allowing a family to cultivate as many parcels as it wishes.
- or;
2. Depending on the decision made concerning section (E) below, remove restrictions on the number of parcel holdings, but the combined area of all parcels farmed by the family should not exceed the ceiling provided for by law.

E. Land Ceilings and Allocation

A concession for an individual or family is 30 hectares of irrigated land and 60 hectares of rainfed land. The ceiling for banana plantations is 100 hectares. State farms, Cooperatives, autonomous agencies, and private companies have no limits (Article 8).

Provisions in the Law for one family-one concession and for land "ceilings" appear to have been aimed at ensuring equitable distribution of land among the Somali people. The rationale for excluding private companies from any ceilings is less clear, although the legislation appears to have resulted from sentiments in the 1970s that smallholder agriculture was unproductive and inefficient, and corporate agriculture offered the best prospects for improving economic growth in agriculture. Regardless of the motivation, one or more individuals can exceed these "ceilings" in practice by forming a private company, essentially creating a legal loophole. A review of the central land register in Mogadishu reveals the extent to which these ceilings have been circumvented (Table 2.1):

- i. A large proportion of registrations to date have been by private companies. Land may be registered by an individual, private company (Shirkadda), Cooperative (Iskaashatadda), or religious commune (Xerta). Land registered in an individual's name may either indicate an individual holding or a company holding since a company can be registered in an individual's name. Based on a random sample of entries drawn from the central registry in

Table 2.1
Distribution of Concessions by Type of Registration

Type of Concession: Number and Size	Frequency/Size
Individual:	
Number of Concessions	551 (76.3) ^a
Number of Concessions Listed as 30, 60 or 100 hectares in Size	107 (19.4) ^b
Mean Size of Concession (ha)	26.4
Private Company:	
Number of Concessions	170 (23.5) ^a
Number of Concessions Listed as 30, 60 or 100 hectares in Size	61 (35.8) ^b
Mean Size of Concession (ha)	194.0
Religious Group:	
Number of Concessions	1 (0.1) ^a
Number of Concessions Listed as 30, 60 or 100 hectares in Size	0 (0.0) ^a
Mean Size of Concession (ha)	1.2
Total:	
Number of Concessions	722 (100)
Number of Concessions Listed as 30, 60 or 100 hectares in Size	168 (23.3) ^a
Mean Size of Concession (ha)	65.8

Source: Ministry of Agriculture, Directorate of Irrigation and Land Use, 1989. Statistics were calculated from a random sample of 750 entries out of the central land registry, starting at entry 5,619, and selecting every 10th entry up to 13,129, the last entry in the register. This period covers roughly 1980-81 up to present. After finding sections of missing numbers in the registry, the total sample size dropped to 722.

- a. Denotes percentage of total concessions (722).
- b. Denotes percentage of individual concessions (551).
- c. Denotes percentage of private company concessions (170).

Mogadishu (10 percent sampling frame), 76.3 percent of concessions registered from about 1980-81 to present have been by individuals, and 23.5 percent by private companies.

- ii. Concession sizes for private companies are considerably larger than for individual concessions. Private companies in the sample average 194.0 hectares per concession, while concessions of individuals average 26.4 hectares per concession. Both of these mean farm sizes are considerably in excess of 3.8 hectares, the average farm size in Somalia (Ministry of Agriculture, Department of Planning and Statistics 1989).
- iii. A fairly sizable proportion of the concessions registered are round figures of 30, 60 or 100 hectares. Measurement of the parcel during adjudication would generally result in an odd fraction for area in the register unless land is marked out by survey prior to acquisition as in the case of opening new lands. But, the registration process can be reversed. An order from Mogadishu may be issued to find land for some person; an area of land equivalent to the "ceiling" is requested; and that area is mapped out and the area entered in the register. While not a precise measure of land registered in this manner, the data suggest widespread use of land registration as a means to gain access to land. Of the total sample of 722 entries, 23.3 percent are listed precisely as 30, 60 or 100 hectares in size. These precise areas were more common for private companies (35.8 percent of the total concessions) compared with 19.4 percent for individual concessions.
- iv. A number of concessions greatly exceed 100 hectares. Out of a total of approximately 7,220 registrations viewed from the present dating back to 1980/81, 54 concessions exceeded 500 hectares in size. Of this figure, 40 concessions fell in the range of 500-1,000 hectares, 8 in the range of 1001-2,500 hectares, 5 in the range of 2,501-5,000 hectares, and 1 farm 7,000 hectares.
- v. The majority of concession holders are men. Out of the total number of individual concessions, 92.7 percent were registered in the names of men and 7.3 percent in the names of women.

The inclination is to impose further restrictions to curb land accumulation. But such restrictions create further inefficiencies in the land market, by restricting the larger efficient producers from gaining access to land.⁵ Several policy options should be considered:

1. Eliminate "ceilings," impose taxes on land to increase the costs of idle or unproductive holdings, and provide stricter enforcement of repossession in the event that taxes are not paid (see section G).

5. Smaller efficient producers would not be constrained by the land ceiling. Large "inefficient" producers could also exceed the ceilings but at higher costs if taxes are imposed on the basis of land area (see section G).

2. Eliminate restrictions on land transfers to increase the opportunity cost of holding on to idle, unproductive landholdings.

Options (1) and (2) together are preferred because they offer the greatest flexibility for transferring land to the most productive users, without imposing restrictions on land size. However, there is an alternative argument that because of market imperfections (land concentration, political or economic might) there is economic justification for ceilings to guard against speculation and accumulation. Under these situations, land taxes alone may be insufficient to dissuade land accumulation. Land taxes in reality may be poorly enforced. There are also very productive lands in the Jubba valley that are unclaimed or claimed under very tenuous customary rights. If perceptions of economic returns greatly exceed the realizable returns from investment in the valley, it will be very difficult to curb speculation in the short to intermediate run through taxes alone. In the longer run, however, market forces should prevail leading to down-sizing of larger unproductive farms. Still the MOA may prefer to:

3. Impose "ceilings" on private companies as well as private landholders to disable such companies from claiming large tracts of land. Setting "ceilings," however, requires prior knowledge of the optimal size of landholdings in agriculture. "Ceilings" set below the "optimal" size (which will vary by crop) may result in economic inefficiencies from higher costs of production.

Recent history in Somalia offers very little guidance on whether ceilings are necessary. There has certainly been land speculation and land grabbing in the river valleys. However, these problems have primarily been due to a registration system that allowed outsiders to acquire large concessions, sometimes displacing smallholders, at little or no cost. The State effectively subsidized the acquisitions. If the present system of sporadic registration is eliminated, this means of acquiring land will disappear as well, and prospective landholders will face higher costs in settling and claiming land (e.g. costs of clearing of land, cultivating or grazing the land, and living in the area to reinforce ones claims).

However, it needs to be recognized that the effects of removing land ceilings are unpredictable. If doubts persist, ceilings should be imposed at a sufficiently high level to permit economies of size, but low enough to prohibit excessive accumulation. Such ceilings would have to vary by land type (irrigated, rainfed and rangelands) and perhaps even by crop (e.g. cereals and perennial tree crops). Achieving these criteria will not be easy.

F. Land Transactions and Mortgage

According to Article 14.3 of Land Law No. 73, concessions cannot be transferred, sold, or leased to another, unless the concession holder suffers permanent injury (Article 12). Article 13.B.4 entitles the concession holder to borrow money from banks based on the value of the farm. But, the utility of land as collateral, when transfer is prohibited, brings to question the value of registered concessions to creditors. These restrictions on transfers were subsequently relaxed in paragraph 17 of the Circular of 24 May 1987.

Concessions may now be transferred by the MOA once the two parties reach an agreement on terms of transfer and have the agreement notarized. But, as mentioned in section (A) the legal validity of Circulars is highly uncertain.

Land transactions under customary tenure are common, particularly cash rental and buying and selling of land in the Shabelle valley, and giving and borrowing of land in the Jubba valley. Relaxing restrictions on land transfers in the land law would:

- i. provide more efficient users with the legal means to acquire land, and less efficient users with the means to dispose of it on mutually agreeable terms;
- ii. provide farmers greater flexibility to meet seasonal or temporal land needs through borrowing or renting-in, or to employ seasonally idle land through giving or renting-out;
- iii. permit parents greater flexibility to acquire land for their sons' inheritance;
- iv. provide landholders with greater flexibility to adjust the size of their landholdings (either larger or smaller) according to economic forces;
- v. facilitate mortgage for credit.

Because of the restrictions in the Agricultural Land Law on transactions, we understand that the Courts have been turning to the 'Law Relating to the Transfer of Immovable Property' of 15 December 1986 as the legal basis for deciding on transfers of land.

The Somali Development Bank, which provides most of the agricultural credit in Somalia, requires registered land as collateral for loans. But not all land is of equal value.⁶ The highest preference is for land under perennial crops (mango, grapefruit and lemon). Land under bananas provides reasonable security as long as the area is large. Land under cereals may be suitable security as long as the season is good; ironically, credit is normally required early in the season before crop success is known with certainty, although such land would be suitable credit for other loans, in agriculture or elsewhere. If land offered as security is not sufficient, the bank will accept other houses, buildings, or land, particularly urban land. As expected, most bank credit in agriculture goes to plantations and to farms greater than 30 hectares in size.

Land is the most important form of security in the eyes of the Bank. But more important than the land itself is the value of investment on the land. For perennial crops like mango, grapefruit and lemon trees with life spans of

6. These effects reflect the outcome of current Law with restrictions on land transactions in place. With changes in transferability of land, the suitability of land as collateral will change accordingly.

50-100 years, the trees or production potential of the trees command high security value. When the bank takes over a farm in case of loan default, it has reasonable security that money will be repaid from income of current investments. Security of land for vegetables and cereal crops is said to be quite low; in case of crop failure, the bank incurs much higher costs in assuming management of the land for repayment. Thus, in the short to intermediate term, registration of land is not likely to have a large effect on the supply of credit in agriculture, until such time that land markets emerge and land values rise to convert land as a fixed asset into a financial asset.

The following recommendations are made in relation to transactions (e.g. transfers, leases, loans for credit, partitions) in land:

1. Eliminate all restrictions on transfers in land. There would be no need for the MOA to authorize transfers, thus reducing budget requirements. Any lingering concerns over land accumulation through transfer should be addressed through ceilings and/or progressive taxation, not through restrictions on transfers.
2. Eliminate all restrictions on leases in land. No form of leasing is currently allowed in the Law.
3. Current provisions allowing for mortgage of land as collateral for credit should be retained and facilitated, although credit demand and supply in the short to intermediate run will likely remain quite unresponsive. These mortgages should be recorded in the register. Any mortgage not so registered will be null and void.
4. Eliminate restrictions on partitioning of land that would provide the mechanism for larger, unproductive farms to disintegrate over time as a result of taxation, or otherwise. Eliminating restrictions on transfers and leases in (1) and (2) should help offset any threat of excessive sub-division.
5. All transactions should be normalized and simplified.

G. Land Taxes

Policy options (B.4), (E.1) and (F.1) above use land taxation as a means for implementing land policy. Land taxes also provide a revenue source for the government. Taxes on external trade are administratively easiest for the State to implement and enforce because trade is funneled through easily monitored points of exchange (roads at border crossings, airports, and seaports). But, high taxes on exports and imports stifle trade and have negative welfare impacts on producers and consumers, respectively. The income tax in principle provides the broadest revenue base and is the most equitable, but success depends on the State's ability to identify and verify income. A land tax is a compromise. It is a fairly broad based tax. Yet, linking the tax with a registration program reduces the administrative costs of identifying tax payers and levying charges.

Even though land taxes are easier to administer, governments often prefer taxation on the basis of output or income because of risk. While land taxes remain fixed in the face of ecological variations (e.g. drought), output and/or income taxes adjust positively with changes in output and income levels. Article 12 of the Decree of 16 October 1976 already provides the legal precedent for land taxation in Somalia. Taxes must be paid once a year on agricultural land granted by the Government. Ordinary farmers and Cooperatives are required to pay Sh. 5 per hectare of rainfed land, and Sh. 10 per hectare of irrigated land (from rivers). Special companies and individual farmers who plant perennial crops (bananas, grapefruit/lemon, papaya/mango, and the like) must pay Sh. 30 per hectare of rainfed land and Sh. 50 per hectare of irrigated land. Taxes paid by ordinary farmers and Cooperatives go to the treasury of the Local Government in which the land is situated. Taxes collected from special companies and individual farmers who plant perennial crops are payable to the state treasury.

These tax schedules are grossly out of date because they have failed to keep pace with inflation. According to one measure of inflation--the GDP deflator--prices increased at an average annual rate of 12.4 percent over the period 1970-80, and 45.4 percent between 1980-86 (World Bank 1982, 1988). Meanwhile, tax rates have remained fixed in terms of 1976 shillings, implying a substantial decline in real tax rates (tax rate divided by the inflation rate) over time. The following table is the value of these taxes in 1990 terms assuming alternative rates of inflation:

Table 2.2
Taxes in Real 1990 Shillings Assuming Alternative Rates of Inflation

	1976 Shillings	1990 Sh. Assuming Inflation Rate of:			
		<u>10%</u>	<u>20%</u>	<u>30%</u>	<u>40%</u>
Ordinary Farmers					
Rainfed land:	5	19	64	197	555
Irrigated land:	10	38	128	394	1,111
Banana Plantations					
Rainfed land:	30	113	385	1,181	3,333
Irrigated land:	50	189	642	1,969	5,556

Clearly, tax rates need to be raised to reflect the decline in the value of the shilling over time. But, at what level should tax rates be set and what should be the form of the new tax structure? There are several possible options:

1. Set specific taxes on all land whether it is registered or not, essentially updating the tax structure in current legislation with revised tax rates. Assuming 20 percent annual inflation between 1976 and 1990, for example, revised tax rates might be set at (per hectare):

Ordinary farmers:	Rainfed land	Sh. 65
	Irrigated	Sh. 130
Banana Plantations:	Rainfed land	Sh. 385
	Irrigated	Sh. 640

These rates are only illustrative figures indicating the direction and rough magnitude of tax reforms to consider.

2. Levy a progressive tax based on land area. An indicative tax base might look like:

Land Size Category	Sh./ha.	Land Size Category	Sh./ha.
0 - 19 hectares	50	100 - 249 hectares	275
20 - 49 hectares	125	250 - 499 hectares	350
50 - 99 hectares	200	500 + hectares	425

3. Create separate progressive tax structures for pastoral, rainfed and irrigated land to adjust for differences in land quality and access to water. However, distinguishing between land types is difficult in practice. Vast areas along the Shabelle and Jubba rivers are potentially irrigable with pump or flood irrigation. Irrigation rates, and thus productivity, vary by type of irrigation. Some lands may have canals constructed (indicating irrigation), but due to limited capital or labor, or to plentiful rains, irrigation is not undertaken.
4. Disassociate land taxes from type of crop (e.g. perennial crops as is now the case), and levy taxes instead on the basis of land area (an alternative would be land value although this would be very costly to administer at the present time). This renders taxation crop-neutral, eliminating tax distortions and economic disincentives for individual crops. However, if taxes are set too high, the reverse can occur; farmers must grow cash crops to earn cash to pay the taxes.
5. Any change in tax rates or taxation systems should be undertaken in conjunction with a careful review (and changes) of urban taxes to avoid shifting the tax burden and tax disincentives against the rural sector.

Again, these tax rates are only illustrative figures indicating the direction and magnitude of tax change. Tax rates on smaller farms may need to be reduced because of the low cash income of subsistence farmers. Tax rates on larger farms may need to be increased because of the cash earning potential of commercial fruit tree and banana production.

H. Fallow and Natural Resource Management

The agricultural land legislation is free of restrictions on use rights, with two exceptions: (1) Under Article 15.e of Land Law No. 73, the GSDR may revoke a concession when the concession holder fails to cultivate land within 2 years after obtaining a concession. A related provision (Art. 14.2) states that the land must be used in the most efficient manner, producing the highest yield. (2) A subsequent provision (para. 19) in the 24 May 1987 Circular, states that bush land cannot be held in reserve for a village, community or person in a way not in accordance with the Law. Criteria for determining accordance with the Law is not defined.

A number of studies have mentioned an increase in unnecessary forest clearing in the Jubba valley by registered landholders (Deshmukh 1987, Besteman and Roth 1988, Riddell and Samatar 1988). In some cases land is cleared to meet provisions of the Law but then is never cultivated or poorly cultivated due to labor and capital shortages (Roth and Besteman 1988). Unregistered farmers are working hard at clearing their land to prevent farmers from registering it (Roth and Besteman 1988). Farmers in the Shabelle have expressed reluctance to rent-out land for periods longer than a year on the grounds that the land is not being used by the landholder and thus can be expropriated (Roth et al.). The two year provision on idle land and provisions that disallow holding bush land in reserve are creating disincentives for cultivating fodder and fallow crops (traditional land resting strategies) while encouraging permanent cultivation.

These restrictions on use rights impose three types of economic costs: (1) They impose tenure insecurity on landholders due to uncertainties whether land use criteria are being met. (2) Perceptions that government monitoring of provisions are arbitrary further increase tenure insecurity. (3) Provisions on use rights either assume an unrealistic level of monitoring and enforcement by the government, or lead to excessive bureaucracy and demands on the budget.

Three policy options are recommended:

1. Eliminate sporadic registration, which enables outsiders the means to gain access to land in frontier areas. This provision should help reduce the demand for registration, and slow the spread of deforestation, all else being equal.
2. Eliminate the two year provision on land use cultivation. Such provisions are useful to facilitate GSDR expropriation of concessions, as in the case of the recent expropriation of land in the Jubba (Chapter 5, footnote 12). But, applied too often, expropriation of land will decrease the tenure security of concession holders. Rely instead on economic forces, taxation, and unrestricted land transfers to determine land allocation.

3. Redefine use rights to include fallow, forage, bush reserve and forests, i.e. establish a broader definition of use rights. However, it will be very difficult to determine with certainty land that is idle from land that is fallowed in practice, making enforcement difficult. Because of this reason, use requirements should be eliminated as a condition of tenure (2 above).

Eliminating the two year provision poses a difficult problem for the GSDR. Use rights were originally implemented to curb land speculation and to ensure that land is allocated to valid users. Instead, the above provisions are resulting in the decline of traditional soil resting strategies, excessive deforestation in the Jubba, tenure insecurity, and disincentives to lease out land. We argue elsewhere in this report (section B) that the motivation for land grabbing will be reduced by: (a) eliminating the sporadic registration program that the GSDR has used to subsidize acquisition of land by outsiders; and (b) increasing direct costs on land ownership. We further argue in section E, that land "ceilings" impose costs in terms of economic inefficiency, and should thus be eliminated. But ceilings may be justified in frontier areas like the Jubba until such time that the settlement phase has passed. We thus recommend in addition:

4. Impose land ceilings on the size of total farm holdings in the Jubba river valley (specific districts can be defined) until such time that the settlement phase has passed. As recommended in section E, land ceilings should then be abolished.

Initially, ceilings will be difficult to enforce, as land will not have been systematically adjudicated and registered (Chapter 3). However, once land is systematically registered, excess land should be expropriated and redistributed under provisions in the Law.

CHAPTER 3

RECOMMENDED POLICY REFORMS IN LAND REGISTRATION

I. Introduction

This chapter first discusses the existing system of registration of concessions under Agricultural Land Law No. 73 and comments on procedural aspects of that system. In the second part, an attempt is made to explain a different, well-tried system of land registration based on systematic adjudication, which is recommended for the future. This part of the chapter goes into considerable detail on the concepts and procedures of systematic adjudication and registration for those readers who are unfamiliar with such systems.

II. Legislation Pertaining to Land Registration

All land in Somalia is the property of the State. Law No. 73 of 1975, currently in force, makes provision in two short Articles, 19 and 20, for compilation of "a register for agricultural land in which is entered the names of the users of land and the conditions of their concessions." By the end of 1987, the number of such registrations was 13,340 (Table 3.1), covering less than 1 percent of Somalia's land area.

The Law envisages a formal system of concessions granted by the State, which will be registered, and lays down the conditions on which such concessions will be granted. Small farmers, who have hitherto held and used their land by custom, can apply for such a concession and if successful the concession will be registered. They will, however, be seriously disadvantaged by some of the conditions; see Articles 6, 12 and 14 below.

Under Article 5 all holders of concessions of agricultural land prior to the effective date of Law No. 73 (21 October 1975) were required to apply for a new concession, which must accord with the new conditions, within six months from that date. Failure to do so would result in cancellation of their concession. Relatively few did so within the short period allowed.

Article 6 limits registration by a family or individual to one concession only. Any additional holdings held by the family or individual cannot be registered, even if the areas of the additional holdings together with the registered holding do not exceed the maximum ceilings imposed by Article 8. Any holdings in excess of one would presumably be available for disposition by the State.

Table 3.1
Land Area and Registered Concessions by Region

Region	Total Land Area ('000 ha)	No. of Reg. Concessions	Area of Reg. Concessions ('000 ha)		Percent Total Land Area Registered
			Irr.	Rainfed	
Awdal	1,680	488	1.6	3.0	0.3
Northwest	2,800	2,472	7.2	21.5	1.0
Togdheer	3,270	1,821	0.9	18.9	0.6
Sanag	5,170	808	1.1	3.6	0.1
Bari	6,170	66	0.4	0.2	0.0
Nugaal	2,900	-	-	-	0.0
Sool	3,830	-	-	-	0.0
Mudug	6,310	-	-	-	0.0
Galguduud	4,970	-	-	-	0.0
Hiraan	3,400	438	18.1	0.6	0.6
Middle Shabelle	2,080	1,584	64.8	0.3	3.1
Banaadir	80	-	-	-	-
Lower Shabelle	2,770	3,692	151.4	17.2	6.1
Lower Jubba	4,900	513	13.0	4.4	0.4
Middle Jubba	1,870	455	22.6	4.3	1.4
Gedo	4,540	603	12.1	-	0.3
Bay	4,250	400	0.1	13.1	0.3
Bakool	2,630	-	-	-	0.0
Somalia	63,620	13,340	293.3	87.2	0.6

1. Figures for total land area were taken from Ministry of Agriculture, Department of Planning and Statistics, Istraatiyyadda Dowladda Ee Horumarinta Beeraha (Government Strategy Towards Developing Agriculture), Mogadishu 1989.

2. Figures for number of registered concessions and area of registered concessions were taken from Ministry of Agriculture, Department of Planning and Statistics, Agricultural Statistics 1988.

Further restrictions are placed on users of land when registered or re-registered. Articles 12 and 14 forbid transfer, sale, partition and renting of the land, although a procedure for "changing hands of farm land" (i.e. transfer) is contained in a Circular of 24 May 1987 (para. 16). The right to borrow money on security of the land is, however, specifically permitted by Article 13, and the right to pass the land of a deceased landholder to his heirs is confirmed by Article 16.

Law No. 73 is supplemented by Decree of 16 October 1976. Under Articles 5-9, land which has not been used for agriculture or livestock for a period of two years will be repossessed and reallocated to other persons. Procedures for compensation to previous holders are laid down.

The above provisions of the Law, which have a bearing on registration, have resulted in severe insecurity among small farmers holding land under customary tenure. Although it is difficult to estimate, many farmers have reportedly lost their land or part of it to speculators as a result of these provisions. The restrictions on dealing in their land are likely to reduce its value. Unless the provisions are modified, the situation is likely to deteriorate further. See Catherine Besteman and Michael Roth (Middle Jubba 1988) and Michael Roth (Lower Shabelle 1988).

III. Procedures for Registering Concessions

Procedures for registration under Law No. 73 are mainly contained in a Circular--Guidelines for Allocation of Farm Land--dated 24 May 1987, issued after a halt in registration earlier in that year. The process starts when any Somali citizen, whether or not he is currently using farm land, requests registration by written application (with a small stamp duty fee) to the Coordinator of the Ministry of Agriculture of the district. The application is then advertised on various notice boards locally for a period of thirty days. When that period is completed without challenge:

- i. The land to which the application applies is demarcated, i.e. the boundaries are defined, by a committee of three officials and the village chairman. A plan of the land is made.
- ii. The Land and Water Officer reports to the MOA Coordinator giving the village, whereabouts of the land, approximate size of the land and other details, and confirms that there is no dispute. The Police representative sends the MOA coordinator a similar, but separate report.
- iii. After verification of both reports the MOA Coordinator and the Officer in Command of the police station report separately to the local Secretary of the Somali Socialist Revolutionary Party and the Administration Chairman, who confirm (or reject) the application for registration.

- iv. The MOA Coordinator ensures that the applicant understands and accepts the requirements of the registration, and that he signs accordingly.
- v. The MOA Coordinator assigns the district registration number. Copies of all the documents (namely the application; the plan of the land; all reports and confirmations mentioned in (ii) and (iii) above; and the original certificate containing the applicant's signature and three additional copies) are then forwarded by the District Coordinator to the Regional Coordinator of the Ministry of Agriculture.
- vi. If the Regional Coordinator is satisfied with the documentation received, he assigns a regional registration number, which will be different from the district registration number. He then forwards copies of all documents mentioned above to the Ministry of Agriculture (Directorate of Land and Water)⁷ in Mogadishu.
- vii. The Director of Land and Water, after verifying that the documentation is correct in all respects, forwards the file to the Minister for signature of the certificate. A central registration number for the registry in Mogadishu is assigned.
- viii. Separate registers are compiled at all three levels giving the concessioner's name and various other details relating mainly to the land.

IV. Comments on Procedures for Registering Concessions

These registration procedures have been followed energetically. The few registers examined were neatly compiled and up to date at all levels. There are, however, a number of defects in the system:

1. Adjudication procedures have not been complete and thorough, occasionally resulting in certain landholders losing rights in land.
2. The administrative procedures are tedious, exacting and protracted, and there is considerable duplication of effort. For instance, registers are maintained at district, regional and central (MOA Mogadishu) levels containing exactly the same information. Outside of the Middle and Lower Shabelle, the forwarding of documents from district to regional to central offices is very difficult due to poor communications, long distances, and limited resources within the MOA for transport, resulting in long delays in registration.
3. The procedures are costly. The cost to the State of each registration cannot be calculated easily, but is likely to be

7. Now the Department of Irrigation and Land Use.

substantial. All MOA officials taking part in the process, and the Minister himself who signs the certificates, are involved in the paper work of registration to the detriment of their proper and more useful duties, although the heaviest burden falls on MOA coordinators in districts. The police too are involved in this paper work. The cost to applicants for registration is also substantial. Although no fee is charged for registration (other than the Sh. 6 stamp duty on the application) applicants bear the cost of transport to take officials into the field and the cost of plans (maps) of the land, which amounted in 1987 to about Sh. 3,000 to 5,000 (Roth et al.). At the present time charges for plans are reportedly as high as Sh. 10,000 to 15,000.

4. The costs are not effective. In earlier registrations, for example, plans of the parcel were often inadequate to define the boundaries of the parcel or even to establish its location. More recently, plans have been produced by private technicians at prices, borne by the applicants, mentioned above. Even these improved plans are of doubtful value. They are not "tied-in" to any form of survey control. Consequently, as registration proceeds in any locality, it will be impossible to fit the various plans to each other; there will be overlaps and the areas of parcels may have to be adjusted. This is likely to raise disputes and loss of faith in the system.

V. Discussion

A. Benefits of Land Registration

Land registration is a valuable form of infrastructure. Its benefits are widely recognized. In the last thirty years or so many developing countries, including a number in Africa, have established new registration systems or have overhauled earlier systems. The main benefits to holders of land are:⁸

1. Security of tenure; this is provided by the formal identification and recognition of the rights of the holder through a process known as "adjudication," and by the recording of those rights in the land register, usually supported by a State guarantee.

8. The extent to which these benefits are realized will depend on a number of conditions: (1) Whether security of tenure is increased will depend on the level of tenure insecurity present under customary tenure, and the value of the State's guarantee to honor concession rights. (2) Security of credit is increased only if the Law permits flexible transfer and mortgage of land, and land can be converted into a liquid asset at reasonable costs. (3) Investment and output response depend on the presence of technological options for investment in land, on farmers' access to market information and knowledge about these technological options, and on functioning credit and input markets free of rationing constraints.

2. Reduction of land disputes and court cases with a consequent saving in time and money.
3. Simple, quick and effective methods of dealing in land on the register.
4. Security for credit.
5. Increased investment and agricultural output as a result of (1) to (4) above.

The main benefits to the State are:

6. Facilitating land reforms (e.g. consolidation of fragmented holdings, redistribution of land, redevelopment) which can be expedited by the available information on the register.
7. Management of State land available for dispositions by the State, including public acquisition of land, which is facilitated by information on the register.
8. Monitoring of the land market.
9. Support for land taxation; information on the register facilitates collection.
10. Statistical information (e.g. land prices, parcel sizes, outstanding credit).

B. Land Adjudication

"Adjudication" is the process whereby existing rights in a particular parcel of land are finally and authoritatively ascertained. It is a necessary prerequisite for land registration, for land consolidation and for land redistribution. It is a cardinal principle of adjudication that the process does not alter existing rights or create new ones. It merely establishes what rights exist, by whom they are exercised and to what limitations, if any, they are subject. It should be understood, however, that a land register operates within a framework of (written) statutory law. Where adjudication is used to compile the land register, the rights and limitations of persons identified by adjudication in land held under (unwritten) customary tenure are likely to be altered upon registration to conform with the nearest equivalent rights and limitations recognized by statutory law.

Various forms of adjudication are used for compilation of a land register. In some countries which already have adequate mapping of land parcels and written deeds available to support an entry in the register, adjudication is a clerical task which can be completed in an office. In Somalia, however, and in many other countries, adjudication must be a field exercise involving the demarcation and survey of parcels and the recording of rights and limitations in those parcels, in the presence of all persons concerned.

C. Sporadic or Systematic Adjudication

The field process of adjudication may be sporadic or systematic. Sporadic adjudication means that parcels are investigated from time to time and at different places within a specific area (e.g. a district). The sequence in which parcels are brought onto the register is thus piecemeal, haphazard and unpredictable. The systematic approach implies orderly sequence in which all parcels are brought onto the register area by area. Systematic adjudication ensures maximum publicity regarding who holds what rights within the area and has the benefit of direct evidence from owners of adjacent parcels. It is a substantially safer system than sporadic adjudication. Indeed, sporadic adjudication:

"is vicious in principal, as it means that each property is given isolated consideration when it happens to come up for registration instead of the conflicting claims of neighbours all being thrashed out at the same time. Unco-ordinated work of this character is considerably less worthy of confidence, as well as being slower and more expensive than investigation and settlement of boundaries and title systematically conducted district by district."⁹

Sporadic adjudication is applied voluntarily by application, as in Somalia, and applicants often bear at least part of the cost, e.g. by paying for parcel plans. Systematic adjudication, however, must be compulsory, for all parcels in the area must be examined and thereafter registered whether or not the holders of rights in the parcels desire registration. For this reason, in order to obtain local cooperation, systematic adjudication is usually subsidized by the State, although some countries apply a modest flat-rate fee per parcel. If the intention is to compile a useful and complete land register for the country (or chosen parts of it) as quickly as resources allow, compulsory systematic adjudication must be applied. Experience has shown that without an element of compulsion land registration will certainly fail. (See Chapter 5 for recommendations on funding and implementing a systematic registration program.)

D. Standard Systematic Adjudication Process

1. Preliminary Stage

A systematic Adjudication Law must be enacted. This regulates the various procedures which must be followed and defines the duties and powers of adjudication staff (and of committees, if required). A more or less standard

9. Egyptian Government Commission Report on Registration of Title (1921). Paper No. 6.

form of this legislation has been adopted in countries which have established a new system of land registration since 1925.¹⁰

Policy decisions are required as to which area (or areas) of the country should first be adjudicated systematically. These decisions will depend on the number of adjudication staff (including survey staff) and equipment initially available. If limited staff are spread over different parts of the country costs will rise significantly (e.g. additional cost of aerial photography).

Systematic Adjudication is a relatively slow process (though infinitely quicker than sporadic adjudication). It will be many years before all chosen areas are adjudicated and registered. There is no point in alerting all holders of land immediately after the Law is enacted, for most of them will not be affected for many years. For this reason provision is made in the Law for the Minister to declare an "adjudication area," which may be of any suitable size, and that is the only area affected until other adjudication areas are declared. The Minister appoints an "Adjudication Officer" for the area, who has powers to divide the adjudication area into convenient "adjudication sections," usually on the basis of well known localities, manageable size, and estimated number of parcels.

Staff required for adjudication are given their powers and duties by the legislation. The Adjudication Officer is appointed by the Minister and is responsible to the MOA for the efficient execution of all aspects of the adjudication in the adjudication area. His duties are mainly administrative; he must ensure that every stage in the process is completed in accordance with the Law; he also exercises judicial powers in determining disputes. He has powers to administer oaths, take affidavits, issue summons, etc. As regards disputes, the Law provides for "staying" (suspending) ordinary court cases concerning land in an adjudication section once it has been declared. It is obviously undesirable that the same matters should be simultaneously considered by two differing authorities. No new court proceedings can be instituted once the adjudication section is declared; existing court proceedings can, where practical, be completed; but the Adjudication Officer can at any stage order the proceedings to be stayed (suspended).

The remaining staff required for adjudication are usually appointed by the Adjudication Officer and are subordinate to him. They are (a) the "Demarcation Officer," who identifies and records the boundaries of each parcel of land in the adjudication section; (b) the "Survey Officer," who carries out any necessary surveys and prepares the "demarcation map" of the adjudication section showing each parcel, to which is assigned a distinguishing parcel number (except roads or rivers); in practice, the Demarcation Officer may frequently carry out the Survey Officer's functions; (c) the "Recording Officer," who examines all claims to rights in each land

10. The (Sudan) Land Settlement and Registration Ordinance, 1925, is the prototype of systematic adjudication legislation on which countries have based their adjudication statutes.

parcel and prepares an "adjudication record." These three officers (with some field assistants) are termed an "Adjudication Party;" they operate only in one section at a time. If two or three parties are formed, they will operate in other sections of the adjudication area, but the Adjudication Officer for the area will be responsible for all Adjudication Parties in his area.

The adjudication staff will require some training, though in general this will be minimal. They must, however, be wholly conversant with all the procedures in the adjudication legislation. Training for survey officers may prove more difficult, depending on the survey methods which are to be adopted.

2. Start of the Adjudication Process

When the Minister has declared an adjudication area and the Adjudication Officer has divided the area into named adjudication sections, he and his staff will meet leading members of the community and landholders in the first section (and in other sections if additional adjudication parties are available) to explain in detail how the adjudication process functions, how landholders can help to expedite the process (e.g. by marking their boundaries), and how the process will benefit them. The understanding and trust of the public is essential. Without such trust the adjudication will fail. This stage of explanations must therefore continue until the Adjudication Officer is satisfied that the public understands the process and will cooperate. During this stage the Adjudication Officer should also contact government officials and local secretaries of the SSRP in the locality and answer any questions posed.

Adjudication actually starts when the Adjudication Officer issues a formal written notice specifying the situation and limits of the section, requiring all persons claiming any rights in land in the section to make a formal claim within a stated period (usually two months), and requiring holders of land to mark or indicate the boundaries of their land. This notice should be widely publicized. This stage is known as the claims period. The rights of absent persons or minors are investigated during this stage by adjudication staff.

Adjudication on the ground starts when the claims period expires. The Demarcation Officer issues a formal notice stating the time and place where the demarcation will start. In practice, field assistants will alert the first batch of landholders whose land is to be demarcated; as demarcation proceeds, further batches will be alerted. The Demarcation Officer must ensure that the boundaries of parcels subject to a claim are marked in a suitable manner; he must also indicate the boundaries of public roads, public rights of way, and unclaimed land. He has a number of powers (e.g. he may demarcate a right of way necessary to give access to a public road in favor of any parcel completely surrounded by other parcels). He usually completes a "demarcation record," although this record is not required by legislation. The record contains for each parcel the name of the holder(s), the holder's claim number, details of the parcel boundaries, names of holders of adjoining parcels, rights of way and other matters.

If suitable enlarged aerial photographs are available, the Survey Officer should be able to identify and mark up parcel boundaries on the enlarged

photo; but often boundaries will be only partly identifiable and the gaps must be filled in by ground survey methods.

As soon as a parcel has been demarcated the Recording Officer begins his task of ascertaining the rights in it. Claims to land can be confirmed by perusal of written documents, but the majority of claimants to land who have no documents will need to show they have occupied the land openly, peaceably and without interruption for the period of years stipulated in the adjudication legislation. This is not difficult; there must be many witnesses who can testify or the holder himself can swear an affidavit that he has held the land for the necessary period. The Recording Officer fills in and signs an "adjudication record" for each parcel containing: (a) the number and approximate area of the parcel as shown on the demarcation map; (b) the name(s) of the person(s) entitled to be registered as the holder and any restrictions affecting his or her powers of dealing with the land; (c) any rights registerable under registration legislation with the name of the person entitled to the benefit of such rights (e.g. part of the parcel may be leased; the lessee would be entitled to the benefit of the lease); (d) if any person is under a disability (e.g. unsoundness of mind), the name of his guardian; and (e) the date on which the form is completed. The record should be counter-signed, if possible, by all persons concerned that they accept the record.

The demarcation and recording processes outlined above are completed in public. In particular, landholders of adjacent parcels are invariably present when a parcel is being demarcated. Leaders in the community are usually present. If disputes occur, they can often be settled amicably by discussion with the Demarcation and Recording Officers or by members of the community. If, however, the Demarcation Officer is unable to resolve a boundary dispute, or the Recording Officer is unable to resolve a dispute over rights in land, the Adjudication Officer must adjudicate and determine the dispute forthwith. At this stage the process cannot be held up. (There is a further opportunity in the final stage for objections to the demarcation map and adjudication record.)

When the demarcation map has been completed for the whole adjudication section, showing every parcel of land in the section, and the adjudication record for each of the parcels in the section is complete, the Adjudication Officer signs and dates a certificate to that effect. He then issues a notice of completion indicating the place where the demarcation map and the adjudication record can be inspected. At this stage adjudication in the section is completed and the adjudication party starts work in a different section.

3. Final Stage of the Adjudication Process

Within a period of ninety days from the date of the notice of completion mentioned above, any person who considers the adjudication record or the demarcation map to be inaccurate or incomplete can inform the Adjudication Officer, stating the grounds of his objection. The Adjudication Officer must hear and determine the objection. In hearing an objection the Adjudication Officer must, as far as is practical, follow procedures for the hearing of civil suits, but he may, if he wishes, admit evidence which would not be admissible in a court of law and he may himself call evidence. He must make a

written record of all proceedings in deciding an objection. If his decision allows an objection, he authorizes the necessary corrections to be made in the records or the map. During the ninety day period he may also correct any errors or omissions not materially affecting the rights of any persons or, with the consent of all persons affected, make an alteration which he considers necessary. After expiration of the ninety days the adjudication register becomes final. The Adjudication Officer signs a certificate to that effect and delivers the adjudication record and the demarcation map (and any related documents) to the land registrar. This declaration of finality marks the end of the adjudication process in the section.

All countries, however, provide for an appeal from the final decision of the Adjudication Officer to the courts, almost invariably to the High Court. It is, of course, proper that there should be access to the Court in order to question proceedings which have been operated by an administrative authority, but the principle of finality of the adjudication is very important. For this reason, various limitations are written into the law:

- a. The period in which an appeal to the High Court may be lodged is limited to thirty days from the date of the certificate of finality, although the Court can exceptionally allow a longer period "in the interests of justice."
- b. Only one such appeal is allowed; there can be no further appeal to a Court of Appeal (unless the Constitution demands otherwise). The law usually states that the decision of the High Court "is final and conclusive and shall not be questioned in any proceedings whatsoever."
- c. A few countries limit the grounds for appeal to questions of law and procedure; questions of fact are excluded. This limitation can, however, cause difficulties.

Although these appeals to the High Court arise from the final decisions of the Adjudication Officer, they are in reality appeals against first registration. By this stage all parcels in the adjudication section and all rights in them will already have been registered. Appeals to the High Court are therefore lodged with the Land Registrar, who must immediately enter a "restriction" on any register affected by the appeal. (All other registers are not affected in any way.) After hearing the appeal the Court may make any order which it considers just and may, if necessary, order rectification of the register; the Land Registrar must give immediate effect to such orders. The Court cannot, of course, refer cases back to the Adjudication Officer for re-hearing or alteration of the adjudication records (as it might, in other matters, refer cases back to a subordinate court).

4. Finality

Successful appeals to the High Court against first registrations are unlikely to be numerous, for there are certain features of the earlier stages of adjudication which directly contribute to finality:

- a. Publicity and the fact that systematic adjudication is carried out on the ground make it difficult for claimants to raise or sustain a bogus claim.

- b. The notice of adjudication calling for claims (Section 2 above) allows sufficient time for persons to contact absent relatives or appoint agents or guardians; adjudication staff too are required to protect the rights of absentees and may appoint guardians; the Adjudication Officer can accept late claims at any stage up to publication of the completed adjudication record.
- c. When work starts on the ground Demarcation and Recording Officers have a duty to try to obtain an acceptable compromise between claimants who disagree over boundaries or rights. Many disputes are settled finally in this way.
- d. The staying (suspension) of court cases (Section 1 above) avoids the possibility of a court reaching a decision which is in conflict with a decision already reached in the adjudication process.
- e. When there is disagreement between claimants which the demarcation or recording officer is unable to resolve (point c above), the dispute is immediately heard and determined by the Adjudication Officer. This procedure disposes of the majority of conflicting claims before the final stage (3) is reached.

In the final stage the adjudication officer will again hear and determine any objections to the adjudication record or the demarcation map. Strict adherence to the procedures laid down in the adjudication legislation will provide the final and authoritative record envisaged in section B, entitled "Land Adjudication."

E. Systematic Adjudication--Pilot Scheme

A pilot scheme under USAID's Shabelle Water Management Project will shortly take place to register all parcels in a particular area (Shalambood) using systematic adjudication techniques, including mapping of parcels from aerial photography. Because the legislative reforms proposed in Chapter 4 will not come about until 1990, the pilot scheme must operate under existing legislation (Law No. 73). The likely number of parcels involved is approximately 5,000. This pilot scheme should prove to be interesting and useful; different procedures will be tested in registering parcels; the surprises and difficulties it will uncover will provide valuable information for the program of drafting new legislation on land adjudication and registration.

F. Form of a Land Register

Land parcels are almost invariably "proprietary units." This means that a land parcel, whatever its size, is defined by its "proprietor" (whether an individual, a company, a State farm, or an autonomous agency) having the rights (and limitations, if any) over that parcel. Land parcels are the basic units of a land registration system. This is logical. Land is finite and permanent by nature; although parcels may be subdivided or amalgamated with adjoining parcels, the land they cover remains unchanged. On the other hand, the holders of parcels are impermanent; they will die and new owners will

succeed them, or they may transfer the land to another person, or their rights or limitations may change as a result of transactions.

Land parcels must be adequately surveyed and mapped and each parcel must be accorded a unique reference (for instance, a combination of the district, block number and parcel number, although there are more sophisticated methods). Each parcel is then cross-referenced to the folio (termed "a register") containing written details relevant to the parcel and the name of the person having the rights and limitation in the parcel (termed "the proprietor"); a register bears the same unique reference as the parcel reference. The maps of the parcels, termed the "Registry Map," and all the registers together constitute the Land Register. This system of a parcel-based register has many advantages and is widely used. Name-based registers, usually supported by separate parcel plans, as currently used in Somalia, are likely to encounter problems when names change on death (particularly when several heirs inherit) or on transfer of the land. Nor is it always easy to accommodate changes in the register resulting from other forms of transactions.

G. Land Registries

The Land Register should ultimately be established and maintained in a number of offices (termed "land registries"), one in each "land registration district."

1. Records Kept

Every district land registry office should by law contain:

- a. the Registry Map showing all parcels comprised in the registration district;
- b. the Land Register, i.e. the registers related to each parcel shown on the Registry Map;
- c. parcel files (bearing the same unique number as the parcels and registers) containing documents which support entries in the Land Register;
- d. an "Application Book" in which is kept a record of all applications numbered consecutively in the order in which they are received;
- e. an index in alphabetical order of the names of registered landholders showing the number of parcels in which they are interested;
- f. a "Mutation Record," for the process of altering the Register Map by subdivision or amalgamation;
- g. a register and file of powers of attorney.

2. Staff

The official in charge of a district land registry is known as the "Land Registrar." Minimum staff consists of the Registrar and two clerical/typist staff. As adjudication brings in more parcels and the registry expands, the Registrar may ultimately require an "Assistant Land Registrar" and additional clerical staff.

3. Buildings

A land registry requires a building which should include a fire proof strongroom for safe custody of the maps, registers and parcel files. The loss of any of these records could cause considerable difficulty.

4. Furniture

Furniture consists of tables/chairs for staff and cupboards for storing stationery, forms and other records. A counter should be constructed to separate the public from the officials behind the counter, as is the practice in banks.

5. Equipment

Equipment consists of: (1) at least one typewriter; (2) storage for the maps, ideally in hanging metal containers; (3) loose-leaf binders for the registers which are held in order of parcel numbers; registers may have to be removed occasionally (e.g. when there is no space left for further entries or when a subdivision takes place and the resulting new parcels are given new parcel numbers); (4) a safe for custody of fees paid by the public for various registry services; (5) a photocopy machine (if electricity is available); and (6) a seal for authorization of certain documents; (original documents held in the land registry can be inspected by any person, but they should never be removed from the registry).

It would no doubt be convenient for persons holding registered land if a land registry could be set up in all or nearly all of the 91 districts (Annex D) in Somalia, but that is out of the question. The cost of providing buildings, staff and equipment would be exorbitant. Land registries, once established, should be self-financing through collection of fees paid by the public for registry services, particularly fees for land transactions. The average holder of registered land will carry out transactions relatively seldom and it would be uneconomic to establish a land registry for an area which, when fully registered, contains less than, say, 100,000 parcels.

There are no estimates of the number of parcels nationwide or by region. Official data on number of farms are given in Table 3.2. Research results from field surveys have indicated 1.4 parcels per farm in the Lower Shabelle (Roth et al. 1987), 1.3-2.0 parcels per farm in four villages in the Middle Shabelle (Boateng, Ibrahim and Mire 1987) and 3.0 parcels per farm in the Middle Jubba (Besteman and Roth 1988).

Assuming 1.5 parcels per farm on average, the three administrative regions in the Shabelle valley (Hiraan, Middle Shabelle and Lower Shabelle)

Table 3.2
Estimated Number of Parcels by Region

Region	Total Number of Farms in 1986	Number of Parcels (1.5 parcels/farm)	Number of Parcels (3.0 parcels/farm)
Awdal	1,463	2,195	4,389
Northwest	12,564	18,846	37,692
Togdheer	9,194	13,791	27,582
Sanag	3,939	5,909	11,817
Bari	5,165	7,748	15,495
Nugaal	1,833	2,750	5,499
Sool	2,208	3,312	6,624
Mudug	4,041	6,062	12,123
Galguduud	6,035	9,053	18,105
Hiraan	11,306	16,959	33,918
Middle Shabelle	22,549	33,824	67,647
Banaadir	-	-	-
Lower Shabelle	65,833	98,750	197,499
Lower Jubba	20,761	31,142	62,283
Middle Jubba	13,766	20,649	41,298
Gedo	18,030	27,045	54,090
Bay	56,891	85,337	170,673
Bakool	5,025	7,538	15,075
Somalia	260,603	390,905	781,809

Source: Ministry of Agriculture, Department of Planning and Statistics, "Yearbook of Agricultural Statistics: 1986/87," Mogadishu 1987.

would comprise about 150,000 parcels, or about 300,000 parcels assuming 3.0 parcels per farm. The three administrative regions in the Jubba valley (Gedo, Middle Jubba and Lower Jubba) would comprise about 80,000 parcels assuming 1.5 parcels per farm and 160,000 parcels assuming 3.0 parcels per farm.

Four different options for establishing registries might be considered:

1. Initially establish one land registry in one land registration district to hold all parcels registered in irrigated land in the Shabelle valley. As systematic adjudication proceeds and the number of parcels and the time involved can be better estimated, this option should be reviewed and decisions made whether this one land registration district should be divided into two or more land registration districts corresponding to administrative regions. (The boundaries of a land registration district can, of course, be varied at any time; all that is required is to transfer the relevant maps and registers affected by the variation from one land registration district to another.)
2. Initially establish one land registry in each of three administrative regions of the Shabelle valley. This option will involve higher fixed costs for construction of registry offices. Because the number of registrations are spread over more offices, it will be difficult for the registries to operate at a profit in the short run. Yet, for reasons of poor transportation, poor communication and poor mail services, this option may be preferred to increase landholders' access to the registry.
3. Initially establish one land registry in the Shabelle valley and one land registry in the Jubba valley.
4. Establish one land registry in each of three administrative regions in the Shabelle valley and each of three administrative regions in the Jubba valley. Fixed costs and operating deficits would be higher still. Establishment of many registries would also encounter problems of staff, vehicles and other capital items. The appropriateness of options (1) to (4) will depend on the location of donor projects implementing land registration, and the GSDR's ability to subsidize registration costs. This option seems very unrealistic.

It is further recommended that:

4. All registrations of concessions under present procedures should be halted. Existing concessions already registered under Law No. 73 will not be prejudiced; when systematic adjudication extends to areas in which such concessions are located they will be "picked-up" in the demarcation and recording procedures of adjudication and registered along with other parcels in the normal way. Such parcels may, however, have to be reviewed because of overlap.

VI. Survey and Mapping of Land Parcels

Land parcels are the basic units on which the whole system of land registration is constructed. If the GSDR decides to establish such a system, at least in areas of productive agricultural land, it will wish to do so as quickly and as cheaply as possible. The cost of surveying and mapping the land parcels may account for 40 percent of the costs of the whole registration system.¹¹ The quickest and cheapest method of survey and mapping is to use recent, unrectified aerial photography; photo-enlargements are made at a scale of 1:2000 (or at other suitable scales); parcel boundaries are identified in the field and marked on the enlarged photographs; any undemarcated boundaries or parts of boundaries are put on by reference to adjacent photo-identifiable detail, e.g. using a compass and chain. The demarcation map is then prepared by tracing off the marked up, enlarged photographs. This method (with slight variations) will be tested in the Shalambood Pilot Scheme (section E) using 1985 aerial photography covering 75 percent of the area; enlargements to a scale of 1:2000 are to be made in the form of a photo-transparency, enabling additional dyeline copies to be made. Parcels appear from this photography to be well demarcated but, if necessary, undemarcated parcels will be put on by reference to adjacent photo-identifiable detail, using a measuring wheel, which will require scale adjustments to conform with ground measurements. Aerial photography of the remaining 25 percent of the area is to be flown later.

Such methods of survey and mapping are the minimum acceptable for purposes of a land registration system. The degree of accuracy is low; but provided that the boundaries of all parcels are demarcated in length by roads, tracks, canals, walls, fences, hedges, etc. or at turning points by survey monuments, cairns or other permanent marks, they meet the requirements of a land registry. They will enable the Land Registrar to identify on the ground any parcel shown on the Registry Map; relocate any boundary feature, should it be moved or lost; and to effect subdivisions. The map is, in effect, an index of parcels. These methods were adopted in most agricultural lands in Kenya starting in the 1950s and have stood the test of time.

However, different methods are likely to be required in some circumstances. In hilly areas there may be considerable scale changes on the air photographs due to height variations; maps prepared from unrectified, enlarged photographs would be seriously subject to error; it would be necessary to prepare base maps, involving increased cost, from the photography and to plot parcel boundaries on them where possible. Air photography of areas where boundaries of parcels are not adequately demarcated may be of little or no use; different slower and more costly methods of survey must be adopted. Accuracy standards must be monitored; if they are too high or too low, unnecessary costs will be incurred. We are informed that there is a severe dearth of land surveyors in Somalia at both professional and technician

11. P.F. Dale and J.D. McLaughlin, Land Information Management, 1988.

levels; that there are no courses at the National University for training professional land surveyors; that technicians often have trade school training only and are unable to use appropriate equipment.

If the proposed system of land registration based on systematic adjudication is to be successful, there is an urgent need for technical assistance to provide a qualified land surveyor, with experience of cadastral survey and mapping in developing countries, to advise on and coordinate survey aspects of a "general boundaries" system. S/he might be called "Survey Adviser" and should be based in the Ministry of Agriculture. S/he would look into such matters as alternative methods of survey and relative costs, up-grading of the performance of technician surveyors, essential equipment required for surveying/drafting and its cost, and other related matters. This proposition is discussed further in Chapter 5.

VII. Other Land Registration Matters

The land registration system described above should be regulated by a new law distinct from the Agricultural Land Law. The latter regulates the various conditions applicable to persons holding differing categories of agricultural land and includes powers for the State to repossess land when farmers fail to conform with certain of the conditions laid down (e.g. failure to use land for agriculture or livestock for a period of two years). These are not registration matters, although repossession of the land by the State would be greatly facilitated by registration procedures. The separate land registration law would be to a large extent procedural, but strict adherence to procedures is vital to the system; the powers and duties of the Land Registrar must be clearly laid down by law; and the rights of persons holding registered land must be protected by law; any person can appeal to the High Court against any decision of the Registrar. Alternatively, such appeals could be dealt with by a "Chief Land Registrar" with a further appeal thereafter to the High Court, if necessary.

It is not necessary, under the proposed registration system, for the Minister to issue formal certificates to each holder of registered land. In fact, it would be impossible for him to do so given the great number of parcels involved. Land is brought onto the register through systematic adjudication by process of law. The Land Registration Law will confirm that registration of a person as "proprietor" of his parcel of land will give him an exclusive right of occupancy of that land, with all rights in that land, but subject to conditions provided by the Agricultural Land Law. Thereafter, it is the entries in the register that alone provide authority for the current rights in any parcel at any particular time. There is no need for certificates, but registered holders of land often like to have them. Provision is usually made, therefore, for the Registrar to issue, on payment of a fee by an applicant, a certificate of entries in the register on any particular day.

If the proposed system of systematic adjudication and consequent registration is adopted, the first priority is to draft and enact a Land

Adjudication and a Land Registration Law. No further progress can be made until that stage is completed. It is, of course, possible to provide for both adjudication and registration in one Law, but two separate Laws are preferable. The two systems are separate. The land registration legislation will be needed "forever", but once an area has been adjudicated systematically the adjudication legislation will have no further relevance to it. Drafting and enactment of the two Laws is discussed further in Chapter 4.

CHAPTER 4

**AN ACTION PLAN FOR IMPLEMENTING REFORMS
IN LAND LEGISLATION AND REGISTRATION**

I. Introduction

Besides making recommendations on policy reforms in land legislation and registration, this mission was also asked to design an Action Plan for implementing these reforms. Essentially this involves all the activities between the review of land tenure policy and recommendations in Chapters 2 and 3 of this report and the promulgation of a new or revised Agricultural Land Law, an Adjudication Law, and a Land Registration Law. A time schedule is provided, based on the schedule of activities and best estimates of time requirements, showing promulgation of these Laws by August 1990. The GSDR will require technical and financial assistance to implement this plan. Various options for providing this assistance along with resource requirements are contained in a concluding section.

In order for these legislative reforms to be effective, a program of land administration is needed for 1990 and beyond. This program will involve further legislative reforms for rangelands and forest lands, implementation of a systematic program of land adjudication and registration, and future research on land tenure and policy analysis. A brief outline of the scope of activities under this program, and the technical assistance required to design this program, are dealt with in Chapter 5.

II. Objectives and Criteria for an Action Plan

The GSDR is responsible for preparing an Action Plan to improve land tenure policy and the administration of irrigated lands as a pre-condition to the second tranche of ASAP II. The Bank and the GSDR plan to meet in November/December 1989 to exchange views on the extent to which this pre-condition has been met. Two outputs will need to come out of this meeting: (1) an agreement that the GSDR has prepared an Action Plan satisfactory to the Bank (IDA); and (2) clear indication that the Plan has official GSDR approval. The criteria for an acceptable Action Plan, already agreed upon by the GSDR and the World Bank, are that it:

- i. adequately safeguards traditional rights in land;
- ii. provides security of tenure;

- iii. enhances transferability and liberalizes access to land;
- iv. protects the rights of spouses;
- v. is enforceable; and,
- vi. prescribes an administrative framework for managing land resources.

The program of land administration under (vi), as agreed upon by the GSDR and the World Bank, should:

- vii. be simple, rapid and easy to understand;
- viii. provide landholders with clear title to land;
- ix. be cost effective and can be funded from the ordinary budget; and
- x. provides records and information which are easily accessible to landholders and others with bona fide interest.

This mission was asked by the GSDR and USAID to provide preliminary details on the composition and scheduling of this Action Plan.

III. Components of the Action Plan

The purpose of this Action Plan is to improve land tenure policy and registration of land in the irrigated areas of Somalia. Three main components of the Plan are proposed to achieve this purpose: (1) conduct a review of land tenure policy in Somalia; (2) propose and implement reforms in land legislation and registration based on the recommendations of this review; and (3) propose a system of land registration that satisfies the conditions specified in Section II above.

A. Review of Land Tenure Policy

A review of land tenure policy is needed to:

- i. Evaluate the impacts and implications of existing land legislation on protection of customary rights, security of tenure, transferability of land, land use and allocation.
- ii. Analyze the impacts of the current system of land registration on security of tenure and land allocation; further, evaluate the efficiency, effectiveness and costs of existing land registration procedures.
- iii. Propose recommendations for reforms in land legislation and registration to improve land tenure policy (i.e. increase security of tenure, enhance transferability of land, liberalize

land access, and provide for a more efficient and equitable system of land allocation).

This review is contained in Chapters 2 and 3 of this report.

B. Legislative Reforms

The GSDR is considering drafting three pieces of legislation: (1) a new or revised Agricultural Land Law; (2) a new Land Adjudication Law; and (3) a new Land Registration Law. The reforms below are indicative of the types of policy changes that are being considered for the new or revised legislation, as recommended by the mission in Chapters 2 and 3 of this report. These changes are not exhaustive; other reforms may be adopted during the drafting process. Further, certain provisions such as land ceilings, levels of compensation, tax rates and rate structure will only finally be determined by the special committee, with the assistance of technical experts, in the actual drafting phase of the Action Plan (Section IV). It is up to the GSDR to decide the specific changes to make in the legislation and the process for implementing this Action Plan. The reforms below are thus provisional and subject to the approval of the GSDR.

1. Security of Tenure and Safeguarding Traditional Tenure Rights

Concerning the criteria that the Action Plan should (i) safeguard traditional rights in land, and (ii) provide security of tenure, the following revisions in the Agricultural Land Law will be undertaken:

- a. Provisions will be explicitly written into the Law stating usufructuary rights as the basis for determining concession rights. (ref: II.B.1)
- b. Terms of compensation will be established for farmers losing land as the immediate result of state expropriation for establishment of State farms, Cooperatives, autonomous agencies, or for Municipal use. Compensation will be based on some measure of assessed land value that considers lost use rights as well as simply the value of investments having been made in the land. (ref: II.B.2)
- c. The sporadic method of land registration, which has enabled outsiders the means to gain access to land, will be replaced by the system of systematic registration described in Chapter 3. (ref: II.B.3)
- d. Until such time that systematic adjudication and registration takes place, land use and allocation will be the prerogative of customary authorities in accordance with customary law and practice. Settlement of any disputes over rights to land will be the responsibility of local authorities with ultimate recourse to the courts. (ref: II.B.6)
- e. Taxes will be increased on land to increase the costs of idle or unproductive holdings, and to provide greater disincentives to land grabbing. Stricter enforcement of repossession in the event that

taxes are not paid will be provided. Restrictions on land transfers will be eliminated to increase the opportunity cost of holding idle, unproductive landholdings. (ref: II.E.1, II.E.2, II.G)

- f. Although all land is the property of the state, concession holders will be given exclusive rights of occupancy for their land with all rights in that land for an unlimited term, subject to conditions provided by the Agricultural Land Law, thus eliminating the 50 year term of concession. (ref: II.C.1)

2. Enhanced Transferability and Liberalized Access to Land

Concerning the criterion that the Action plan should (iii) enhance transferability and liberalize access to land, the additional following revisions in the Land Law will be undertaken:

- g. Restrictions on the number of parcel holdings will be removed allowing a family to cultivate as many parcels as it wishes. (ref: II.D.1)
- h. Ceilings on most agricultural lands will be eliminated except in frontier areas until such time that the settlement phase has passed. Decisions on whether ceilings are needed will be made on a case by case basis. (ref: II.E.1 and H.4)
- i. All restrictions on transfers and leases in land will be eliminated. The GSDR recognizes that there is no need for the MOA to any way authorize or control transfers. (ref: II.F.1 and F.2)
- j. Current provisions allowing for mortgage of land as collateral for credit will be retained and facilitated. Mortgages will be registered, as other transactions in the register. Any mortgage not so registered will be null and void. (ref: II.F.3)
- k. All restrictions on partitioning of land that would provide the mechanism for larger, unproductive farms to disintegrate over time as a result of taxation, or otherwise, will be eliminated. (ref: II.F.4)
- l. The two year provision on land use will be eliminated and powers of expropriation used cautiously to preserve or increase the tenure security of landholders. Use rights will be redefined to include fallow, forage, bush reserve and forest land in order to establish a broader definition of use rights. (ref: II.H.2 and H.3)
- m. The right to bequeath and inherit land, in principle, will be provided for in the Land Law, in accordance with the rights of inheritance under the general Law.

C. Reforms in Land Registration

1. Simplicity, Speed, and Ease of Understanding

The program of systematic adjudication and land registration, described in Chapter 3 of the mission's report, is a well-tried system implemented in many countries in Africa and elsewhere. The systematic approach: (a) implies an orderly sequence in which all parcels are brought onto the register area by area; (b) ensures maximum publicity regarding who holds what rights within the area and has the benefit of direct evidence from owners of adjacent parcels; (c) provides for a safer system than sporadic adjudication; and (d) is infinitely quicker and more cost effective per parcel than sporadic adjudication. Because systematic adjudication is compulsory and well advertised, smaller farmers are not at a disadvantage in terms of cost or information. Further, landholder rights are protected given that adjudication is properly conducted.

One, of course, would like a system where all customary rights are completely converted to statutory rights through the process of adjudication and registration. However, because of high information costs, this conversion is not always easy or entirely possible. The experience of land registration in some countries has shown that some landholders gain rights as a result of this process, while others lose rights. But, the alternative--the continuance of land grabbing, tenure insecurity, and high litigation costs under customary tenure, and restrictions on transferability of land to outsiders--also imposes costs. And, these costs will continue to rise with population pressure and increasing land value. These risks point out the importance of careful land adjudication.

The GSDR agrees with the mission's review that a system of systematic adjudication and registration should be adopted and the present system of sporadic registration stopped. However, the first priority is to draft and enact a Land Adjudication and a Land Registration Law. No further progress can be made until that stage is completed. Drafting and enactment of these two Laws is discussed under the implementation of the Action Plan (section IV).

2. Records and Certificates

Land is brought onto the register through systematic adjudication by process of law. Land parcels must be adequately surveyed and mapped and each parcel must be accorded a unique reference. Each parcel is then cross-referenced to the Register containing written details relevant to the parcel and the name of the person having the rights and limitations in the parcel; a register bears the same unique reference as the parcel reference. The maps of the parcels, termed the Registry Map, and all the registers together constitute the Land Register. This system of a parcel-based register has many advantages and is widely used.

The Land Register will ultimately be established and maintained in a number of offices, one in each land registration district. Every district land registry office will by law contain: (a) the Registry Map showing all parcels comprised in the registration district; (b) the Land Register; (c)

parcel files containing documents which support entries in the Land Register; (d) an Application Book in which is kept a record of all applications; (e) an index in alphabetical order of the names of registered landholders showing the number of parcels in which they are interested; (f) a Mutation Record, for the process of altering the Register Map by subdivision or amalgamation; and (g) a register and file of powers of attorney.

The Land Registration Law will confirm that registration of a person as proprietor of his parcel of land will give him an exclusive right of occupancy of that land, with all rights in that land, but subject to conditions provided by the Agricultural Land Law. Thereafter, it is the entries in the register that alone provide authority for the current rights in any parcel at any particular time. There is no need for certificates, but registered holders of land may want them. Provisions will be included that allow applicants the option to obtain certificates from the Registry.

3. Cost Effective but Cannot be Funded from the Ordinary Budget Alone

Two sources of revenues are established or strengthened by these reforms: (1) registry fees to cover the operation of the registries; and (2) tax revenues from levying and enforcing taxes on land.

Land registries, once established with say 100,000 parcels per registry, should be self-financing through collection of fees paid by the public for registry services, particularly fees for land transactions. In the interim, until a sufficient number of parcels are recorded in the registry, operating deficits will need to be funded out of the ordinary budget.

The GSDR is in general agreement that taxes on land should be increased, although tax rates and the choice of tax system--fixed rate taxes or progressive taxes--will need to be decided by the special committee with assistance of technical experts during the implementation of the Action Plan (section IV). Ways must also be discovered to increase enforceability of tax payments and to optimally allocate tax revenues. These additional taxes should help augment government revenues, although higher administrative costs will be required for tax collection. The net difference will depend on the efficiency of the tax system and compliance.

4. Rights of Women

Despite other family members having use rights in land, the majority of registrations in Somalia are recorded only in the name of the male head of household. This has led to suggestions that joint registrations be used to adequately secure women's rights. However, this issue is complex: (a) women's rights to land under customary law are not well understood and/or as clearly defined as men's rights; (b) women for various reasons do not come forward to state their claims, or they defer to their brothers or husbands; (c) under customary tenure, women have rights to some piece of land within the parcel, but the specific location is undefined; and (d) there is conflict between formal legal rules and customary practice.

The Adjudication Officer should see that a woman's claim is recorded if it is raised during the process of adjudication. Meetings with women's groups

might be arranged along with the meetings with the leading members of the community, prior to adjudication and registration, to explain to women the purpose and implications of the adjudication and registration process. But, it is unreasonable to expect the Adjudication Officer to actively search out women who for whatever reason, do not come forward to state their claims, or who are reluctant to assert their customary rights.

There is of course concern that registering land solely in the name of the male head of household will result in other family members losing rights in land, or losing the freedom to exercise their rights. This concern may arise in each of the following situations:

- i. Divorce. It is generally not practical to record all the rights of all rightholders on the register. For this reason, the marital law is used to preserve the rights of a spouse to land in the case of divorce. The outcome under marital law should not be affected by the spouse's name not being shown on the register.
- ii. Death of Husband. Any rights of a wife to use of land owned by a deceased husband should be guided by the general inheritance law. The outcome under this law should not be affected by the wife's name not being shown on the register.
- iii. Transfer. Liberalizing land markets at the same time as registration does increase the risk that land will be sold by the man, leaving the wife or wives of the man destitute. There are several options for dealing with this problem:
 - a. Put formal provisions into the Registration Law stating that registration does not take away any of the rights that are granted under the general law.
 - b. Include women as joint holders of the concession and include their name(s) in the registry. This option would provide women with more secure rights to the land of her husband and to the share of the sale proceeds. But, it also risks giving women more rights than they are entitled under customary tenure. It is crucial that land registration not be perceived as an instrument for social change. Otherwise the program risks being undermined by poor cooperation.
 - c. Provide some mechanism (e.g. Land Boards) for reviewing transfers when conflicting claims arise. Such Boards may help protect other family members rights in cases where claims are brought to the attention of the Boards. But, they also impose restrictions and economic costs on transfers, countering attempts to liberalize the land market. Such Boards also increase demands on administration and the budget.

Consideration will be given by the GSDR to these and other options to better secure womens' rights in land during the implementation of the Action Plan. A review of marital property law and inheritance law is needed to ascertain womens' rights in land in de jure and practice.

5. Enforceability

Enforceability is a difficult issue to address because it is integrally linked with funding constraints. Many of the policy reforms, i.e. facilitating land transfers, will make policing easier because the provisions more closely conform with land use practices under customary tenure. Basing the program of registration on systematic adjudication will help eliminate the problems of tenure insecurity arising from overlapping boundaries and loss of rights from poor adjudication procedures that sometimes have resulted from sporadic registration. However, the size of area covered by systematic adjudication will largely depend on the resources available to the MOA, and this in turn will depend on budget allocations within the GSDR, and technical assistance by donors. Even with substantial resources, systematic registration will require years to complete.

Outside areas of systematic registration, the powers of the MOA will be limited. In areas managed under customary tenure arrangements, the Courts not the MOA should be responsible for land disputes. The MOA neither has the jurisdictional powers for such areas, the expertise to deal with problems of dispute resolution, or the resources to handle such problems. The question remains whether the Courts are capable of managing such disputes. There are two points that must be taken into consideration:

1. The Courts and the MOA both have tried to handle such disputes in the past, leading to jurisdictional conflicts and increased tenure insecurity for landholders. Giving authority to the Courts will reduce administrative costs and increase legal certainty (at least over which of the two institutions have jurisdiction).
2. The Courts are the ultimate authority for interpreting and enforcing the Law. The fact that legal processes may be weak suggests that further programs and regulatory reforms may be needed to improve the judicial process. Unfortunately, the functioning of the Courts in practice is poorly understood, in particular the relations between the general law and customary law.

Until such time that systematic adjudication has become "widespread," two strategies should be pursued:

3. Target systematic adjudication and registration towards those areas where economic forces are driving up land values, and increasing payoffs to land speculation.
4. The GSDR and donors will need to provide more resources to expand the scope of the MOA's registration program. Still, in some areas such as the rangelands and certain areas of the Jubba, land registration must await usufruct rights being clearly established. These are the areas where apparent problems of land grabbing are most severe, and where the most resources for law enforcement by the Courts will be needed.

D. Costs and Benefits of Legislative Reforms and Land Registration

The costs of undertaking legislative reforms are contained in the section entitled "Technical Assistance" in Section V. Determination of costs of the systematic land adjudication and registration program and the design of a Central Land Registration Project are discussed in Chapter V.

The benefits of legislative reforms are derived from reducing the economic costs imposed by restrictions on land use and allocation:

- a. Lengthening the term of concession should reduce the tenure insecurity arising from concerns whether the concession will be renewed, and provide a more secure planning horizon for those investments--terracing, irrigation infrastructure, wells, buildings, and mango, grapefruit, and lemon trees--with productive lives greater than 50 years.
- b. Relaxing restrictions on land transfers in the land law should: (a) provide more efficient users with a less costly means to acquire land, and less efficient users with the means to dispose of it on mutually agreeable terms; (b) provide farmers greater flexibility to meet seasonal or temporal land needs through borrowing or renting-in, or to employ seasonally idle land through giving or renting-out; (c) permit parents greater flexibility to acquire land for their sons' and daughters' inheritance; (d) provide landholders with greater flexibility to adjust the size of their landholdings according to economic forces; (d) to facilitate mortgage of land for credit. In the short to intermediate term, registration of land is not likely to have a large effect on the supply of credit in agriculture, until such time that land markets emerge and land values rise to enable conversion of land as a fixed asset into a financial asset.
- c. Eliminating the two year provision on land use cultivation and redefining use rights to include fallow, forage, bush reserve and forests, to establish a broader definition of use rights, should reduce needless deforestation, increase the security of adopting traditional soil resting strategies (fallowing and forage crops), and facilitate leasing and renting of land.

The net impact of these benefits is very difficult to quantify.

The theoretical benefits to land registration are widely recognized. In the last thirty years many developing countries, including a number in Africa, have established new registration systems or have overhauled earlier systems. The main benefits to holders of land are: (a) Security of tenure provided by the formal identification and recognition of the rights of the holder through a process known as "adjudication," and by the State guarantee of those rights in the land register; (b) Reduction of land disputes and court cases with a consequent saving in time and money; (c) Simple, quick and effective methods of dealing in land on the register; (d) Security for credit; and (e) Increased investment and agricultural output as the result of (a) to (d) above.

The main benefits to the State are: (a) Facilitating land reforms (e.g. consolidation of fragmented holdings, redistribution of land, redevelopment) which can be expedited by the available information on the register; (b) Management of State land available for dispositions by the State, including public acquisition of land; (c) Monitoring of the land market; (d) Support for land taxation; and (e) Statistical information (e.g. land prices, parcel sizes, outstanding credit).

The extent to which the benefits to holders of land are realized will depend on a number of conditions: (1) Whether security of tenure is increased will depend on the level of tenure insecurity present under customary tenure, and the value of the State's guarantee to honor those concession rights; (2) Security of credit is increased only if the Law permits in a flexible way transfer and mortgage of land, and land can be converted into a liquid asset at reasonable costs; and (3) investment and output response depend on the presence of technological options for investment in land, on farmers' access to market information and knowledge about these technological options, and on functioning credit and input markets free of rationing constraints.

In situations, as in Somalia, where agricultural technology research, technological options and input markets are weak or non-existent, measuring the potential benefits to land registration is very difficult. Yet, the expected returns from future investment may depend crucially on the institutional framework of property rights and the freedom to exercise those rights, particularly if situations of rapidly rising land value and moderate to rapid technological change emerge. Waiting for these changes will pose problems of timing, since technological change can proceed quickly, while land registration programs require a long planning horizon.

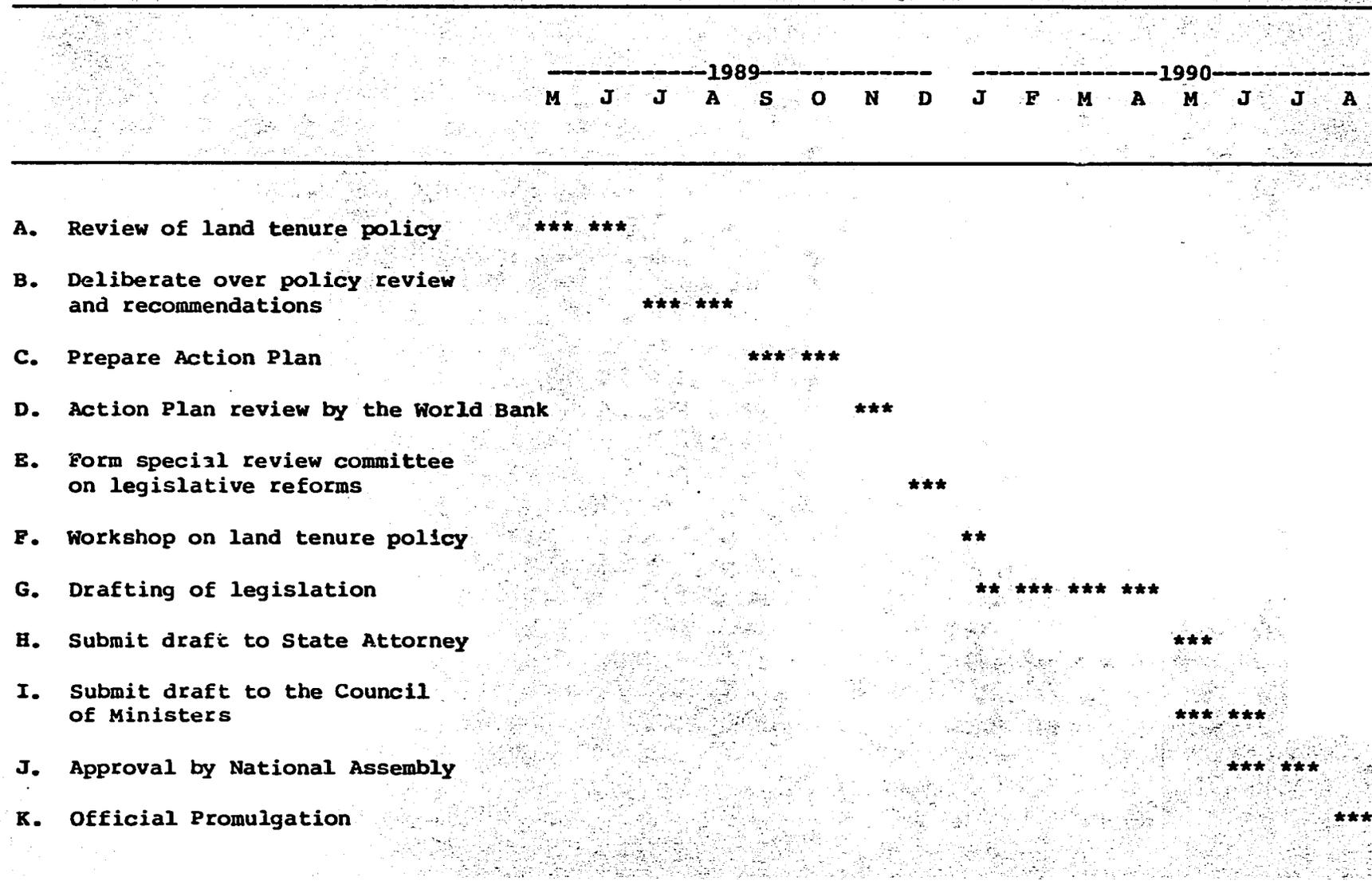
IV. Implementation of the Action Plan

This mission has identified the following steps that will need to be undertaken to implement the above legislative reforms. Although in reality it is very difficult to consider one step separate from the others, they provide some basis for estimating time requirements, and indicate areas where additional resources may be necessary to assist the GSDR in implementation. Phasing starts in May 1989, corresponding with the review of land tenure policy in this report, and ends with promulgation of new agricultural land legislation in August 1990. A tentative time schedule indicating phasing of the program is given in Figure 4.1.

A. Review of Land Tenure Policy

A comprehensive review of land tenure policy has been completed in Chapters 2 and 3 of the mission's report. The recommendations from this review will serve the basis for legislative changes, and procedural changes in land registration (Chapter 5).

Figure 4.1
Schedule for Drafting the New or Revised Agricultural Legislation



B. Deliberation Over Policy Recommendations

Chapters 2 and 3 contain recommendations for reforms in land legislation and registration. The GSDR will need time to consider these reforms and to:

- i. review the policy recommendations for completeness, oversights, or any misrepresentations in the mission's report;
- ii. deliberate on whether specific reforms can achieve their intention, and if not submit proposals for reforms to be implemented in their place;
- iii. choose among policy options in situations where multiple options are offered in this report (e.g. in the case of land ceilings and taxation);
- iv. evaluate the type and level of resources the GSDR will require to meet the requirements of the Action Plan.

A period of time is envisaged for discussions and negotiations between the MOA and the World Bank. This report will provide the initial starting point for those discussions. This period for deliberation is essential, but very difficult to estimate. We conservatively estimate two months, but time requirements could be considerably shorter or longer.

C. Preparation of the Action Plan

An Action Plan showing the GSDR's plans and strategies for improving land tenure policy and administration of irrigated land needs to be finalized by October 1989. Acceptance of the Action Plan by the World Bank has been set as a pre-condition to the second tranche of ASAP II. After review by the MOA, this chapter can be revised as the GSDR's Action Plan.

D. Action Plan Review

A meeting is tentatively scheduled for November/December 1989, between the GSDR and the World Bank, to determine whether the conditions to ASAP II have been met. Acceptance by the World Bank will depend on: (1) a satisfactory Action Plan having been prepared by the GSDR; and (2) clear indication that the Plan has clear GSDR approval.

E. Special Committee on Legislative Reforms

We recommend under step (G) below that an expatriate adviser be hired to assist the MOA in drafting the Agricultural Land, Adjudication and Registration legislation. But, to avoid having the drafting specialist working in a void, we recommend further that a special committee be formed of Somali experts who are interested and knowledgeable in issues of land policy

and legislative reform. The committee will have responsibility for: (a) choosing among policy options (where noted in Chapters 2 and 3 of the mission's report); (b) making decisions on specific changes in land legislation (e.g. appropriate land ceilings, tax rates, levels of compensation, fixed versus progressive taxes, etc.); and (c) drafting of the law (with the technical assistance of an expatriate adviser). We suggest several possibilities (for organizing such a committee):

1. A committee comprised solely of legal and technical experts within the MOA.
2. An inter-ministerial committee formed with representatives from various Ministries (e.g. Agriculture, Jubba Valley Development, Livestock, and Justice) and Agencies. The Ministry of Agriculture would be the lead institution in coordinating the committee.
3. An advisory committee comprised of knowledgeable and interested people from the academic and business community, agricultural cooperatives, farmers associations, development/commercial banks, and other farm related groups. The committee would be selected by the Minister of Agriculture.
4. Some combination of the above.

We strongly recommend options (1) and (3), at least initially, because representatives from ministries have a strong tendency to introduce and dwell on programming objectives and self interests. After the drafting stage has gotten underway and a preliminary draft law completed, the draft can be circulated among other Ministries. We recognize however that there may be knowledgeable and interested people in other ministries that have a valid interest, hence some combination of (1), (2) and (3) may be preferred.

F. Workshop on Land Tenure Issues, Policy and Legislative Reforms

A workshop on land tenure issues, policy and legislative reforms is recommended prior to drafting of legislation. The workshop would be jointly sponsored by the Ministry of Agriculture, the Land Tenure Center through the U.S. Agency for International Development, and the FAO. The Land Tenure Center has had a three year program on land tenure research and policy, funded by USAID, mainly in the Shabelle and Jubba riverine areas of Somalia. FAO has had considerable experience organizing and implementing similar workshops in Somalia, as well as experience in the area of legislative reforms. The purpose of the workshop is to:

- i. provide a forum for discussing land tenure problems and issues in Somalia;
- ii. allow a free and open exchange of ideas on ways and means to address these problems through policy, administrative and legislative reforms;

- iii. present the policy recommendations in Chapters 2 and 3 for review and open discussion.

Based on the Land Tenure Center's experience with a similar workshop in Swaziland, a minimum of four days is required to allow time for discussions, comments, and full exchange of ideas. Ideally, the workshop should be held early in the drafting stage to allow time for ideas to be incorporated into the draft law. However, according to Dr. Schels, FAO Representative in Somalia, 6-8 months will be required to organize the workshop. Given these requirements it will be difficult to hold the workshop before January 1990.

In principle, the MOA feels that such a workshop could potentially be very worthwhile, but it also feels strongly that it should not hold up the schedule of legislative reforms. Given these parameters, there are a number of options to consider:

1. Hold an internal MOA workshop attended by staff of the MOA, and representatives of the special committee.
2. Hold a National workshop bringing together academics, researchers, government officials, the special committee, and other interested parties. Additional time and costs would be required for: (a) organizing speakers; (b) organizing and preparing discussion papers; (c) organizing workshop participants, both Somali and expatriate; (d) writing contracts and preparing budgets, etc.
3. Instead of a workshop have the special committee hold hearings or consultations with expert witnesses to gather evidence, or to hear advice on legislative reforms.
4. Postpone the workshop until after the legislative reforms are enacted. The workshop would then focus on land policy issues for the purpose of designing a program of land policy research and land administration post-June 1990 (see Chapter 5).
5. Do not hold a workshop.

Because of limited time and resources, either options (1) or (3) are preferred. The choice, however, is up to the MOA and the extent to which it desires having the proposed legislative reforms reviewed and considered.

G. Drafting of Legislation

Two perhaps three separate pieces of legislation will need to be drafted: (1) a new or revised Agricultural Land Law; (2) a new Land Adjudication Law; and (3) a new Land Registration Law. Depending on the preference of the MOA, Laws (2) and (3) can either be combined or kept separate. One argument for separating them, as explained in Chapter 3, is that once all lands are adjudicated and entered on the register the Adjudication Law effectively becomes obsolete.

There are several possible options for drafting the legislation:

1. The MOA, using legal staff or locally hired expertise, will undertake the drafting of legislation itself with the technical input from the committee under (E).
2. One or more expatriate advisers are hired on a short term basis to work with the committee within the MOA on drafting the legislation. By expatriate adviser, we refer to someone who has had expertise with drafting similar legislation elsewhere, and is familiar with models that might apply. To the extent that legislation elsewhere can be used as a model, some of the drafting could be undertaken outside Somalia.
3. Throughout this process translators will be required to translate from English to Somali, and vice versa.

Because of the difficulties finding people with drafting experience locally, we recommend hiring an expatriate legal drafting specialist (see Section V). The time required for drafting legislation, including interactions between the committee, technical experts within the MOA, the expatriate adviser and donor committee is estimated at 3-4 months, including time for translation, and review of draft legislation by the President's Office and other Ministries. Actual time requirements will depend on how successfully delays in planning and coordination are minimized. Keeping the size of technical and review committees to the minimum is essential. Having the expatriate adviser under (2) plan and coordinate program implementation can expedite the process.

The drafting process implies some level of monitoring and review by the World Bank to determine whether reforms have been satisfactorily met. We assume that this process is clearly understood by the GSDR and the World Bank.

H. Submission of Draft to the State Attorney

Once the draft legislation is prepared, the MOA will pass the legislation to the State Attorney for review. Some revision mainly in the legal language of the law can be expected. Estimated time: 1 month.

I. Submission of Draft to the Council of Ministers

The Council of Ministers will review the legislation and may suggest changes. If changes are requested, then the legislation is passed back to the State Attorney and MOA for revisions. Estimated time: 1-2 months.

J. Approval by the National Assembly

The legislation is forwarded from the Council of Ministers to the National Assembly for approval. This assembly meets bi-annually, once in June/July and once in December. The Assembly will expire in December of this

year unless extended. A Permanent Committee is always in session, and has the authority to review the legislation and make a decision. The approval of the National Assembly is still required for enactment, but once the Permanent Committee reaches a decision, the National Assembly normally abides by its decision. Estimated time: 2 months.

K. Official Promulgation

After approval by the parliament, the legislation is forwarded for publication in the monthly official bulletin. The draft land legislation becomes a law or decree within 15 days from publication unless a different date is indicated in the law itself.

V. Technical Assistance

The MOA, knowing its resources and capabilities, must make the decision on the level of technical resources it needs to implement the above program within the designated time frame. The three options presented below represent different ways that technical assistance can be given to the MOA. Option 1 calls for a legal draftsman on a short term basis to assist the MOA in drafting the legislation. Option 2 calls for the legal draftsman plus a land policy adviser, both on a short term basis, to assist the MOA with making policy choices and choosing among specific policy options. Option 3 calls for the legal draftsman on a short term basis plus a land policy adviser on a longer term basis to assist the MOA with coordinating and implementing the Action Plan, in addition to the land policy assistance under option 2.

A. Option 1

An expatriate Legal Draftsman only is recruited to assist the Ministry of Agriculture on drafting the Legislation. The Draftsman will work with the special committee on land tenure, or with the GSDR, drafting three pieces of legislation: a new or revised Agricultural Land Law; a Land Adjudication Law; and a Registration Law. The Legal Draftsman should have legal background or experience with drafting agricultural legislation, familiarity with Islamic law, and African experience. While the Legal Draftsman will work with the MOA on clarifying land policy for purposes of drafting the legislation, the Legal Draftsman will have no responsibility for helping choose among the land policy options posed in Chapter 2 (e.g. determining land ceilings, levels of compensation, tax rates and rate structure). Two visits over a five month span are envisioned:

1. one month outside the country and 2 months inside the country at the beginning of the drafting phase;
2. once the first draft is completed, documents will need to be translated and circulated for review, requiring several months. The

Legal Draftsman will then return for a second visit for 1-2 months to finalize the draft legislation.

Budget Requirements:

a. One expatriate legal draftsman for 4 months at \$270/day	\$24,300
b. Honorariums for Special Ministerial Committee (12 persons x \$1,000)	12,000
c. Counterpart Somali lawyers for drafting of legislation	10,000
d. Airfares and local transport for legal draftsman	8,000
e. Per-diem in Mogadishu for 3 months at \$65/day	5,850
f. Communications, supplies, computer rental	4,000
g. Legislation preparation and duplication	5,000
h. Secretarial and staff assistance	7,000
i. Translator fees	5,000
Total	\$81,150

B. Option 2

In addition to the Legal Draftsman under option (1), a Land Policy Adviser will visit Somalia for two weeks, prior to the arrival of the Legal Draftsman to assist the MOA in developing specific policy and legislative changes to be made in the Agricultural Land Law. The Land Policy Adviser should be an economist or agricultural economist with experience working within ministries on policy issues related to land regulations and controls, taxation, compensatory payments and registration. The Land Policy Adviser will then overlap with the Legal Draftsman and work with the committee on designing specific legislative changes. The Legal Draftsman has the same scope of work as under option (1).

Additional Budget Requirements:

a. One expatriate land policy adviser for 1 month at \$270/day	\$ 8,100
b. Airfares and local transport	4,000
c. Per-diem in Mogadishu for 1 month at \$65/day	1,950
d. Communication, supplies and computer rental	2,500
e. Secretarial and staff assistance	1,500
Total	\$18,050

C. Option 3

Recruit a Land Tenure Policy Adviser with a wider role of coordinating this program activity from inception (January 1990) through step (K) above referring to official promulgation (August 1990). The Adviser would be responsible for assisting the MOA and special committee on making specific

policy and legislative changes, working with the Legal Draftsman and coordinating the drafting phase of legislation, organizing the workshop, serving as the liaison between the MOA and donors, and in all other ways coordinate and facilitate program implementation. This option supplements the position of Legal Draftsman under option (1), and replaces the Land Policy Adviser under option (2).

Budget Requirements in Addition to Option (1):

a. One expatriate land policy adviser for 8 months at \$270/day	\$ 64,800
b. Airfares and local transport	10,000
c. Per-diem in Mogadishu for 8 months at \$65/day	15,600
d. Supplies and computer rental	5,000
e. Secretarial and staff assistance	<u>10,000</u>
Total	\$105,400

Note: The above budget excludes expenses for the workshop. The difficulty of finding qualified expatriate staff for eight months will require one of the donors to make provision for housing. These figures also assume complete support in terms of access to commissary, pouch, health unit, and check-cashing.

Options (1), (2) and (3) will require the MOA to provide office space for the expatriate adviser. If facilities have to be rented outside, additional resources will need to be budgeted.

CHAPTER 5

A PROGRAM OF LAND ADMINISTRATION FOR POST-JUNE 1990

I. Introduction

Besides the recommendations for changes in land legislation in Chapter 2, the recommendations for reforms in land adjudication and registration in Chapter 3, and the Action Plan for implementing legislative reforms in Chapter 4, this mission was also asked to briefly outline a program of land administration for 1990 and beyond, following enactment of the new or amended agricultural legislation. We divide land administration into two basic components: a program of systematic adjudication and registration; and a program of land policy and tenure research. This chapter briefly explains each component and in the case of land registration provides alternative options for coordinating donor efforts and funds within the MOA for implementing the program.

II. Program of Systematic Adjudication and Registration

It was argued in Chapters 2 and 3 that the current program of sporadic registration should be replaced by a program of systematic adjudication and registration. Two questions confront the planning of such a program: (1) What should be its scope in terms of size, coverage and location? Size and coverage will be determined by level of funding and constraints on implementation; and (2) How should it be implemented given multiple donor interests and funding?

From the MOA's perspective, administrative costs in managing and coordinating a program of land registration increase with accountability requirements and earmarking of funds by donors. Costs and inefficiencies increase proportionally with the number of donors involved, unless attempts are made to coordinate financing and accountability through a centrally funded project. In principal, having one central source of funding and one set of program objectives is more efficient, and easier for the MOA to administer, than multiple sources of funds and objectives.

A. Current Donor Activities and Plans for Land Registration

A number of donors are implementing or considering the implementation of land registration programs in specific donor funded projects:

1. USAID Shabelle Water Management Project

Registration of smallholder lands has been imposed as a precondition to construction rehabilitation on an 8,540 hectare scheme (5,133 hectares of smallholder lands) adjacent to Shalambood. The Land Tenure Center, University of Wisconsin, is providing a technical adviser to the Ministry of Agriculture to design and implement the registration program. Pilot registration of 150-200 parcels is expected to be completed by July 1989, and registration of all land in the scheme by December 1990. The program is being designed with the intention of providing standardized land adjudication and registration procedures for the benefit of future programs by other projects and donors.

2. The World Bank Farahanne Irrigation Rehabilitation Project

A cadastral survey and registration campaign is being proposed for about 5,480 hectares of land in the Farahanne area before major construction works begin (Lemel 1988). Field implementation of the registration campaign has been tentatively set for October 1989. The MOA has agreed to complete the registration of approximately 200 parcels in a 300 hectare area where a cadastral survey has already been completed. USAID and the World Bank are collaborating closely to ensure that standard registration procedures are adopted in both the Shalambood and Farahanne sites.

3. EEC Dar es Salam Busley Development Project

Project site covers 27,500 hectares upstream from the Shalambood and Farahaane projects. The site, starting near Aw Dheegle and ending near Afgoi downstream, is about 26 km long and 10 km wide. Approximately 5,650 hectares are considered irrigable, and 14,010 rangeland, the rest being dense bush, swamp, villages, roads and other land. The project is still in its planning stages, but registration of land is being considered at least for the irrigable land.

4. GTZ, Multiple Projects

GTZ is considering land registration in the following project areas: (a) 400 families, averaging 2-3 plots per family, in the Middle Jubba (Saakow, Dujuuma and Bu'aale); (b) 400 families, averaging 1-2 plots per family, in the Qorioley Refugee Settlement in the Lower Shabelle; (c) 6,000-7,000 families, averaging 1-2 plots per family, under the Shira project in the Lower Shabelle; and (d) 300 families, averaging 1-2 plots per family, near Jowhar in the Middle Shabelle. GTZ is considering the possibility of group registration, rather than individual registration, presumably to expedite the registration process. However the logistics of providing for group registration, separate from the provisions for Cooperative and company concessions in the Land Law, have yet to be worked out.

5. Ministry of Jubba Valley Development and GTZ, Jubba Valley Development

Construction of the dam at Bardheere is expected to provide irrigation for up to 120,000 hectares of land. About 17,000 hectares in the valley are currently irrigated. A cadastral mapping and land registration program is in

the very preliminary stages of planning by GTZ. A mission comprised of 1-2 GTZ specialists is planned for September-November 1989 to prepare a project identification document for the cadastral mapping with preliminary cost estimates. GTZ is planning to develop the program then search for financing among donors.¹²

6. FAO Land Resources Survey for Land Use Planning

This project is not connected with land registration. Its emphasis instead is on soil inventory, land use planning, and institutionalizing a coordinating body for land resource survey and planning within the MOA. The project is expected to provide the following outputs:

- a. Organize a Land Resource section within the Department of Land and Water in addition to the hydrology section and irrigation section already formed. Land tenure is foreseen as a sub-section within this Land Resource section.
- b. Establish a Land Resource Advisory Committee to coordinate the activities of the Land Resource section with other Ministries, Departments and agencies;
- c. Establish a functioning Cartographic office within the Land Resource section; assemble available maps, landsat imagery, aerial photographs, relevant reports and background data for each survey region; and purchase cartographic equipment, aerial photography and satellite imagery.
- d. Conduct an inventory of soil resources at a scale of 1:250,000 for the Lower Shabelle and irrigated areas along the Shabelle river with supporting maps for land use planning;
- e. Provide teaching materials and training in remote sensing, land resource data processing, and land use planning; and conduct a Workshop on the Planning and Use of Land Resources of Somalia.

B. Complementarity, Overlap and Gaps Among Current Donor Projects

The above donor activities indicate both the potential for a more effective and better funded program of land registration, by exploiting the

12. In February 1989, the MOA expropriated the registered concessions of 30 individuals and firms totalling about 1,630 hectares between Bardheere district and Jilib. This land is intended for the resettlement of those farmers whose land will be inundated by water of the Bardheere Dam reservoir. The concessions were expropriated on the basis of Art. 10 of Land Law No. 73, providing for state expropriation of land for the public good. But this mission is also informed that the concessions had not been cultivated for at least two consecutive years, and thus were subject to revocation under Article 15.e.

complementary nature of the various donor projects, or the prospect of inefficiency resulting from overlap and competition among donors for limited resources within the MOA. Whether a synergism can be established will depend on the level of coordination among donors. Registration on a scheme basis enables a donor to internalize all the costs of planning, financing, and coordinating registration activities with other activities within its own project. Yet, from the perspective of the MOA seeking to establish a regional or national program of land registration, there are shortcomings to this piecemeal approach:

- i. Decisions to register land depend on resource levels of the project and project objectives. Registration of land is thus inevitably linked with the project time schedule. The likely possibility that projects will be delayed, or all commence at the same time, pose uncertainties for the MOA trying to maintain stability and employment of its staff and facilities over time.
- ii. The MOA in the short to intermediate run will be constrained by facilities, transport, surveyors, adjudication staff, and funds to meet recurrent costs. Because of project time schedules, donors will face pressures to implement registration on their schemes as their schedules dictate with two possible outcomes: competition between projects for limited MOA resources; and unreasonable expectations placed on the MOA to accomplish registration in a timely fashion.
- iii. The MOA is left without resources to register land outside the designated project sites of donors.
- iv. With the exception of the Jubba valley project, which may be large enough to absorb the costs, the fixed costs for establishment of registries, furnishings, and aerial photography are difficult to justify given the small number of registrations under any individual project.

As mentioned in Chapter 2, the use of the land registration system in the past to grant land to applicants occasionally resulted in the loss of land rights of certain landholders. The MOA points out that many of the abuses inherent in the system were corrected in 1987. Nevertheless, a number of donors have imposed or are considering imposing land registration as a pre-condition to project activities (e.g. USAID) to ensure that the ultimate beneficiaries are existing landholders. In other instances, donors are trying to secure landholder rights through solutions aimed at expediting the process and/or lowering registration costs (e.g. GTZ).

Eliminating sporadic registration outside districts being systematically registered should reduce somewhat the need to impose systematic registration as a precondition to project implementation. Freezes on registration have already been implemented under the Jubba Valley Development Project and under the Shabelle Water Management Project. The MOA is very concerned that project development activities proceed on a timely basis, and thus, not be encumbered by a land registration activity. Still, there are concerns that stopping sporadic adjudication and imposing higher taxes on landholdings alone may not

be sufficient to prevent land grabbing in areas under customary tenure, particularly in areas undergoing or about to undergo considerable capital investment. Decisions whether or not to impose registration as a condition to projects will need to be decided by the MOA and donors on a case by case basis. However, registration procedures should be established along the lines recommended in Chapter 3 of this mission's report to enable a coherent and standardized program.

C. Options for a Registration Program

In Chapter 3, a number of options were presented for establishing land registries: (1) initially establish one land registry in one land registration district to hold all parcels registered in the Shabelle valley; (2) initially establish one land registry in each of three administrative regions of the Shabelle valley; (3) initially establish one land registry each in the Shabelle and Jubba valleys; and (4) establish one land registry in each of the administrative regions of the Shabelle and Jubba valleys. Which option is the most cost effective will depend on the nature, location and timing of the adjudication and registration program. There are several ways of implementing such a program:

1. Site by Site Registration

Implement the registration program on a site by site basis, the sites determined by donor projects. Since four of the registration programs now planned by donors (USAID, World Bank, EEC, and GTZ) fall within the Lower Shabelle region, it is logical to begin registration in this zone (it in fact is about to begin under the USAID Shabelle Water Management Project). Donor projects would cover all variable costs associated with registration within their project area. However, the GSDR, not individual donor projects, should be responsible for the establishment and operation of the registry or registries. A Central Land Registration Project would be needed for:

- a. Training of registry staff, surveyors, cartographers, and adjudication officers.
- b. Construction of buildings, and the provision of furniture and equipment (see Chapter 3) for the establishment of the registry or registries.
- c. Ultimately establish a Department of Surveys and Lands within the MOA to handle maps, landsat imagery, aerial photographs, and land use planning. Efforts to establish such a Department should be coordinated with the FAO, to avoid overlap and duplication of efforts.
- d. Other capital items, including vehicles, mapping equipment, survey equipment, aerial photography and maps, may either be provided by donor projects or the Central Land Registration project.

2. Registration by "Registration District" in the Shabelle Valley

Implement the registration program on a district by district basis within the Shabelle valley. Since four of the registration programs now planned by

donors (USAID, World Bank, EEC, and GTZ) fall within the Lower Shabelle region, it is logical to start in the Qorioley/Genale area, then proceed upstream towards Afgoi. The campaign could then be extended to the Middle Shabelle with time. A centrally managed project would be needed to cover the above capital items (a) through (d). In addition, the central land registration project would need to provide technical assistance to cover costs of:

- e. Vehicles, survey equipment, supplies, staff, and field support to undertake adjudication and registration activities outside sites of registration funded by other donors.

3. Registration by Site or "Registration District" in the Shabelle and Jubba Valleys

Implement the registration program also in selected regions of the Jubba where cultivation has taken place. Since registration is preceded by adjudication, and adjudication depends on clear usufructuary rights having been determined, "registration districts" will be more difficult to establish and entail higher costs. Program costs will need to be met by projects involved in the development of the Jubba Valley, or the Central Land Registration Project.

4. Registration by Private Company

Options (1) to (3) assume that donor funds are used to strengthen the MOA's capability to implement the adjudication and registration program with some foreign technical assistance. Despite the level of funding, the MOA will be seriously constrained in the short to intermediate run by skilled field staff and registry personnel. Another alternative is to have an expatriate company implement the adjudication and registration program, construct the registries, and turn the registry and records over to the MOA upon completion. This option has recently been tested in St. Lucia. However, benefits of more rapid program implementation are offset by higher costs and concerns of heavy expatriate involvement in registration procedures. The MOA is opposed to this option, preferring instead to strengthen MOA capabilities at land registration from within.

D. A Central Land Registration Project

Donors have to realize that any future program of land adjudication and registration will require donor funding. Land registration cannot effectively proceed under the tight budget constraints of the past. An effective program will require years of investment, at least a 10 year planning horizon. In the short run, benefits will be limited by constraints on program implementation, and impediments to expansion of input and commodity marketing. Yet, in the long run, the institutional framework governing land tenure will have a crucial bearing on investment incentives and capacity.

It is difficult to imagine the MOA coordinating and administering a standardized program of land registration given the piecemeal approach now being pursued by donors. Also, the MOA wants and needs to look beyond the demands of current donor funded projects to a more comprehensive and coherent

program of land registration. A Central Land Registration Project should be established with funds from a consortium of donors (e.g. USAID, the World Bank, EEC and GTZ) and the GSDR to provide central administration and coordination.

USAID among donors has been on the forefront of land policy work and land registration in Somalia. They continue to be interested in playing a substantive role in a future land registration project. However, issues of land rights are sometimes very sensitive and political. The GSDR may thus prefer to have the project implemented by a multi-lateral donor, which from the viewpoint of Somalis, is not as influenced by country-specific aims and politics. In this event, the World Bank would be the appropriate institution to head the project, although other donors could maintain substantive roles. As an internal policy matter, this is up to the MOA to decide.

III. Land Tenure Research and Land Policy

Along with the legislative reforms and a program of land registration, there will be an ongoing need for research and land policy analysis. These research needs can be grouped into two broad categories: land policy analysis in irrigated areas; and land tenure research in rangelands and forests. It is recommended below that a future mission be funded to design this program of research. But, the following issues are indicative of the types of land policy questions that will confront the GSDR.

A. Land Policy in Irrigated Areas

Analyses of land tenure policy will need to be continued in irrigated zones. These can be grouped into two subject areas: (1) analyses related to land policies in irrigated areas, or to specific provisions in the new or revised Agricultural Land Law that may require amendments and changes over time; and (2) monitoring and evaluation of socio-economic impacts of the legislative reforms. There are a number of important policy issues in the domain of the former:

1. Optimal farm sizes with implications for provisions on land ceilings or floors in land legislation.
2. Effects of alternative modes and levels of taxation on farm size, land use, and allocation.
3. Alternative models of measuring and assessing land value for determining appropriate levels of compensation in the event of state expropriation.
4. Technical and economic efficiency of state and cooperative landholdings with implications for privatization and land reform.
5. Environmental and natural resource management concerns associated with settlement of lands in frontier riverine areas.

6. Social and economic consequences of resettlement schemes on settlers and residents with implications for GSDR programs to reduce dislocation costs.

Many effects of the proposed reforms in land legislation and registration will not be felt until years (e.g. 5-10) following enactment. However, baseline studies will be needed in early years to provide the bench mark for comparing effects in subsequent years. There are also program impacts that should be carefully monitored and evaluated beginning with the inception of legislative reforms and systematic land registration:

7. Monitor the impacts of tax changes on tax revenue with implications for administrative reforms.
8. Monitor the impacts of new provisions allowing for land transfer on agricultural credit and investment.
9. Evaluate the structure of agricultural landholdings from data assembled in land registries, including size and distribution of farms, form of management (e.g. individual, private companies, cooperatives, etc.), frequency of women's registrations, and monitoring reactions of beneficiaries to land registration.
10. Identify problems in land adjudication and registration programs which may require legislative and procedural changes.
11. Evaluate alternative institutional bases and processes for enforcing and fostering the development of indigenous land tenure rules, including review of dispute settlement processes and legal change on community initiatives.
12. Examine the effectiveness of court enforcement of the land law and interactions with the MOA with implications for possible program support to strengthen legal processes.

B. Land Tenure Research in Forests, Rainfed Areas and Rangelands

This component constitutes the second stage of research aimed at providing data and analysis to support future legislative reforms for forests and rangelands. Much of the research on land tenure in Somalia today has taken place in either irrigated zones or areas of potential cultivation in the Shabelle and Jubba river valleys. By comparison, there is a dearth of research and data on land tenure in forests and rangelands. The proposals put forward in Chapter 4 called for a new or revised agricultural land law with specific provision for irrigated lands. Similar special provisions for forests and rangelands are ultimately envisioned. The MOA is well positioned to implement legislative reforms today because it had the foresight to invest in land tenure research a number of years ago. Future legislative reforms should be preceded by a similar research component. Several issues are particularly important:

1. Special land "ceilings" and controls on ranches or rainfed farms.

2. Effects of population growth and economic forces on the settlement of non-irrigated lands with implications for economic livelihood of families, and natural resource management.
3. Alternatives for regulating control of rangeland used sporadically by nomadic herdsman.
4. Type and level of regulations to impose on rangeland for optimal management of natural resources.
5. Appropriate levels of taxation.
6. Appropriate levels of compensation in case of government expropriation.
7. Determination of property rights associated with establishment of wells and use rights of water from such wells in dryland areas. Water rights and land rights in dryland areas are integrally related.
6. Optimal size and location of state forest lands, parks, preserves and other forms of reserves, and modes of compensation to displaced landholders and users in the event of state expropriation.

IV. Immediate Needs for Technical Assistance

It is impossible under the time frame of this consultancy to prepare the plans needed for a future land registration program. The MOA and donors should reflect on the recommendations put forward in Chapter 3 and consider options (1) to (4) in Section C above, in order to establish the guidelines for planning a future program. Once these guidelines are set, we recommend that the following technical assistance be provided to the MOA.

1. Arrange for a Land Survey Adviser to:
 - i. Advise on appropriate methods and costs of survey aspects of adjudication/registration in those areas in which the MOA intends to introduce adjudication/registration in the next five years.
 - ii. Explore possible methods of training (including "in-house" training) to upgrade the standards of technician surveyors and draftsmen.
 - iii. Recommend essential equipment and stores for surveying and mapping and calculate their costs. (This may involve preparation of contracts for air survey firms and monitoring the performance of such firms.)
 - iv. Establish liaison with donors interested in land registration, particularly GTZ's efforts with cadastral mapping, USAID's efforts with land registration, and FAO's efforts to establish a section of Land Resources within the MOA.

- v. Provide general advice to the MOA on all survey and mapping aspects of the adjudication/registration program.

These requirements will need to precede any program of land registration. Thus, a year consultancy starting in September 1989 is advised, renewable by agreement of both parties for an additional year. The Land Survey Adviser should have knowledge of, and experience with, cadastral survey and mapping in a "general boundaries" system in a developing country. The Adviser will be based in Mogadishu.

Budget Requirements:

a. One expatriate Land Survey Adviser for 12 months at \$270/day	\$ 98,550
b. Airfares and local transport	10,000
c. Per-diem in Mogadishu for 12 months at \$65/day	23,725
d. Communications, supplies, computer	5,000
e. Secretarial and staff assistance	<u>7,000</u>
Total	\$144,725

2. A follow up mission in late 1989 or early 1990 to design the Central Land Registration Project. The terms of reference would involve organizing a Department of Survey and Lands within the MOA, examining aerial photography and mapping requirements, and planning the adjudication and registration program. The team should include at a minimum the land surveyor under (1), a land registration specialist, and an agricultural economist. Some preliminary indication of donor interest and funding is needed a priori to provide general guidelines on the scope of program to be designed. Following are a preliminary estimate of costs for the mission:

Budget Requirements:

a. Two expatriate advisers for 2 months at \$270/day	\$32,400
b. Local salary support	10,000
b. Airfares and local transport	10,000
c. Per-diem in Mogadishu for 4 months at \$65/day	7,800
d. Supplies and computer rental	10,000
e. Secretarial and staff assistance	10,000
f. Communications, report preparation and duplication	<u>5,000</u>
Total	\$85,200

3. A follow-up mission is needed in late 1989 or early 1990 to organize the program of land tenure and land policy research. The mission will need to design a 3-5 year research program including objectives, issues, policy relevance, approach, research requirements and costs. One land policy specialist with African experience would be sufficient for the program. The specialist should have proven skills in designing and implementing research

programs in Africa. S/he should also have proven research experience in the areas of land policy, and/or natural resource management. Wisconsin's Land Tenure Center, one of USAID's Cooperative Agreements, has the staff to undertake the design and program of research.

Budget Requirements:

a. One expatriate adviser for 1 month at \$270/day	\$ 8,100
b. Airfares and local transport	4,000
c. Per-diem in Mogadishu for 1 month at \$65/day	1,950
d. Secretarial and staff assistance	1,000
e. Supplies, communications and computer rental	<u>3,000</u>
Total	\$18,050

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ANNEX A

DAILY SCHEDULE OF MEETINGS AND CONTACTS, SOMALIA

Daily Schedule of Meetings and Contacts, Somalia

<u>Date</u>	<u>Activities</u>
Mon. May 8	Mr. Roth travelled from Madison to London.
Tues. May 9	Mr. Roth is met by Mr. Lawrance in London airport. Flight from London to Nairobi.
Wed. May 10	Somalia Airlines flight from Nairobi to Mogadishu is delayed. Stay over in Nairobi.
Thur. May 11	Somalia Airlines flight from Nairobi to Mogadishu is again delayed. Stay over in Nairobi.
Fri. May 12	Somalia Airlines flight to Mogadishu.
Sat. May 13	Meeting with Mr. Michael Fuchs-Carsch of USAID/S. Meeting with Vice Minister Mohamood Abdi Noor of the Ministry of Agriculture (MOA) and Mr. Michael Fuchs-Carsch. Visited the Land Registry Office in the MOA to examine the registry and to discuss registration procedures. Located Mr. Ahmed Sheikh Mohamood to determine his availability for working on the mission.
Sun. May 14	Meeting with Mr. Mohamood Mohamad Ali, Director of the Department of Irrigation and Land Use (DILU), MOA. Meeting with Ms. Lois Richards, Director of the USAID Mission to Somalia.
Mon. May 15	Visited the Bank to exchange currency for in-country mission costs. Contacted World Bank to arrange future meeting. Visited GAO of the U.S. mission to go through check-in procedures for ID and health unit clearance.
Tues. May 16	Day field trip to the district and regional land registry offices at Qorioley and Genale, in the vicinity of Merca/Shalambood. At the district land registry office at Qorioley, spoke with Mr. Hassan Hersi Farah, district land registry officer. At the regional registry office (also the district office) at Genale, spoke with Mr. Ahmed Said, regional/district land registry officer.
Wed. May 17	Meeting with the Minister of Finance, Mohamed Sheikh Osman; Ms. Lois Richards and Mr. Michael Fuchs-Carsch in attendance. Meeting with Dahir Warsame, World Bank. Visited GAO to complete checkin procedures.

<u>Date</u>	<u>Activities</u>
Thur. May 18	Introductory meeting with Ahmed Sheikh Mohamood, ex-State Attorney for Somalia. Contacted offices of GTZ and FAO to arrange future meetings. Meeting with Michael Fuchs-Carsch over revised scope of work.
Fri. May 19	Weekend.
Sat. May 20	Meeting with Mr. Donato Chiarini, Mogadishu delegate of the EEC. Meeting with Mr. Vitillo Piceseppe, EEC.
Sun. May 21	Rebooking of flights due to Somali Airlines plane crash.
Mon. May 22	Meeting with Mr. Ali Ahmed Ali Faqi, Head of Legal Division, Somali Development Bank. Meeting with Mr. Jan-Hillem Taaks of the Ministry of Jubba Valley Development and GTZ, and Mr. Geoffrey M. Shillinglaw, consultant GTZ.
Tues. May 23	Meeting with Mohamood Mohamad Ali, Director of the DILU to plan work on computing data on farm type and hectarage of registered farms from data in the Central Mogadishu registry.
Wed. May 24	Worked on rebooking of flight following Somali Airlines plane crash. Meeting with Dr. Herbert F. Schels, FAO Representative in Somalia.
Thur. May 25	Meeting with D. Kammer, Chief Technical Advisor, "Establishment of National Water Center," Food and Agriculture Organization of the United Nations. Meeting with Laurel Rose, Socio-Ecologist, Central Rangelands Water Rehabilitation Project, Food and Agriculture Organization.
Fri. May 26	Weekend.
Sat. May 27	No Meetings.
Sun. May 28	No Meetings.
Mon. May 29	Meeting with Mr. Hassan Bari, Vice Minister of Finance.
Tues. May 30	Meeting with Mr. Hassan Bari, Vice Minister of Finance for general debriefing. Ms. Lois Richards and Mr. Michael Fuchs-Carsch in attendance. Meeting with Vice Minister Hassan Bari, and Mr. Gianni Zanini, African Region Economist, The World Bank. Meeting with Vice Minister Mohamood Abdi Noor of Agriculture.

<u>Date</u>	<u>Activities</u>
Wed. May 31	Meeting with Mr. Michael Fusch-Carsch of USAID for comments on mission report. Meeting with Vice Minister Mohamood Abdi Noor of Agriculture for comments on this report and for general debriefing; Michael Fusch-Carsch in attendance.
Thur. June 1	Departed Mogadishu for London then to Pithingdean, Britain.
Fri. June 2	Mr. Jerry Lawrance and Mr. Michael Roth work jointly on the mission's report.
Sat. June 3	Mr. Michael Roth returns to Madison, Wisconsin.
Fri. July 7	Report is completed and copies distributed.

ANNEX B

TERMS OF REFERENCE

Statement of Work

Attachment A
PIO/T No 649-0510-3-80037

A. Background

To assist the ministry of Agriculture (MOA) in the implementation of Land Law 73, USAID/Somalia has provided the services of a Land Registration Specialist through a buy-in to a S&T Bureau Cooperative Agreement with the Land Tenure Center, University of Wisconsin. On the basis of land registration work already undertaken in the lower Shabelli area, the MOA has made policy changes to facilitate implementation of a rapid, low-cost registration system for irrigated holdings.

To further facilitate land registration on irrigated holdings and to enable land transferability, additional modifications to Land Law 73 and associated legislation are necessary. Initial policy and legislative changes have to be identified by June 1989 so that the GSDR can meet conditions for a second phase of IBRD's Agricultural Structural Adjustment Program and can conform to the requirements of its Policy Framework Paper leading to a possible shadow program with the IMF. Accordingly, the GSDR must prepare an action plan for implementing the first round of policy changes by December 1989 so that new legislation can be promulgated by June 1990. In addition, the GSDR is expected to develop a program in land administration to assess the impact of policy changes on beneficiaries and on the evolution of markets in land. This program will also formulate new policies and legislation for all types of land use including rainfed areas and the rangelands.

B. Objective

The objective of the contract is to begin to move the GSDR towards a more flexible land policy which:

- recognizes different systems of land use and different forms of land tenure;
- respects traditional rights to land;
- gives local authorities a greater role in settling land disputes;
- allows for the transferability of land and the evolution of land markets; and,
- provides for an equitable and efficient system of land administration and taxation.

C. Scope of Work

To achieve this objective, the contractor shall undertake the following specific tasks:

1. Identify changes to Land Law 73 and associated legislation which can be immediately promulgated to facilitate registration and improve administration of irrigated lands whether under individual or other rights to land use or ownership;
2. Identify and assess alternative ways (and corresponding resource requirements) by which the GSDR can be assisted to prepare an action plan by December 1989, for the implementation and promulgation (by June 1990) of the above identified changes to the Land Law and associated legislation; and,
3. Identify resources needed for the design of a more comprehensive program in land administration which will assess the impact of policy changes on beneficiaries and on the evolution of markets in land. This program will also formulate new policies and legislation for all types of land use including rainfed areas and the rangelands.

D. Timing and Responsibilities

The duration of this contract is 30 days (25 days in Somalia, 5 days in the U.S.) and should commence o/a the second week of May 1989. The land policy adviser shall prepare the final report. In addition to the land policy adviser, the contractor shall arrange for the services of a land legislation specialist for a period of 16 days and a Somali lawyer (3 weeks). The contractor shall arrange for the travel and associated costs of the land policy adviser and the land legislation specialist to and from Somalia and in country travel. The contractor shall remunerate the Somali lawyer.

E. Reports

The contractor shall submit to USAID/Somalia a draft report fully covering the items under (C) above in 5 copies two days before the departure from Somalia of the land policy adviser. The report shall be reviewed by MOA, IBRD and officials from other concerned ministries. Two weeks after the land policy adviser's return to the U.S., the contractor shall mail 3 copies of the final report by DHL to: Eileen Beck, Mission Liaison Officer, c/o U.S. Embassy Sonalux Building, 5th Floor, P.O. Box 30137, Tel: 331160 Ext-433, Nairobi, Kenya. An additional 17 copies should be pouched to USAID/Somalia at the same time.

L T C M E M O R A N D U M

To: Michael Fuchs-Carsch
From: Michael Roth
Date: March 15, 1989
Subj: Clarification of Statement of Work

We wish to say at the outset that USAID did a fine job preparing the Statement of Work for our current visit. The intricacies in relations between Land law 73, land registration, and customary tenure are complex, and the land tenure problems in Somalia today are pervasive. It is not easy to narrowly define a Land Policy project of these dimensions within the time frame imposed by World Bank. Yet, as you have pointed out in personal conversations, the time seems right within the GSDR for undertaking significant reforms in land policy and registration. USAID is in the best position within the donor community to assist the GSDR in undertaking these reforms.

Our comments here are an attempt to further clarify and define the Statement of Work to enable us to better focus our efforts, and to gain as clear an idea as possible of what we need to accomplish during our short stay in Somalia. If you are in agreement we would like to alter the specific tasks of our mission to those we present in the section "Proposed New Scope of Work."

USAID Scope of Work

Three tasks were identified by USAID in the Scope of Work:

1. Identify changes to Land Law 73 and associated legislation which can be immediately promulgated to facilitate registration and improve administration of irrigated lands whether under individual or other rights to land use or ownership.
2. Identify and assess alternative ways (and corresponding resource requirements) by which the GSDR can be assisted to prepare an action plan by December 1989, for the implementation and promulgation (by June 1990) of the above identified changes to the Land Law and associated legislation; and,
3. Identify resources needed for the design of a more comprehensive program in land administration which will assess the impact of policy changes on beneficiaries and on the evolution of markets in land. This program will also formulate new policies and legislation for all types of land use including rainfed areas and the rangelands.

Proposed New Scope of Work

Land administration, as you use the term, can be thought of in several ways: in terms of a land legislation component, a land registration component, a land policy component, and a research component. We suggest rewriting the above tasks to make this more explicit. We also suggest making clearer the distinction between the land policy reforms that need to be undertaken between June 1989 and June 1990 in order to meet World Bank and IMF conditions under ASAP II, and programs to assist the GSDR post-June 1990. Given the June 1989 deadline that is nearly upon us, it would seem imperative that our mission should place priority on accomplishing the former, i.e., essentially your tasks 'a' and 'b.'

We propose then that the tasks of our mission be rewritten as follows:

1. Make specific policy recommendations on changes to Land Law 73 and associated legislation pertaining to land policy on irrigated lands;
2. Make specific policy recommendations on changes in land registration legislation and registration procedures;
3. Design a program for assisting the GSDR with drafting and implementing new land legislation including registration under (1) and (2);
4. Outline in brief terms a program of research for evaluating impacts of the above reforms on beneficiaries and land markets;
5. Outline in brief terms a program of research on land tenure in rainfed areas and rangelands to serve the basis for drafting new legislation and for new land policy reforms in these areas;
6. Outline in brief terms an ongoing program of adjudication and registration following enactment of land legislation and registration under (3).

Tasks 1 to 3 correspond to tasks A and B, and tasks 4 to 6 correspond to task C in USAID's original Scope of Work.

As you will observe, we have removed the dates (in 'A') from task 3. While we wish to fully accommodate the World Bank schedule, our discussions with Vice Minister Nuur and Mission Director Lois Richards indicated that these dates are flexible. We also feel, that the dates themselves are policy recommendations depending on the nature of the program that is developed under task 3.

Tasks 4 and 5 are intended to help clarify task C in the USAID original scope of work. Research (or studies) seems the best way to get at the impacts you are suggesting. Most of the data on land tenure today in Somalia pertains to irrigated lands; much less is available for rainfed areas and rangelands. USAID is on the forefront of land legislation reforms in irrigated areas today because it had the foresight to invest in land tenure research three years ago. It would seem sensible then that work on future legislative reforms be preceded by a research component.

It is our understanding that tasks A and B, and revised tasks 1-3, are the most important tasks for meeting World Bank and IMF conditionalities under ASAP II. We are very reluctant to deal extensively in the report with task C, or revised tasks 4-6, given the tight time schedule we are on, and the difficulty of making such plans so far into the future. Still, we appreciate the need of USAID and other donors to adopt a longer term time horizon for purposes of planning and earmarking of funds.

We thus propose that we concentrate our time and energies on the land policy changes (1 and 2), and the process for drafting and enacting legislation following these changes (3). We will still try to sketch out tasks 4-6, but in brief terms.

While we can offer some guidance on the physical needs of a land registration effort, an assessment of financial needs will be impossible. Costs of land registration around the world vary tremendously depending on level of bureaucracy, logistical constraints, human resource skills, and the willingness of host governments to fully cooperate and allocate resources for such programs. The system of land administration in Somalia today is less advanced than existed in many other countries around the world where similar reforms in land registration have been attempted. This in no way suggests that such reforms are not feasible or should not be undertaken. It does, however, point out the necessity of maintaining a realistic perspective, and the futility of reasonably assessing budget requirements at this early stage.

Reporting

Mr. Lawrance and I are planning to take the evening Somali Air flight from Mogadishu to Frankfurt on Wednesday, May 31. During our short stay here we would like to get as much feedback as possible. We are aiming for Tuesday, May 23 to have a preliminary draft of policy recommendations (Tasks 1 and 2) that we can pass to USAID, Mohamood Mohamad Ali of the DILU, and Vice Minister Nuur of the MOA. We are then aiming to have a preliminary draft of the process for implementing the reforms (Task 3) by Thursday May 25. This schedule, if the drafts are reviewed expeditiously, would enable us to incorporate revisions in our report before leaving the country.

We are planning on delivering 5 copies of the report to USAID on early Monday morning, May 29, according to the USAID Statement of Work. But we would like to emphasize that this draft will be very preliminary. Upon returning to work at Madison on June 4, I would like to pass a copy to Jack von Holst Pellekaan of World Bank for his comments (since he has primarily been involved with the land policy reforms), and for the comments of John Bruce and David Stanfield of the Land Tenure Center. We are aiming to finalize the report and send copies out to USAID/S by June 15. I am then scheduled to take a trip to China on June 17 for a 5 week period. Could you cable any comments you have on the report to the Land Tenure Center by the week of June 5 to 8 to allow time for us to incorporate them into the final copy.

ANNEX C

TRANSLATIONS: SOMALI LEGISLATION RELATED TO AGRICULTURAL LANDS

TRANSLATIONS: SOMALI LEGISLATION RELATED TO AGRICULTURAL LANDS

Agricultural Land Law No. 73 of October 1975

**Decree of August 16, 1976
Government Regulations on Agriculture No. 73**

**Law of 15 December 1986
Concerning Transfer of Immovable Property**

**Circular of 24 May 1987
Guidelines for the Giving of Farmland**

**Circular of 15 August 1987
Registration of the Private Companies and Transfer of Immovable Property**

**Circular of 10 October 1987
Registration of Small Farms in the Country**

**Circular of 10 October 1987
Registration of Farms in the Regions and the Rangelands**

All translations here have been undertaken by the Land Tenure Center, University of Wisconsin. The Agricultural Land Law and the Decree of October 16, 1976 were first translated by Mr. Adbirahman Beileh in February 1985 when he was then a student at the University of Wisconsin. The Circulars were originally translated by Mr. Bashir Kalif Sudi of the National University under a previous Land Tenure Center project with USAID. All these translations have been reviewed, and in some cases edited substantially, by Advocate Ahmed Sheikh Mohamood under this and previous projects funded by USAID. It is the opinion of the Land Tenure Center that the translations in this document supersede in accuracy and completeness any of the previous translations included in earlier documents by the Land Tenure Center.

Law. No. 73 of 21st October 1975
AGRICULTURAL LAND LAW

The Chairman
SUPREME REVOLUTIONARY COUNCIL

- Having seen: the First and Second Charters of the Revolution;
- Recognizing: the necessity of issuing a Law that organizes agricultural land in order to achieve the economic development and production of Somali farms;
- Considering: the decision of the Supreme Revolutionary Council and that of the Council of Secretaries;

HEREBY DECREES

The following Law:

PART I: GENERAL INTRODUCTION

ARTICLE 1: Definitions

The following words are intended to mean:

1. LAND: Any type of land that is farmed;
2. CONCESSION: Permission to use agricultural land for a fixed term;
3. CERTIFICATE: A document evidencing the right to use the land;
4. SECRETARY: The Secretary of State for the Ministry of Agriculture;
5. GOVERNMENT REGULATIONS: Government Regulations to explain and implement this law;
6. FAMILY: A household comprising the husband, his wife and their children who have not reached the age of maturity;
7. COOPERATIVE: Recognized agricultural cooperatives;
8. THE FAMILY: The person who is responsible for the management, etc., of the farm under concession and the payment of the tax on the farm.

ARTICLE 2: Land Ownership

Having regard to the tenets of this law, land of the Somali Democratic Republic irrespective of whether it is used or not is the property of the State.

ARTICLE 3: Land Administration

The Secretary of State for the Ministry of Agriculture is vested with the power of supervising the land as well as the responsibility for its management in accordance with this Law.

PART II: CONCESSION OF AGRICULTURAL LAND

ARTICLE 4: Grant of Concession

The Secretary of State has the authority to grant concessions of agricultural land to Cooperatives, State Farms, autonomous agencies, municipal governments and private farmers whether an individual, family or company while observing the conditions specified by this Law.

ARTICLE 5: Previously Owned Land

1. All those who have concessions of agricultural land prior to this Law should apply for a new concession to the Secretary of State for Agriculture within six months from the operative date of this Law to enable them to re-register it.
2. A concession that has not been re-registered shall be cancelled on the expiry of the period mentioned above.
3. This Article does not apply to Agricultural Cooperatives established by Law No. 40 dated 4.10. 1973.

ARTICLE 6: Limit to Concession

Each family or individual can only be issued one concession. It is not permitted for a family or an individual to be granted two or more concessions in the district in which he resides or in any another. Likewise, it is not permitted to grant a concession to absent persons.

ARTICLE 7: Term of Concession

Having regard to the provisions of this Law, the term of the concessions will be as follows:

1. For private farmers whether Somalis or aliens (an individual, family or a company) the term of concession is fifty years which is renewable.
2. Concessions for Cooperatives, State Farms, autonomous agencies and local governments shall have no time limit.

ARTICLE 8: Size Limit of Concessionary Land

1. An individual or a family can be granted 30 hectares of irrigated land or 60 hectares of rainfed land excluding banana plantations, and the like.
2. The size of banana plantations and the like that can be granted to an individual or a family is 100 hectares inclusive of the perimeters. Land that could be granted to special agricultural companies will be specified later in Government Regulations.
3. These size limitations do not apply to State Farms, Cooperatives, local governments, autonomous agencies and private companies.
4. Those who are in possession of land in excess of the size limitations specified in this Article will be permitted to continue using it for 2 years commencing from the operative date of Law.

ARTICLE 9: Expropriation of Excess Land

1. Any land in excess of the limitations specified in paragraphs one and two of Article eight shall be expropriated within two years from the operative date of this Law by the Ministry of Agriculture under a decree from the Secretary.
2. The procedure of expropriation and the party paying the compensation for the expropriated property will be provided for in the Government Regulations.

ARTICLE 10: Expropriation for the General Good

1. All land whether farmed in the past or present could be the subject of expropriation for the general good.
2. The procedure for the expropriation of the land for the general good and the payment of compensation shall be provided for in the Government Regulations.

ARTICLE 11: Redistribution of the Land

1. With respect to Articles 9, 10 and 15 of this Law, expropriated land shall be distributed among the landless farmers, Cooperatives or State Farms.
2. Regional, District and Village Revolutionary Committees shall be responsible for the task of redistribution of the land.

ARTICLE 12: Restrictions on the Concession

1. Land granted under this Law cannot be transferred, sold or leased.
2. If the concession holder suffers a permanent injury so that he is unable to farm the land, then he can transfer ownership of his farm to the State or his heirs.
3. Partition of the land is prohibited.

ARTICLE 13: Rights of the Farmer

The person tilling the land has the right to:

1. Range of Activities:
 - a. plant the land and produce, and bring out its blessings;
 - b. plant perennial crops;
 - c. build a home or other buildings for the services and development of the farm;
 - d. rear animals on his farm and provide all services they need;
 - e. join an agricultural cooperative by contributing his land;
2. Legal and Financial Aspects:
 - a. the right legally enjoyed by a person granted the right to the use of his goods;
 - b. all the rights permitted by this law including the use of the produce which shall be his property;
 - c. he is entitled to defend his rights in the courts and in other State offices and is, further legally entitled to obtain their protection and support without any discrimination on the basis of his birth, citizenship, religion or any sort of racial discrimination;
 - d. he may borrow money from banks on the land, based on the value of his farm;
 - e. he is entitled to be treated under the benefits granted by the Law on foreign investments giving him the right to repatriate a portion of his profits from the farm if the money expended on the farm and related services originated from abroad.

ARTICLE 14: Obligations of the Farmer

1. The farmer has the following obligations:
 - a. he should not use the land in a manner different from the terms of the concession;
 - b. he must farm the land in the most efficient manner thereby increasing its blessings and producing the highest yield;
 - c. he must not transfer or sell to any other person or rent to another;
 - d. he must not partition the land except for the portion that he ought mandatorily to exploit;
 - e. if he has employees, he must give them, as provided by the law, adequate remuneration commensurate with their work and he is barred from levying on them customary charges;
 - f. he must pay the land taxes provided for in this Law or in the Government Regulations.
2. The conditions which govern the concession of land shall be spelled out in the Government Regulations.

ARTICLE 15: Revocation of the Concession and Its Transfer

1. The concession could be withdrawn from the holder when the following reasons are found:
 - a. when the government expropriates the land in accordance with Article 10 of this Law;
 - b. when the user of the land contravenes this Law or the Government Regulations;
 - c. when the user of the land fails to fulfill the conditions of the concession;
 - d. when the inheritor of the concession holder has no desire to cultivate the land as provided in Art. 16 of this Law;
 - e. when the concession holder fails to cultivate or abandons his land for two years after obtaining the grant;
 - f. when the user of the land transfers, sells, or leases the concession to another as provided in Art. 12 of this Law;
 - g. the concession holder's title can be transferred when the State expropriates a portion of his land as provided in Art. 9 of this Law.

2. The land from which the concession has been revoked shall be redistributed as provided in Art. 11 of this Law.

ARTICLE 16: Inheritance

1. Upon the death of the concession holder, title to the concession devolves to those entitled to inherit from him.
2. In such an event the names of the heirs to the concession shall be entered in the land register.
3. If the heirs do not desire to cultivate the land in accordance with the terms granted to the concession holder, the concession will be revoked from them and the land will be redistributed to the landless peasants resident in the area. The new beneficiaries shall reimburse the dispossessed for any expenses incurred.

PART III: TAXES AND OTHER EXPENSES

ARTICLE 17: Payment of Taxes

1. Every user of the land is obliged at all times to pay the land taxes of the State and all other types of taxes imposed on the land.
2. Taxes will be levied per hectare according to the fertility of the land.
3. Conditions for the payment of tax and the procedure for payment will be provided for in the Government Regulations.

ARTICLE 18: Expenditure on the Development of the Land

1. If the land which is the subject of a concession has previously been developed by the State, local government or an autonomous agency, the new title holder shall reimburse them.

PART IV: REGISTRATION

ARTICLE 19: Land Registration

1. The Ministry of Agriculture shall have a Register for Agricultural Land in which is entered the names of the users of the land and the conditions of their concessions.

2. The representative of the Ministry of Agriculture of each district shall register the agricultural land in the district.
3. Having regard to this Law all entries in the land register shall be based on the concession deed, an official document or a court decision concerning the land.
4. Any entries made in the register should be agreed upon by the District Commissioner and the Regional Agricultural Coordinator of Agriculture.
5. Upon arriving at a decision relating to the entries in the land Register, the concession holder will be issued with a certificate enumerating the details of the land.
6. The District Representative of the Ministry of Agriculture shall then transmit to the Ministry of Agriculture a copy summarizing the above mentioned matters.

ARTICLE 20: Inspection and Certification of the Land Register

Any interested party can examine the land register during office hours upon payment of fees to be stipulated in the Government Regulations if he wishes to obtain a written certificate.

PART V: MISCELLANEOUS PROVISIONS

ARTICLE 21: Exclusion of Land for Security Reasons

The Chairman of the Supreme Revolutionary Council having heard the opinion of the Secretary of State for Agriculture and the advice submitted by the Secretaries of State for the Interior and Defense, can exclude by decree any given land from private farming for reasons of national security.

ARTICLE 22: Delegation of Authority

The Secretary of State for Agriculture can delegate the authority vested in him under this Law to the heads of the Ministry of Agriculture in the regions and districts.

ARTICLE 23: Penalties

Any one who contravenes this law shall be liable to punishment of imprisonment from two to ten years or a pecuniary fine of Sh. 2,000/- to Sh. 10,000. The concession shall also be revoked.

ARTICLE 24: Competence

The ordinary courts are competent to adjudicate on suits arising under this Law where the State is not a party.

ARTICLE 25: Government Regulations

The Chairman of the Supreme Revolutionary Council, after hearing the advice of the Secretary, is empowered to issue Government Regulations to explain this Law.

PART VI: FINAL PROVISIONS

ARTICLE 26: Repeal

Any law that is in conflict or incompatible with this Law is hereby repealed.

ARTICLE 27: Entry Into Force

This Law shall enter into force on the date of publication in the Official Bulletin of the State.

The Chairman
Supreme Revolutionary Council
Maj. General Mohamed Siad Barre

MOGADISHU, 21.10.1975

**A Presidential Decree of the SDR 16.8.1976
Government Regulations on Agriculture No. 23**

THE PRESIDENT

J.D.S

Having seen: The first and second Charters of the Revolution dated 21.10.69;

Having seen: Law No. 73 dated 21st October;

Having recognized: The need for the formulation of Government regulations relating to agricultural land;

On the proposal of: The Ministry of Agriculture.

HEREBY DECREES

PART 1: LAND LIMITATIONS

ARTICLE 1:

1. The "Special Company" mentioned in Article 8 page 2 of the Agricultural Law is intended to mean a company in which the Government is part owner.
2. The "Special Company" mentioned in Article 8 page 3 of the Agricultural Law is intended to mean a company in which the Government is part owner.

ARTICLE 2:

A NATIONAL company can own agricultural land exceeding the land limits laid down in Article 8 page 2 of the said Law.

ARTICLE 3:

The conditions for the concession of land for farming to be allotted to a special company are:

- that the special company be one constituted under a law recognized by the State;

- that the special company has financial ability and is possession of sufficient competence to farm the land;
- that the company produce a clear cut work plan to develop the land;
- the work plan of the company should be based both on long and short term outlining the finance, technical expertise and clearly showing the best possible way of utilizing the land on the basis of scientific know-how;
- that the special company shall not contravene state laws on agriculture.

ARTICLE 4:

The Secretary of State for Agriculture has the authority to limit the size of land to be given to a special agency.

PART II: PROCEDURE FOR REPOSSESSION OF AGRICULTURAL LAND

ARTICLE 5:

The secretary of State for Agriculture is empowered to repossess every type of land that is farmed or used to be farmed for national purposes as laid down in Article 10 of said law.

ARTICLE 6:

Agricultural land in excess of the size limits specified in Article 8, paragraphs 1 and 2, of the Agriculture Law can only be utilized in the manner indicated by the Law.

The land obtained by request which has not been utilized for two years is transferable from the previous user.

The previous user of the land that is being transferred is not permitted to give directions or enter into an agreement with the new beneficiary to which the land is transferred.

The land subject to transfer should be one entity.

ARTICLE 7:

Compensation for investment shall be payable on the transferred land. This shall be assessed by a committee of experts designated by the Secretary for Agriculture.

ARTICLE 8:

The person to be given land transferred from another should:

- be a Somali by birth and have reached the age of majority;
- not have owned land previously;
- have the ability to pay compensation.

ARTICLE 9:

The procedure for compensation will follow the format below:

1. The compensation must be paid within 10 months of the date of transfer of the title if the expenditure for improvements in the land is less than Sh. 100,000.
2. If the expenditure for investment is between Sh. 100,000 and Sh. 300,000, the compensation shall be paid within 15 months.
3. If the expenditure for investment is in excess of Sh. 300,000, the compensation shall be paid within 18 months.
4. If these terms are not observed, the Secretary of Agriculture has the authority to repossess the land for the Government.

ARTICLE 10:

Anyone who wants to be given agricultural land for use should apply to the appropriate district authority. He should use the 5/- official stamps paper (Carta Bollata) and attach a plan of the land.

PART III: GRANT OF CONCESSION OF THE AGRICULTURAL LAND

ARTICLE 11:

The person being granted the concession should farm the land within a period of two years.

PART IV: TAX PAYMENT CONDITIONS

ARTICLE 12:

Taxes must be paid once a year on agricultural land granted by the Government on the following basis:

1. Ordinary farmers and Cooperatives:

Rainfed Land: Sh. 5/- per hectare; and,
Irrigated land (from rivers): Sh. 10/- per hectare.

2. Special companies and individual farmers who plant perennial crops (bananas, grapefruit/lemon, papaya/mango, and the like):

Rainfed land: Sh. 30/- per hectare; and,
Irrigated land (from rivers): Sh. 50/- hectare.

Tax paid by ordinary farmers and Cooperatives shall be deposited in the treasury of the Local Government in which the land is situated.

Taxes collected from special companies and individual farmers who plant perennial crops like (bananas, grapefruit/lemon, papaya/mango, and the like) are payable to the state treasury.

PART V: IMPLEMENTATION

ARTICLE 13:

The grading or classification of agricultural and grazing land and other traditionally owned land shall be specifically laid down in a Government Decree.

PART VI

ARTICLE 14:

This Law will take effect soon and will be issued in a regular circular.

ARTICLE 15:

Everyone is commanded to observe and protect the implementation of this law.

Mogadishu, 16 August 1976

Jaale Mohamed Siad Barre
President of the Somali Democratic
Republic

This Law No. 3 Dated 15.12.1986,

Conversion into Law, Decree Law No. 3 dated 5.10.1986, and

The Reorganization of the Law on the Transfer of Immovable Property,

Taking into consideration the approval of the permanent Committee of the National Assembly,

Hereby Decrees

The following law:

Article 1

Decree-law No. 3 dated 5.10.1986 Intpretation of Law is hereby converted into law and on being reconstituted shall be read as follows:

A. Article I of Law No. 67 dated 2.7.1972 shall be read as under:

1. The transfer of ownership of immovable property between two living persons (inter vivos), apart from other conditions imposed by law are required to have permission ("no objection") granted by the Minister of the Treasury except for the cases mentioned in Article 5, paragraphs (A) and (B).
2. The notary, court and the judge specifically assigned to formulate the Deeds of Transfer of Ownership for the parties are forbidden to execute transfers without the submission of the permission mentioned in the preceding paragraph.
3. The Minister of Justice and Religious Affairs shall designate the Court or Judge to be entrusted with this responsibility in a District without a notary.

B. Article 5 of Law No. 67 dated 2.7.1972 is hereby amended and shall be read as follows:

1. The instances contained in this law shall not be applied to the property mentioned below:
 - a. all immovable property regulated by the Foreign Investment Law.
 - b. the transfer of ownership of immovable property made by judicial authorities and the transfer between Public Organs.
2. By the transfer of ownership made by Judicial Authorities is meant those resulting from Court Judgements.

Article 2

This law shall become operative on the date it is published in the Official Bulletin of the Republic.

Mogadishu, 15.12.1986

The President of the S.D.R.

(Mohamed Siyad Barre)

**SOMALI DEMOCRATIC REPUBLIC
MINISTRY OF AGRICULTURE**

Mogadishu, 24-5-1987

Number: WB/XW/F-95/796/87

Regional and District Secretaries of the Party
Their Centers
Regional and District Chairmen of the Government
Their Centers
Commandants of the Sections and Stations of the Regions and Districts
Their Centers
Regional and District Coordinator of the Ministry of Agriculture
Their Centers

cc: The First Minister of the S.D.R.
Mogadishu
The Minister for Internal Affairs
Mogadishu
The Assistant Secretary General of the Somali Socialist Revolutionary
Party
Mogadishu
The Department of Organization and Public Awareness of the Somali
Socialist Revolutionary Party
Mogadishu
The Organization of the Somali Cooperative Movements
Mogadishu

SUBJECT: GUIDELINES FOR THE GIVING OF FARM LAND

As everyone knows for some time now the Ministry of Agriculture suspended the registration and concession of farm land (circular reference WB/XW/F-95/157/87 of 16/2/87 and WB/XW/F-95/541/87 of 12/3/87) so as to finalize the suits and conflicts that have arisen over cultivated land and farm land used as reserve or grazing land, and also to give priority to small scale farmers with land of 1-12 ha or less in the registration of farm land. Now that the objectives of these affairs are being realized (the suspension of registration), the administrators who are involved or participate in the registration are being informed that starting from the day May 19, 1987, registration of farm land is open using the following guidelines:

1. Registration Request

Anyone who is a Somali citizen whether using farm land or not, can request the use of such land by writing an application with a legal stamp to the Coordinator of the Ministry of Agriculture for the district in which the requested land is situated.

2. Size of Land to be Allocated

The size of the land to be allocated will be based on the 8th article of the Land Law, number 72, which is:

- a. The size of land permitted and that will be allocated to a person or family is 30 ha. of irrigated land and 60 ha. of dry or rainfed land.
- b. The size of land permitted for banana or fruit tree cultivation that will be allocated to a person or family will be 100 ha. including the boundaries of the land. The land that will be given to private companies and cooperatives will be stated in the clauses of this guideline.
- c. Notice of the Land: for a period of 30 days the land requested must be pinned on the notice boards of the District Party Secretary's office and the offices of the District Chairman of the Government, Commander of the Police Station, Coordinator of the Ministry of Agriculture for the district in which the land is situated, and the centers of the village and community.

3. Boundary Making

When the notification period is over a committee made up of the following will go together:

- a. The Land and Water Officer of the district;
- b. A policeman from the police force of the district;
- c. The registration applicant;
- d. A draftsman;
- e. The Chairman of the committee of the village in which the land is situated.

The committee will first make a boundary for the farm using a bulldozer if the land has trees (outline); if the land is bare a ditcher will be used. Then the measuring will be done by the land and water officer, who will be responsible and answerable to any error in the measurement or overlapping with another farm, and a draftsman; they will face appropriate measures should this happen. The draftsman will make an actual farm layout with the exact area, its angles and hectares. The draftsman must render an actual farm layout ("plan meteria") bearing his stamp, signature, name and date. A farm without boundaries as indicated above or does not exist shall not be registered.

4. Land Officer's Report

Following the delimitation of the boundary, the Land and Water Officer will send to the Coordinator of the district for the Ministry of Agriculture a report defining the following:

- the village where the farm is;
- the distance from the village or a fixed landmark with a name or meaning;
- number of hectares;
- the type of soil in his opinion;
- if it is a previously cultivated farm, how it was used under this law, if it exists, or if it is new;
- that it is not the subject of a dispute.

It is the responsibility of the Coordinator of the Ministry for the district to verify the report.

The Police representative should send a similar report, for security purposes, to the officer in command of the police station. Then the Commanding Officer, if convinced, will send to the Secretary of the SSRP, the Administration Chairman and the Coordinator of the Ministry of Agriculture for the district a report stating that there is no dispute over the land.

5. Order to Register

The Coordinator of the Ministry of Agriculture will order the Land and Water Officer to begin the registration, receive and verify that the layout conforms to the measurement previously made out by him. At the same time the Coordinator will write a report to the Secretary of the SSRP and the Administrative Chairman who will then take into consideration the reports of the Coordinator, the commanding police officer, the situation of the area, the peace and scope of production, and will then confirm the registration of that farm.

Petitioner's Declaration: The Petitioner after reading or having someone read for him the obligations written on the back of the Land Certificate shall sign in front of the Coordinator of the Ministry of Agriculture that he accepts and will abide by them.

6. Giving of District Registration Number

After the Petitioner signs the Land Certificate the farm will be given a district registration number.

7. Giving of District Registration Number

The Coordinator of the Ministry of Agriculture of the district will forward in writing (it cannot be given to the Petitioner), once every two weeks, all the farms that have completely satisfied the requirements stated above of the district which consists of:

- a. the registration request of the Petitioner;
- b. the farm layout;

- c. the Land and Water Officer's report;
- d. the report of the commanding police officer;
- e. the confirmation of the Secretary of the SSRP and the Administrative Chairman of the district;
- f. the certificate (original) and three signed copies;
- g. the report of the Coordinator of the Ministry of Agriculture of the district.

The Regional Coordinator, if satisfied by the documents he receives and considering the regional plans, will then order the Regional Officer for Land and Water to issue a regional registration number.

8. Forwarding to the Headquarters

The Regional Coordinator for the Ministry of Agriculture, especially the regions of Hiran, Lower Shabelle, Middle Shabelle, Gedo, Middle Jubba and Lower Jubba will take at least on the first of every month to the Directorate of Land and Water of the Ministry of Agriculture the documents (the Petitioner cannot handle them) which have been verified. The Directorate will issue a note acknowledging that the documents have been received showing clearly the number, names and districts. The registration and holding of documents of the region will be complete when the Regional Coordinator hands over the delivery note of every farm and his signature.

9. Forwarding for Signature to the Ministry of Agriculture

The Director of Land and Water, after verifying that the preceding requirements have been completed for every document, will forward in writing to the Minister stating that the documents are complete and the farm is not on government land or land held for national use (in the near or distant future) and that there will be no problems arising in the area.

10. Company Registration

The companies that want to cultivate farm land will have to follow the procedure contained in Articles 1, 2, 3 of the S.D.R Decree No. 23 of 16-10-1976 on Agriculture. After satisfying Article 3 the company will apply to the Minister so that he can allocate the size of land that will be given in accordance with Article 4 of the Decree. The companies that do not satisfy these requirements will not be given farmland.

11. Registration of Cooperative Farms

Since farm cooperatives are mostly multi-purpose and have formed a cooperative on farm land, their registration will be as follows:

- a. every member's land will be registered in the normal manner of every citizen;

- b. after every member has a farm land and certificate they will then collectively apply to be registered as a cooperative in the district and region;
- c. the Regional Coordinator will enclose the other documents and his report so as to issue a Ministerial Decree;
- d. after the Minister signs and the Auditor General confirms it, it will be sent to the National Cooperative Organization so that it can register and issue the certificate of the Cooperative Organization.

12. Registration of Farms Situated in Towns

The land in the urban areas comes under the responsibility of the authorities of the area and can be issued as a farm land by the Mayor and will be registered on his permission stating that it will be used for cultivation.

The Mayor can be involved in the registration of farm land in this case only.

13. The Opening of New Land

New land that has not previously been cultivated cannot be opened without the following procedures:

A committee consisting of the Coordinator of the Ministry of Agriculture, Coordinator of Livestock, National Range Agency, Secretary of the SSRP, the Administrative Chairman and the Community Chairman must write a report to the region taking into consideration the balancing of benefits, natural changes, desertification, protection of livestock and wild animals, climatic changes and the economic activities of the people living in the area and their neighbors. They will then forward their decision to the Ministry of Agriculture, Livestock, and Internal Affairs to confirm or to submit their views.

14. The Registration of Farm Land in the Regions of Rangelands

Land for farming cannot be granted in the rangelands since normally their rainfall is less than adequate for rainfed cultivation and desertification is rapid. Since the towns of these regions and districts need vegetables for a balanced diet, the towns that have permanent water (all year round) or where underground (well) irrigation is possible, land can be allotted up to 0.25-0.5 ha. in which vegetables will be grown and the land should not be beyond the town limits.

15. Boundaries of Land Irrigated by the Shabelle River

Since the land that can be irrigated in the Shabelle Valley is more than the volume of the seasonal amount of water available and the capacity of the water administration and the protection of the grazing land, it is not permitted to have a canal parallel to the river exceeding 20 kms. Land beyond this limit should be used as rainfed land or grazing.

Registration Priority: Small scale farmers with land of 1 - 12 ha or less will have first priority in registration.

16. Settling of Farm Land Disputes

The Settling of disputes over farm land is the responsibility of the disputes committee of the inter-riverine areas at the district, regional and national level that already exist.

17. Transfer of Farm Land

The transfer of farm land and changing of certificate will be executed by the Ministry after the two parties reach an agreement between themselves and bring a notarized agreement.

18. Expansion of Residential Zones

Land that was previously farmed cannot be converted to land for residential purposes without permission from the Minister of the Ministry of Agriculture.

19. Reservation of Land

Bush land cannot be held as a reserve for a village, community or person in a way that is not in accordance with the land law.

Finally the officials to whom this circular is addressed are being informed that they should broadcast this to the public and that they (officials) are responsible for the implementation and safeguarding of these guidelines.

Good Execution,

Minister of the Ministry of Agriculture

(Abdirazzak Mohamed Abukar)

**SOMALI DEMOCRATIC REPUBLIC
MINISTRY OF AGRICULTURE**

WB/XW/F-95/1096/ /87

Mogadishu 15/8/87

TO: The Secretaries of the SSRP of the Regions and Districts, H.Q.
TO: The Governors of the Regions and Districts, H.Q.
TO: All Coordinators of the Ministry of Agriculture in the Regions and Districts, H.Q.

cc: The First Minister of the Somali Democratic Republic, Mogadishu
cc: The Minister of Treasury, Mogadishu
cc: Minister of Justice and Religious Affairs, Mogadishu
cc: Vice Minister of Agriculture, Mogadishu
cc: President of the Supreme Court, Mogadishu
cc: Permanent Secretary of the Ministry of Agriculture, Mogadishu
cc: General Directors of the Ministry of Agriculture, Mogadishu
cc: Director of Land and Water of the Ministry of Agriculture, Mogadishu
cc: Party Representative at the Ministry of Agriculture, Mogadishu.

**SUBJECT: REGISTRATION OF THE PRIVATE COMPANIES AND TRANSFER OF IMMOVABLE
PROPERTY**

According to Circular No. WB/XW/F-95/796/87 of 24-5-1987 on the guidelines for the concession of agricultural land, clauses 10 and 17 thereof which are based on Decree Law No. 23 of the S.D.R. dated 16-10-1976 on Agriculture Art. 2 thereof which, inter alia, includes one of the conditions for the concession of agricultural land to be allotted to private companies is that the private company be one that is constituted under a law recognized by the Government, and Law No. 3 of 5-10-1986 reconstituting the Law relating to the transfer of immovable property as specified (Article I, para. 1,2,3) in relation to the transfer of ownership of immovable property between two living persons (inter vivos), stipulates that apart from other conditions imposed by the Law it is necessary that they have the permission of the Minister of Treasury and that such a transfer is prohibited in the absence of such permission and that in districts without a Notary, the Minister of Justice and Religious Affairs shall designate the Court or Judge exercising such responsibility.

Therefore while observing the a/m laws the following procedures must be observed in order to facilitate the registration and the transfer of agricultural land:

1. Those companies which want to organize a company have to write a precise application to the Ministry of Agriculture in Mogadishu and the Regional Coordinator seeking permission to establish a company.
2. The members of the company shall formulate the statute and regulations of their company through the public notary or in a court after the permission of the Ministry of Treasury.
3. The members shall make the regulations of the company which has to be written by a notary.
4. They will deposit in the central bank or its representatives in the regions the share capital of the company to be formed.
5. All these documents shall be filed with the regional court.
6. The regional court will send them to the Regional Attorney General for verification.
7. The Regional Attorney General shall certify that all legal procedures requisite for the formation of a company have been fulfilled and shall return the documents to the Regional Court.
8. On the certification of the Attorney General, the Court will legalize the formation of the Company and assign for it a registration number, (Confirmation of legal corporate personality).
9. The company shall, in its own name apply, to the Regional Coordinator of the Ministry of Agriculture for registration of an agricultural land and attach all the a/m documents as copies.
10. The Regional Coordinator shall, after investigating the existence of the farm and land, forward to the Directorate of Land and Water all the documents of the Company together with a detailed report on the state of the farm, its boundaries, surroundings and his opinion and at the same time attach the opinion of the District Coordinator if the farm is located in another district.
11. According to the fourth article of the rules No. 23 of 16/10/1976 the Land and Water directorate will hand the document to the Minister of Agriculture so that he can decide the area of the land to be given to the private company.
12. The Regional Coordinator will be given in writing the order of the Minister concerning the area allotted to the company.
13. After all these conditions are met the land allotted to the company will be registered in accordance with the circular No. W/Beraha (WB/XW/F95/796/87).

Transfers: According to Law No. 3 the process is as follows:

1. Possession of the permission (and no objection) of the Ministry of Treasury.
2. Transfer agreement drawn up by a notary or the court in districts without a notary.
3. An application of the parties to the transfer to the District Coordinator of the Ministry of Agriculture enclosing all the a/m documents and the previous original of the certificate.
4. The Coordinator then prepares a new certificate in the name of the new owner (the registers will not change) and will obtain his signature on the obligations imposed.
5. He will forward all these documents to the Regional Coordinator who will in turn forward them to the Land and Water Directorate.
6. When the Minister signs the new certificate and cancels the previous certificate the Ministry will send to the Regional Coordinator the new certificate and its two copies that have been issued in the name of the transferee.

Lost Certificates

1. The police bulletin stating the loss of the certificate and that there is no hope of finding it, and an application for a new certificate has to be presented to the district coordinator.
2. If there are banks in the district it must be certified that the certificate is not at the banks.
3. The District Coordinator will send the materials to the Regional Coordinator who will in turn send them to the Land and Water Directorate.
4. The Ministry of Agriculture will write to the Commercial and Development Banks confirming that the certificate is not in their custody.
5. When all this has been ascertained the Ministry will make a new certificate (one original) and its copies.

Accordingly all the Regional Coordinators of the Ministry of Agriculture are instructed to apply this process for the a/m matters.

Good Work,

Cabdirisaaq Maxamud Abuubakar
Minister of Agriculture

**SOMALI DEMOCRATIC REPUBLIC
MINISTRY OF AGRICULTURE**

Mogadishu 10/10/87

Number: WB/XW/F/14/933/87

TO: All the Secretaries of the Somali Socialist Revolutionary Party (SSRP) of the riverine regions

TO: All the Governors of the riverine regions

TO: All the Coordinators of the Ministry of Agriculture for the riverine regions and districts

cc: First Minister of the Council of Ministers

cc: Vice Minister of Agriculture

cc: Permanent Secretary of the Ministry of Agriculture

cc: All the Departmental Directors of the Ministry of Agriculture

cc: Party Representative at the Ministry of Agriculture

SUBJECT: REGISTRATION OF SMALL FARMS IN THE COUNTRY

As you are aware the Ministry of Agriculture has recently issued a circular to register the small farms belonging to small scale farmers of the regions and districts with the following objective:

1. To go to the field in the regions and register the small farms belonging to small scale farmers who will have difficulty coming to the Ministry's centers to register their farms.
2. To solve the conflict which always occurs among the farmers (which usually arises) because of farm boundaries.
3. To know the number of farms and the number of cultivated hectares which is important for production plans and agriculture facilities.
4. To facilitate bank loans and government aid to small scale farmers.

As this is a sensitive and expensive task which serves the interests of everyone whose farm is to be registered, has to pay:

1. Each person for whom a plot of land less than one hectare is registered has to pay for each "jibal" Som. Shs. 5/ (five).
2. Each person with a farm of between 1 and 12 hectares will pay Som. Shs. 200/ (two hundred) only.

This income will be used for the expenses of the regional, district and village committees of the land registration.

These registration committees are instructed to finalize this work without delay.

The committee will consist of:

1. District Coordinator of the Agriculture Ministry;
2. Land and Water Officer;
3. An Engineer;
4. Policeman from the district police station;
5. Member of the Agriculture cooperatives;
6. Chief of the village;
7. Member of the Agriculture extension project.

Cabdirisag Maxamud Abuubakar
Minister of Agriculture

SOMALI DEMOCRATIC REPUBLIC
MINISTRY OF AGRICULTURE

Number: WB/XW/F-95/147/87

Mogadishu 10/10/87

- TO: The Secretaries of the SSRP of the Regions and Districts, H.Q.
- TO: The Governors of the Regions and Districts, H.Q.
- TO: All Coordinators of the Ministry of Agriculture in the Regions and Districts, H.Q.
- cc: First Minister of the Council of Ministers, Mogadishu
- cc: Minister of the Interior, H.Q., Mogadishu
- cc: Minister of Livestock and Range, Mogadishu
- cc: Vice Minister of Agriculture, Mogadishu
- cc: Presidents of the Commercial and Development Banks, Mogadishu
- cc: Permanent Secretaries of the Ministries of Livestock, Agriculture and Interior, Mogadishu
- cc: General Directors of the Ministry of Agriculture, Mogadishu
- cc: Departmental Directors of the Ministry of Agriculture, Mogadishu
- cc: All the agencies that come under the Ministry of Agriculture, Mogadishu
- cc: Party Representative at the Ministry of Agriculture, Mogadishu
- cc: All the Party Representatives at the Agencies that come under the Ministry of Agriculture, Mogadishu

SUBJECT: REGISTRATION OF FARMS IN THE REGIONS AND THE RANGELANDS

As you are aware the Ministry of Agriculture has previously issued a circular concerning the procedures to be observed in the concessions for the use of agricultural land (REF: 29-5-1987, WF/XW/F-96/796/87) wherein are indicated the clauses relating to the administration of legalizing agricultural land, one of these clauses is clause 14 relating to the a/m subject matter whose object seems not to have been generally understood.

It is therefore imperative to understand that clause, the object behind it which is based on the protection of the general interest of the nation and the preservation of nature or the environment of those areas which are highly sensitive due to socio-economic changes e.g., cutting of trees, desertification, soil erosion and the settlement of the people in these areas. Accordingly in order to achieve the a/m objectives, you are hereby informed to execute the following clauses:

1. Agricultural extension is totally forbidden in Galgadud, Mudug, Sool and Nogal regions and at the same no registrations can be effected excluding already cultivated vegetable farms in settled land.
2. Farm registration is forbidden in Sanag, Togdeer and Bari Regions except:
 - a. land previously cultivated whose permission goes back to the colonial governments;
 - b. lands forming part of the towns which is part of the urban areas whose concessions comes directly under the committee of the area and heads of the regions;
 - c. land on which dates are grown or can be grown;
 - d. vegetable farms irrigated through streams.

The following farms are excluded from registration in all the a/m regions

- a. grazing land;
- b. valleys for grazing;
- c. land with mineral salt containing vegetation near towns;
- d. new lands intended for agricultural use;
- e. land near wells and streams used for watering of animals.

Should it become necessary to open up new areas for cultivation, then this could only be done through a joint permission issued by the Ministers of the Ministry of Agriculture and the Ministry of Livestock "Permission to Open New Land for Cultivation."

The authorities for the legalization of agricultural land in the a/m regions are entrusted with:

1. Vegetable farms granted by local authorities--the local government and other heads of the district.
2. Agricultural land with previous permission since the colonial governments, land for growing dates, land irrigated by streams and not situated in grazing lands--heads of the party and government authorities as indicated in previous circulars, e.g. WB/XW/F-95/796/87.

The Coordinators of the Ministry of Agriculture in the a/m regions are hereby notified that they are in their posts for matters related to locusts, protection of existing farms, rendering advice to the farmers of the regions and the like but they are excluded from farm extension in the rangeland and to concentrate instead on increasing production, those farms existing, gathering of food statistics, climate, insects and the like.

We hope that the clarifications of the a/m clauses would substantially contribute in halting the worsening situation of urbanization and the environment, peaceful evolution of the society, the raising of the production of existing farms and the preservation of pastures and animals.

Good Cooperation,

Cabdirazak Mahamood Abukar
Minister of the Ministry of
Agriculture

ANNEX D

REGIONS AND DISTRICTS IN SOMALIA

Regions and Districts in Somalia

Regions: Districts

1. Awdal:
Bakey
Borame
Luqhaye
Zeila
2. Northwest Region
Hargeisa
Berbera
Gebiley
3. Togheer
Burao
Shiekh
Buhodle
Odweyne
4. Sanaag
Erigavo
Eil Afweyn
Badhon
Dhahar
Lasqorey
5. Bari
Bosaso
Qardho
Qandala
Iskushuban
Alule
Bandir Beyle
6. Nugal
Garowe
Burtinle
Eyl
7. Sool
Lasanood
Taleh
Ainabo
Hudun
8. Mudug
Galkayo
Hobyo
Harardhere
Jariban
Galdogob

Regions: Districts

9. Galgudud
Dhusomareb
Adado
Eil Dher
Eil Bur
Balanbale
Abudwaq
10. Hiran
Beledweyne
Bulo Burte
Jalalaqsi
Martaban
Mahas
11. Middle Shabelle
Jawhar
Balad
Adan Yabal
Adale
12. Banaadir
Hodan
Hawlwadag
Wadajir
Karan
Yaqshid
Hamar Jajab
Abdulasis
Hamar Weyne
Wardhigle
Shangani
Waberi
Shibis
Bondhere
13. Lower Shabelle
Merca
Afgoi
Qoryoley
Wanlaweyn
Barawe
Kurtiwarey
Sablale

Regions: Districts

14. Lower Jubba
Kismayo
Afmadow
Badhadhe
Jamame
15. Middle Jubba
Buale
Sakow
Jilib
16. Gedo
Garbaharey
Dolow
Beledhawo
Luq
Eil Waq
Bardhere
17. Bay
Baydhabo
Dinsor
Qansahdhere
Burakaba
18. Bakool
Hudur
Eil Berde
Rabdhure
Tiyeglow
Wajid