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Somalia: An Overview of Land Tenure
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by

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LAND TENURE PROFILE: SOMALIA¹

Dynamics and Direction of Change in Agricultural Land Tenure

Since independence in 1960, increased emphasis on farming has led to more secure and more formal land distribution. This resulted from a number of factors. First, national development programs emphasize the importance of agriculture both as an input for industrial development and for upgrading the standard of living. The state, with the support of the international aid agencies and the developed countries, encourages and subsidizes farming. Second, staple diets have changed. Rural communities have begun to consume more than milk and now buy farm products such as corn, wheat and sorghum. In addition to the increase in the demand for agricultural products, the relationship between farming communities and exclusively pastoral communities has changed, with the latter, who once despised the former, coming to a respect and appreciation of farming activities. Due to these changes in social values, many pastoralist groups are increasingly interested in settling fertile areas and farming themselves. Third, urbanization and deforestation both encourage farming, and frequent drought leads to people moving away from traditional pastoralism to farming wherever and whenever possible. Fourth, development strategy emphasizes settlement to facilitate provision of services such as schools and health centers.

Initially, the revolutionary government advocated and provided incentives for cooperative farming. More recently, however, this emphasis has begun to change back to support for individual farming as the nation's development strategy has shifted toward policies more in line with Western economic thinking.

Private Customary Tenure

During the colonial period, about 90 percent of Somalis were pastoralists, receiving all of their livelihood from their livestock (sheep and goats, cattle and camels). Because of frequent movements of these pastoralists in pursuit of water and pasture, land was commonly owned by all but yet each and every location was designated for the exclusive use of a clan, subclan, down to the smallest unit of an extended family. There were minimal contacts between the pastoralists and the ruling colonial bodies partly because the former were usually on the move but also due to their belief that colonialism was a significant part of a major scheme to convert

¹. This section with exception of footnotes and text enclosed in brackets is an excerpt from James C. Riddell and Carol Dickerman "Country Profiles of Land Tenure: Africa 1986." Madison: Land Tenure Center, University of Wisconsin.

them to Christianity. Because of this belief, the nomads kept their distance from the British and Italian rulers and continued their customary tenure arrangements.

There was no formal land registration even among those who held and farmed drylands in the Northwest and Awdal regions. Cultivation started as individuals cleared and cultivated small holdings on first-come-first-served basis. Recognition of ownership along customary lines followed. Farming in the dryland areas was always taken as a supplement and not as a substitute for the ownership of livestock, which was regarded to be the most prestigious wealth one could hold. Farm border problems became common after years as traditional border marks, such as trees or trails, faded away, but these conflicts were rarely enough to cause clan confrontations, as was usually the case in livestock and pasture land conflicts. During the colonial era, therefore, land ownership was not an important issue, especially since farmers were despised by livestock owners.

Outside the cities and towns, which were and are exclusively state-controlled, land ownership was determined by powerful clans. There are complex clan systems in Somalia, each of which owns a defined territory. It is within the clan system that one seeks the right to use land. There is, however, overlapping territory between neighboring clans. In both areas of cultivation (dryland in the north and between the Juba and Shebelli Rivers in the south) the mode of production is based on well-coordinated integration of farming and livestock rearing. A dual economy is practiced where a family both farms and herds, owning sheep, goats and cattle along with the farm. Camel owners are, by and large, exclusively pastoralists since they inhabit the drylands of the country.

Control of water, the most scarce resource in the country, is a critical element in land tenure. Man-made ponds (har), which can hold rain water for a long time, began as group property with members of an entire village responsible for their digging and fencing for their own exclusive use. Pond-digging later became a separate business, and individual families made their own ponds beside their farms with either their own labor alone or with additional hired labor. They might then sometimes sell water to pastoralists in the mid-winter. There are also spring wells (ael), which are dug and managed by clans and usually only clan members have the right to use them.

Different governments, colonial and independent, have tried to substitute state authority for the strong clan authority. Both British and Italian administrators attempted to penetrate the clan system and to modify it to suit their needs and reduce its influence on the tenure system and in other matters.

Private Freehold and Leasehold

The present land tenure system in Somalia is based on Law No. 73, of October 1975 [Refer to Appendix I for an unofficial translation.]² It

². There may exist pieces of land legislation that provide clarifications,

declares that all land is owned by the state and that individual persons and families can register only one piece of land. Such leases, according to this law, are for 50 years and are renewable, while state farms, cooperatives, independent agencies, and local governments can hold leases for an indefinite period. The law puts a limit on private holdings of 30 hectares of irrigated or 60 hectares of non-irrigated land. Private banana plantations may be of up to 100 hectares. Land in excess of this limit was to be nationalized two years after the implementation of this law.

A private leaseholder has the right to cultivate the land, rear livestock, build on it, receive extension services, get credit from state banks equivalent to the value of the land and transfer profits to foreign banks if the state bank gives permission. However, a lease holder must develop the land within two years and pay taxes; otherwise the land will be confiscated by the state. The law also forbids the leaseholders to sell the land, rent it or subdivide it, or to break any condition of the lease. The lease may be passed to close kinsmen provided that the registry is notified and these conditions are accepted by new owners.

State Land

According to the Land Law of 1975, all land belongs to the State, which has the ultimate authority to repossess, redistribute or allocate any land. The State also has its own farms. State farming schemes started in the early 1970s, when following socialist ideology, the government presumed that farm productivity would increase with large farm cooperatives. State farms were then started to encourage citizens to form their own farm cooperatives. Law No. 40 of October 1973 provided for the promotion and encouragement of cooperatives and was responsible for the establishment of hundreds of cooperatives among cultivators and pastoralists.

Urban Land Tenure

According to Law 41 of 13 September 1973, all land in the Democratic Republic of Somalia, regardless of who uses it, is public property. The law stipulates that in urban areas land use by Somali nationals is permanent, provided that all responsibilities (property taxes, construction, etc.) are met. Foreign nationals can use a piece of urban land for a period from 50 years to 99 years, and the permit is renewable for a period not to exceed the previous use period. An exception to this is that any land expected to

qualifications or amendments to the 1975 Law. One example of such legislation is the official memorandum of May 24, 1987, entitled "Guidelines for the Giving of Farm Land" that provides for changes in land registration procedures. LTC under existing research with USAID/Somalia proposes to research the motives and rationale for the 1975 Land Law and to locate and translate other relevant pieces of land legislation. The extent of translation will be contingent on funds and availability of personnel with English and Somalia language proficiency and appropriate legal backgrounds.

have special natural resources is controlled by special laws. Land in urban areas can be bought and sold at a market price per square meter.

Land in urban areas can be given out permanently or temporarily. Permanent use of urban land is to be authorized by the Office of Administration, Ministry of Public Works, or its representatives in the regions and districts, while permission for temporary use of land can be issued by local government authorities. Temporary users of urban land may not build durable houses on the land.

Distribution of Types of Tenure by Region or Ecological Zone

Somalia occupies a land area of 637,540 square kilometers. It largely consists of plateau surfaces or plains. In the northwest regions, rugged mountain ranges parallel the Gulf of Aden. It is largely dry and hot country throughout the year, except at some higher elevations. Rainfall is sparse.... Of the total area, only 13 percent is arable, and only 8 percent is under cultivation. Cultivation is confined to areas of moderate rainfall in the northwest, the Awdal regions, and the interriverine region of the south.

The Somali constitution as drafted in 1960 states that all the land, both agricultural and pastoral, belongs to the State. Practically, however, the right to cultivation and pasturage remains with members of different clans. In 1977 the average holding was 34 acres but with considerable variations. About 60 percent of landholders averaged only five acres and the remaining 40 percent averaged 50 acres. The present agricultural sector includes both dry land holdings and irrigated plantations. All of the irrigated farms, which include 138 banana plantations averaging about 790 acres each, are located between the Jubba and Shebelli Rivers in the south.

In the south, from 1908 onward, irrigable land along the Shebelli River was appropriated for concessionary agricultural development to help pay the costs of Italian colonial administration. Large areas of the best riverine land were acquired for large-scale private production of bananas and sugar. Only in rare cases were the elders, or local land-using groups, given some compensation for their land. In this interriverine fertile area there were 147 Somali-owned and 200 Italian-held export-oriented banana plantations by 1965. They averaged 308 hectares, of which only 51 hectares were planted.

[A study by Roth et. al. (1986) describes the complexity of land tenure in an 8,500 hectare project area on the lower Shebelli near Shalambood. The zone is the site of a proposed USAID irrigation rehabilitation project. Research revealed that smallholders held 46.4 percent of the land in the project area, agricultural cooperatives 13.7 percent, large farm cooperatives 14.0 percent, large state farms 10.2 percent, and large private farms 15.7 percent. Large farm cooperatives, included the National Petroleum Cooperative, Charcoal Cooperative and Public Transport and Building Cooperative. Large state farms included experimental farms and farmer training projects under the Ministry of Agriculture, Merca Prison farm and the Police farm. Large private farms included land holdings by individuals and organizations such as the Palestinian Liberation

Organization. Fifteen percent of the land held by large commercial farms (privately held, cooperative and state) had been given to farm laborers for their personal use. Counting this figure, smallholders (and laborers of the large commercial enterprises) controlled 66.3 percent of the land area.]

[Large farms (private, cooperative and state) ranged in size from 45 to 350 hectares. For smallholders, 19.6 percent of the farms were 0.0 to 0.99 hectares in size, 44.6 percent were 1.0 to 1.99 hectares, 21.4 percent were 2.0 to 4.99 hectares, and 14.3 percent were 5.0 hectares plus. Mean smallholdings were 2.24 hectares. Smallholders with only 1 parcel of land were the most common, although 32.1 percent of LTC survey respondents had 2 or more parcels, despite the fact that the 1975 Land Law permits registration of only 1 parcel.]

Current Land Administrative System

Initially, it was the responsibility of the Ministry of Agriculture to administer the process of transforming the subsistence sector, but that responsibility is increasingly being shifted to a bureau in the ruling party. The Ministry still has the authority to issue leases to cooperatives, state farms, private agencies, local governments and private farmers.

There is a long bureaucratic process of land registration which starts with an individual filing an application to register land with the District Agricultural Coordinator (DAC). The DAC, along with the head of the District police, reviews the application and the land. They determine the kind of land it is and its present and potential use and know from the local elders whether anyone else is currently using or has a legal claim on it. Signed copies of the application are sent to the Regional Agricultural Coordinator (RAC). The RAC checks the application with other regional authorities to make sure that there are no conflicting plans for the use of the land, registers the application, and sends the documents to the Ministry of Agriculture in Mogadishu. There the process is repeated to check for other claims on that particular land. If there are no claims or objections, the application is approved by the Minister of Agriculture and copies sent back to the applicant, who must develop the land within two years. These files are kept by the Ministry, but it is difficult to know how much of the arable land in each district is registered since there are no maps. Major problems in the system of land registration exist that are not accounted for by any of the land laws. For example, land registration follows the same process whether it is a new and undeveloped piece of land for a new user or a traditionally held farm for a long-time owner.

According to Agricultural Land Law 73 of 1975, the Secretary of Agriculture is responsible for distribution, supervision and management of all agricultural land. Urban land, on the other hand, is under the jurisdiction of the Secretary of State for Public Works.

Critical Tenure Issues in National Policy

The long-term leases provided for by Law No. 73 provide tenure security and therefore encourage long term investment in farming. They also tend to prevent land fragmentation by declaring minimum ownership size. But the law ignores completely the long-standing customary systems of land ownership and the indigenous institutions that still govern access to land and pasture. The law ignores the practices and needs of pastoralists--despite the fact that they constitute over 60 percent of the Somali society. Another striking feature of the law is that it favors cooperatives, state farms, parastatals and corporate agricultural enterprises over private individual farmers in terms of the size of holdings permitted, the length of lease granted and access to credit and machinery.

Nor has sufficient attention been given to dealing with the problems of land registration. The process of land registration is unnecessarily cumbersome and often application materials are lost in the process. Credit from state banks is usually available only for cooperatives and not to the individual farmers.

Other critical tenure issues are posed by the new irrigation projects, such as that in the Juba Valley, and by resettlement projects. Both types of programs are designed to introduce new tenure patterns of more intensive land use, patterns that differ from those already in place.

Land Tenure and Agricultural Production

Although the government of Somalia has recently shifted its emphasis from cooperatives to individually held farms as the preferred unit of agricultural production, there has been no research that shows that one or the other form of production as it exists in Somalia is more efficient.

Implications for Project Design

Throughout this century there have been written laws of the country designed to govern land ownership, access to water and pasturage and other social activities. At many points, the laws contradict custom. On a practical level, however, the traditional social institutions continue to dictate access to natural resources. Compliance to state laws may be gaining some popularity in the urban land tenure system but in rural agriculture clan affiliations and cultural norms dominate most social activities. It is, therefore, extremely crucial to consider these traditional social relations during project design. The loyalty and compliance of these groups (clans) to any government activities can only be gained if they are invited to be a significant part of the scheme. Without their active participation most development projects are doomed to fail.

LAND REGISTRATION AND TITLE SECURITY: SOMALIA³

There is little literature on land administration, land tenure systems, or processes of land registration in Somalia. This information is sensitive because the realities of land administration "do not necessarily conform to law, policy, or political ideology, and because... [these] political processes involv[e] the interests of influential individuals and powerful interest groups" (Hoben, below, p. 2). As of 1985 there had not been a national cadastral survey or comprehensive land use plan drawn up for the country.

Anthropological Literature on Land Tenure

A broad, anthropological review of land tenure issues is presented by Allan Hoben in a draft paper prepared for USAID in Mogadishu. Hoben writes that information about land tenure systems and processes of land registration is scarce. The realities of land administration are not necessarily in line with legal dictates, but rather are dominated by the interests of influential individuals and powerful interest groups. He notes that there has not been a cadastral survey or comprehensive land use plan drawn up for Somalia. Hoben's estimate is that no more than 10 percent of the land under cultivation has been registered but [arriving at accurate estimates is problematic because] ...government records are unreliable and difficult to interpret.

Hoben's paper covers a variety of topics, including an overview of Somalia's indigenous tenure systems and Somalia's experience with refugee settlements. The parts of the paper most relevant to a discussion of registration are the sections that cover the legal and political instruments that have been used to alter the indigenous system (section two), and the land reform law of 1975 (section three). The author notes that successive governments, colonial and Somalian, have attempted to substitute central authority for the decentralized authority of the "traditional" clan system. These governments have sought to reduce the influence of the clan system in conflict resolution and political control. Consequently, national law gives virtually no recognition to customary rights or to the institutions that have enforced them. He writes that at many points, custom and law contradict one another.

³. This section is an adaptation of literature reviews and research findings reported in Carol Dickerman "Land Registration Country Profiles: Africa." Madison: Land Tenure Center, University of Wisconsin (forthcoming), and Roth et al. "An Analysis of Land Tenure and Water Allocation Issues in the Shalambod Irrigation Zone, Somalia." Madison: Land Tenure Center, University of Wisconsin (1987).

In a discussion of legislation (pp. 31-39), Hoben reviews the land laws of 1911 (Law 820), 1929 (Law 226), 1966 (Draft Land Law), and 1973 (Law 40). Most relevant is the discussion of the Land Law of 1975 (pp. 32-39), the most striking feature of which, according to Hoben, is the lack of recognition of customary rules and procedures. These older rules and procedures, however, still influence access to, and disputes over, land. Further, not only does the law provide insufficient attention to the problem of registration, it also creates conflict between the State and the clans. Although the State desires to reduce clan influence, the law relies on clans at the local level to enforce policy. Consequently, the process of registration has generated conflict over the allocation of land.

As regards registration procedures (pp. 35-39), Hoben states that there are no land maps and thus no way of knowing how much or the arable or cultivated land in a district has been leased. Additionally, agricultural coordinators are poorly trained and underpaid. The registration process itself also presents problems. The policy objective of preventing concentration of land in private hands appears to be easily circumvented: the Ministry of Agriculture is not equipped to prevent people from registering more than one block of land in different names or through other corporate or cooperative entities. Hoben writes:

The indeterminacy of land records presents difficulties for land use planning and generates conflicts which inhibit project implementation and rural development. In the absence of a cadastral survey and adequate assessment of land potential, government officials have no way of knowing how much land has been registered or what portion of the cultivated or arable land it represents. Nor has it proven possible to avoid overlapping and duplicate claims to land. (p. 39)

Recent Somali land legislation, including the 1975 Land Law, have been translated into English by Beileh (1985).⁴ The four land laws translated from Somali to English are: (1) Law 73 of 21 October 1975 (Agricultural Land Law); (2) Decree of 16 October 1976 (Law 23 on Agriculture); (3) Law 41 of 13 September 1973 (Urban Land Distribution); and (4) Decree 31 of 31 December 1973 (Nomination of Chairpersons of Regions and Districts). [English translations are included in Appendix I.]

The first law, noting that the Somalia constitution provided that all

4. Five other land laws or official memorandums related to national land law have been brought to the attention of LTC: (a) "Guidelines for Giving of Farm Land" of May 24, 1987; (b) "Registration of Small Farms in the Country" of October 10, 1987; (c) "Registration of Farms in the Range Land" of October 10, 1987; and (d) "Registration of the Private Companies and Transfer of Fixed Assets" of August 15, 1987. These documents have been translated by Somali counterparts, but the translations are being withheld from release pending verification of the translations by Somali legal experts.

land is owned by the government and managed by the Secretary of Agriculture, stipulates that all land must be registered. It states that all parties, whether private or public, must possess land-use permits. Duration of the permit and maximum size of holdings allowable are covered in articles seven and eight, respectively. Other issues covered by the law include: nationalization of excess land (Article 9), restrictions on the use of land (Article 12), rights and responsibility of the farmer (Articles 13 and 14), and most importantly, registration procedures (Articles 19 and 20).

The second piece of legislation, Law 23 on Agriculture, briefly deals with the procedures for acquisition of land by special agencies (defined as an agency in which the government is part owner). It also covers the circumstances that result in repossession of land. Land that is not used for agriculture or livestock for a period of two years, for example, can be repossessed and reallocated. The law discusses issues of compensation for land repossessed as well as taxation of land allocated.

The third law, Urban Land Distribution, addresses issues of urban land tenure. Articles 27 and 28 cover registration, but unfortunately, like many of the provisions in the other laws, the articles are extremely brief and not easily interpreted--i.e., Article 27 states that all land must be registered and that this is the responsibility of the Administrative Department and its district and regional representatives and Article 28 states that the land register is open for public examination during office hours and that it is only open to those who pay the land taxes.

The fourth law, Nomination of Chairpersons, has no direct bearing on registration issues in Somalia.

A paper by Marco Guadagni reviews the origins of land law in Somalia in the brief period from 1892 to 1912. Although the paper does not directly discuss registration issues or provide specific examples of the registration process in Somalia, it does provide an excellent overview of the early development of land law in Somalia and its relationship to European, and specifically Italian, law.

Land Tenure and Registration in the Lower Shebelle

Recently the Land Tenure Center carried out a study for USAID in Shalambod on the lower Shebelle in Somalia to evaluate land and water resource issues in an 8,500 hectare area that has been proposed for agricultural rehabilitation. Results of the research are presented in Roth et al. (1987). The goals of the study were to (1) evaluate security of tenure, the system of land registration, and mechanisms for dispute resolution in the project area; (2) analyze the demographic composition of households with respect to economic size of land holdings and the willingness and ability of farmers to take advantage of the opportunities offered by the proposed rehabilitation of the scheme; (3) provide information on the current system of water distribution; and (4) analyze problems related to livestock damage to canals and irrigation infrastructure.

Most relevant from the perspective of title security and land registration are the second and third sections of the paper, which discuss land tenure structure and organization, and security of tenure and land registration, respectively. The second section contains a review of the legal framework for land tenure (including the Agricultural Land Law of 1975), geographical characteristics of the region, and large farm and smallholder characteristics. The third section of the paper analyzes data that was collected in a survey of 56 smallholder farmers in the Shalambod irrigation zone and from interviews with government officials and local authorities in the area.

Disputes and Tenure Insecurity

Roth et al. report that three sets of institutions are involved in the resolution of land disputes in the lower Shebelli: the district and regional courts, the regional office of Land and Water Resources of the Ministry of Agriculture, and local farmers' committees. While the dispute process usually begins with the farmers' committees, the procedural sequence that follows thereafter is unclear due to jurisdictional conflicts between the courts and the MOA, and to the lack of clearly defined rules. In practice, disputants may take a dispute to the MOA district representative, or to the courts. Both routes have their own set of successively higher appeal steps.

Disputes involving registered land are initiated by a letter of complaint to the head of the MOA district Land and Water resource office. However, there are diverging opinions between the MOA and the courts as to the procedures disputants should follow next. Representatives of the regional courts feel that the case is supposed to shift to them if the local Ministry official cannot settle the dispute. District Land and Water officials of the MOA agree that people may turn to the court if they are dissatisfied with the MOA's determination, but this is improper procedure. The proper procedure is to move up the MOA hierarchy of appeal starting with a district committee composed of the District Commissioner, the District police officer and the District Agricultural Coordinator.

This committee investigates and rules on the case. Committee members accompanied by witnesses, visit the site of the dispute. Neighbors are queried about the length of time land was used by the respective parties. The party dissatisfied with the determination at the district level may then pursue the matter at a regional MOA committee level. If still not satisfied, a disputant may resort to a committee of last resort in Mogadishu by writing to its head, the Permanent Secretary.

Perhaps because of the inconveniences and greater costs involved in moving a case to Mogadishu, people often transfer their case to the district or regional courts, where an alternative hierarchy of appeal exists. Disputes over usufruct rights tend to go straight to the Regional rather than the District Courts, because the district court's jurisdiction is limited to cases in which the land concerned is worth less than Sm. Sh. 3,000. Also, the district court primarily handles inheritance cases. Parties dissatisfied with the regional court ruling may pursue the case at

the appellate court, then through the Supreme Court and if there is still objection to the ruling, the case may be brought before the President.

Whether the courts or the MOA are involved, disputes concerning registered land are decided according to the provisions of the 1975 Act. Both also hear disputes concerning unregistered land. Since no statute strictly applies to such land, courts and MOA committees apply general principles of justice in their deliberations. In operational terms, justice usually means deciding in favor of the person who can establish the most long-standing record of use of the land. Neighbors or other witnesses are called to testify how long the land had been used by the respective parties. Presence of a house or other structures belonging to one of the parties reinforces that person's claim.

Litigants sometimes offer as proof of usufruct rights, certificates issued under a law from the colonial period and in force until 1975. These certificates allowed a landholder to have the Ministry of Agriculture write to the regional court, specifying that the landholder farmed a specific amount of land at a certain location and asking the regional court to issue a certificate to that effect. Occasionally, farmers present court resolutions from a dispute case settled in the past, as proof of usufruct rights.

Roth et al. report that many use-right disputes originate in rental arrangements in which the renter utilizes someone else's unregistered land and then resists returning it after the rental term expires. Fear of this happening has made some villagers wary of entering into rental agreements. Land rental although banned in the 1975 Land Law is common. There are two other common types of disputes over usufruct rights that stem from the MOA assigning land to individuals via official documents. One type of document assigns a given plot of land, the other is a set of instructions to the regional MOA officer to locate "unclaimed" land for someone. This assignment of land by Ministry officials was the major form of land disputes in the frontier areas of the lower Shebelli.

The findings of Roth et al. suggest that registration of land does not necessarily guarantee either security of tenure or credit for the landholder--although farmers' perceptions are that registration can protect them against land-grabbing by outsiders. The incidence of outsiders actually taking land in the area is quite low--in the one case in the area that the researchers were told of, local authorities ruled against the outsider--but farmers believe the threat to be a real one.

Registration and Tenure Security

While Roth et al. report that land registration was clearly desired by farmers, few small farmers have documented rights to the land they are cultivating. The LTC small farmer survey found that only 45 percent enjoyed some measure of tenure security. Of these farmers, 64 percent had land that was registered in the name of a cooperative. The remaining 36 percent held individual title to their primary parcels.

Registration appears to be the domain of larger farmers. An examination of local Land Registry records by researchers revealed that of approximately 350 cases of registration in 1986 very few titles involved parcels smaller than 1 hectare; most were significantly larger. The average total land holding for individually registered respondents in the LTC survey was 5.5 ha compared to 1.6 ha among unregistered farmers. Women were especially unlikely to register their holdings. When asked why they had not registered their land, farmers cited problems of high costs, complicated procedures, and long delays.

When officials were asked to explain non-registration by small farmers, they attributed the cause to laziness of small farmers and lack of information. The regional Land and Water Resources officer noted that his office actively engages in information campaigns designed to encourage registration by small farmers. He and others also recognize, however, that transportation costs involved in the registration process may be too much of a financial burden. Where agreement with the farmers tends to occur is on the matter that registration procedures are too cumbersome, involve too many stages and must be simplified.

Land Registration Procedures⁵

The process of registering land requires many different steps and several months to complete, if all goes well. A landholder wishing to register his/her land must file a letter of application with the district Land and Water Resources Office, stating the applicant's desire to register the parcel. The application letter must also contain minimum background information: name and age of the applicant, place of residence, length of time the parcel has been held, size of parcel and its location relative to canal borders or neighbors parcel immediately adjacent to the site. The fee for initiating this process is Sm. Sh. 6 for a revenue stamp.

Once the letter of application is submitted, the director of the Land and Water Resources Office accompanies the land holder to the field to verify the claim. Measurements are taken of the parcel's dimensions and a rough sketch drawn of its shape. Estimates of area are verified although no exact measurements are made. The sketch is then given to the land holder who has the responsibility of taking it to a draftsman for an official rendering. Charges for making a formal drawing/map of the site are reported as expensive, ranging from a low of about Sm. Sh. 1,000 (Sm. Sh. 100 = \$1.00) to purported highs of Sm. Sh. 20,000 to 30,000. Drafting costs are borne fully by the landholder and appear to be unrelated to parcel size. The supply of drafting services in rural areas is limited,

⁵ . Subsequent to the Roth et al. study, changes in the registration procedures were authorized in two official memorandums: "Guidelines for Giving of Farm Land" of May 24, 1987, and "Registration of Small Farms in the Country" of October 10, 1987. These changes have not been incorporated in the text on registration procedures pending verification of preliminary translations by Somali legal experts.

hence formal maps often have to be drafted in Mogadishu.

Once a formal map is obtained, the landholder returns to the Land and Water Resources office and formally submits the map along with the original letter of application. The director writes a letter to the police station nearest to the site, stating the nature of the case and requesting verification of ownership. An enquiry is made: the site is visited and discussions are held with the village chief, neighbors, or other expert witnesses located by the police. If no dispute to the claim arises, a letter of approval is returned to the Land and Water Resources office. After the letter is sent, a public notice is posted in the village of the applicant for 30 days, to allow time for any final disputes over land ownership to be brought forward to officials.

If no land dispute arises within the 30 days, an official land title is typed and copies made. The district office sends a copy to the regional office of Land and Water Resources. Both the district and regional offices write letters to the main Department of Land and Water Resources in Mogadishu stating that all appears to be in order with the request. The director of the Department in Mogadishu, has the final check before sending the file to the Minister of Agriculture for signing. Once signed, the registration procedure is complete. The original title is returned to the landholder while each of three copies are retained by the district, regional and main departments of Land and Water Resources.

Roth et al. found that the cost and the lengthiness of the registration process deter many small farmers from registering their land. Ideally, the registration process should take no more than 2 or 3 months to complete. However, cases were found where applications were still pending up to 4 years after the process was initiated. Although the registration procedure only requires a farmer to go to the district office, farmers report making countless trips to the various government offices involved to ascertain the status of their file. This is problematic in terms of delays and cost inefficiencies. The highly centralized registration procedures requiring that the Minister of Agriculture sign each and every title will ultimately result (an perhaps is already resulting) in backlogs and delays with the emphasis on expansion of registration activities.

Several other problems are apparent. According to the 1975 Land Law a farmer is allowed only one registered title per household. However, the LTC small farmer survey found that 32 percent of respondents had 2 or more parcels. Smallholders stated that: 1) fragmentation due to inheritance; 2) the need for additional land because of fragmentation; and 3) the use of multiple parcels to increase the likelihood of gaining access to irrigation water somewhere, were the main reasons for having multiple parcels. These farmers are legally unable to extend the benefits of registration to all the land they cultivate, although they attempt to circumvent this regulation by registering land in the name of sons over 15 years of age or in the name of other family members. Thus, even if registration can be extended to all households in the area, many will still have land that is in a legally tenuous state.

Among the claims made for the benefits of registration is that landholders are likely to use their land more productively, investing in inputs and having access to credit to make more costly, long-term improvements. Roth et al. could not test this, however, because of several important complicating factors. Because registered land in Shalambod also had the best access to irrigation, it could not be compared with unregistered land. Moreover, access to credit was more often a function of farm size than of registration status. Land is seldom used to secure a loan. The attractiveness of registered land as collateral is limited by the fact that under the 1975 Land Law, land cannot be sold, rented, sublet, or otherwise transferred. Instead, other assets such as bank accounts, cattle, or buildings are put up as collateral. Small farmers who lack capital or other mortgageable assets use group guarantees or risk-sharing through a cooperative to secure credit. Another complicating factor in attempting to measure the value of registration, Roth et al. found, was that the farmers with the best production and marketing arrangements were those on cooperative-affiliated farms who lacked the individual title which registration advocates proclaim necessary.

Recommendations for Land Registration Reform

The authors suggest a number of ways in which the registration process needs to be amended. Perhaps most important is their recommendation that the process be made less time-consuming and costly. They recommend that final approval for registration be granted by the regional Land and Water Offices rather than by the Ministry of Agriculture in Mogadishu, as is now required. Another obstacle at present is the requirement that land divided among heirs must be fully re-registered, a cumbersome and costly process which many prefer to avoid altogether. In order to prevent wholesale de-registration and as a way of lessening the increased numbers of inheritance disputes that will undoubtedly occur in the future, Roth et al. suggest that a simplified procedure be introduced for cases of sub-division of already registered land. They also believe that the government must recognize that many farmers have multiple holdings and permit their registration. Such a change will benefit primarily the smallholders. (Roth et al. found that in most instances, the total area of these multiple holdings was less than 30 ha. per farmer.) And finally, it is recommended that the government provide more affordable map-drafting services.

The process of reforming local and national land registration policy will face three major problems. First, any attempt to reform existing land registration procedures must face the problem of how to handle smallholder and pastoralist claims to land held by Agricultural Cooperatives, the CRASH program and other parastatal organizations. Second, land tenure issues related to rangelands and refuge settlement will become increasingly more acute with continued population settlement and growth in demand for land resources. However, these issues have received very little attention in either the 1975 Land Law or official memorandums, hence lawmakers will have little guidance from past legislation from which to make a start. Third, the displacement of

smallholders by land speculators and large statal and parastatal projects will increase in severity as the supply of arable land tightens relative to demand. The process of securing individual smallholders land rights will draw into question issues of eminent domain and conflicts between individual and parastatal land ownership.

CURRENT AND PROPOSED LTC LAND TENURE RESEARCH

Arrangements in Somalia for access to and tenure of land and water resources are in a state of flux. Under the Land Tenure Law of 1975, all land in Somalia is owned by the State. Both existing land users and those who desire to initiate cultivation may obtain fifty-year renewable leases from the Ministry of Agriculture. Due to budgetary and personnel constraints, however, the Ministry has only been able to implement the leasehold system systematically in some scheme contexts, sporadically in areas of potential for rainfed cultivation, and not at all as regards pastoralist land use. As a result, most cultivated and all pastoral land remain outside the leasehold system, governed in practice but without legal recognition by traditional land tenure arrangements.

Comparative experience and fragmentary data from Somalia suggest that in these circumstances both existing users and potential investors in agriculture may be hampered in access to resources and operating under insufficiently secure tenure arrangements. Limited access to resources or tenure insecurity may be having negative impacts on incentives to invest the expansion or intensification of land use. In addition, conflicts over land and water resources between both individual users and user groups may exist that results in inefficient resource use. Such conflicts may be intractable in situations of ambiguity regarding tenure rights. Problems of this nature are believed to be particularly acute at the interface between traditional and state-sponsored systems of resource tenure.

LTC with funding from USAID/Somalia and USAID/Washington is undertaking land tenure research in conjunction with two USAID project initiatives: (1) under the Jubba Environmental and Socio-economic Studies (JESS) Project for planning of land and water use patterns following construction of the proposed dam at Bardheere on the Jubba river; and (2) under the Shebelli Water Management Project involving agricultural and irrigation rehabilitation of the Shalambood irrigation zone on the Shebelli river. The two studies are being conducted by LTC project coordinators and two LTC resident researchers in collaboration with the Faculty of Agriculture, National University of Somalia, and the Land and Water Resources Office in the Ministry of Agriculture.

The applied research is made possible by USAID/Washington's S&T Bureau and Africa Bureau, through its Cooperative agreement with the Land Tenure Center (LTC), University of Wisconsin, and resources from USAID/Somalia through its Policy Initiatives and Privatization (PIPs) Project. Because of these different funding sources, there are two separate but complementary sets of objectives being pursued by the LTC research.

Centrally Funded Research Objectives:

In 1985, LTC received funds from USAID's Africa Bureau and S&T Bureau to carry out research on security of tenure and land registration in the context of a number of African and Central American countries and in situations of diverse tenure arrangements. The research interests stem from recent developments in thinking concerning land tenure reform initiatives in Africa. Questions have emerged concerning the reliability of traditional tenure systems in providing security of tenure under changing socio-economic conditions, such as when major investments in land become feasible, or when land becomes a scarce and valuable commodity, as occurs in situations of growing population pressures and intensification of land use.

Conventional wisdom out of the colonial era suggests that traditional tenure systems cannot provide tenure security, and tends to see the solution in the introduction of Western tenure forms --- principally individual freehold and leasehold --- and in cadastral and registration systems which are required for such tenure systems. The processes for establishing the modified Torrens system, broadly adopted in both British and French colonies, have great potential as a tenure-conversion tool. These processes have set in motion systematic individualization of tenure in a few African countries (e.g., Sudan, Kenya and Tunisia).

These programs have stimulated a discussion of the pros and cons of tenure individualization and land registration. Proponents of land registration argue, based primarily on theoretical arguments of economists, that increasing security of individual property rights in land provides incentives for higher capital investment in land and in turn to increases in agricultural productivity. If rights are transferable, then secure individual property rights may result in improved allocative efficiency through the operation of land markets. Critics have argued that registration can have detrimental side-effects, particularly the high costs to governments and individuals required to register lands, and the negative welfare impacts that can result from land grabbing and land speculation preceding and accompanying tenure conversion. Both proponents and critics have generally assumed that individual tenure, once established, demarcated and registered, would "stick." This assumption is being undermined by emerging evidence in Kenya that in many areas, individual titles established at considerable cost are reverting, through non-registration of successions, to a species of extended family ownership (Green, 1987).

Moreover, the causes of tenure insecurity are now seen as diverse, and it is not clear that individualization of tenure is the most cost-effective way to address the security issue. Tenure insecurity, in a particular case, may have more to do with deficiencies in administration of the existing tenure system than with its substantive rules. Given the variety of causes of insecurity, the high costs of individualization and registration programs, and emerging doubts about the durability of their results, a reassessment is timely.

Empirical research on tenure security, and on the costs and benefits of land registration programs in the African context, has been quite limited. There is little empirical evidence, either positive or negative, as to the impacts of registered title on capital investment, land markets, agricultural output, and input utilization. Conversely, there has been little empirical work and analysis of land tenure in situations where land registration is lacking, and economic forces are resulting in tenure insecurity. Empirical research on the socio-economic factors --- population density, technology, nature of land and capital markets --- that influence the nature of these titling impacts is equally limited. An assessment of the benefits or lack of benefits associated with land title has an important bearing on the economic viability of land registration reform that is being proposed in Somalia, and across Africa. Given these considerations, several research needs emerge:

1. Establish whether the problem of questionable durability of individualization and registration programs is unique to Kenya or is a more general phenomenon.
2. Understand better the causes of lack of durability to determine whether the problem can be remedied by better planning.
3. Identify and analyze alternatives to individualization and registration, and evaluate experiences with alternative approaches.
4. Elaborate standards which would provide guidance to USAID, both in a project context and more generally, as to the appropriateness of individualization/registration and alternative approaches, in particular circumstances.
5. Provide new evidence on the relationship between registered title and production, investment, land allocation, transactions, and distributional impacts of enhanced security of tenure through registration and related processes. It is hoped that this would permit LTC to advise USAID on economic and social preconditions for effective programs in these areas, standards of timeliness, and possibilities for phasing.

Three in-depth studies involving field research are being undertaken, two in Somalia and one in Senegal. Case studies are envisioned for six other African countries. The Somalia research sites are: a) the area around Shalambod on the lower Shebelli; and b) the village of Banta near Bu'alle on the Jubba river. In addition, an LTC researcher in conjunction with JESS and USAID has undertaken a Jubba-wide land tenure study. LTC with the collaboration of the Agricultural Economics Department, Faculty of Agriculture, in the Somali National University and the Land and Water Resources Office in the Ministry of Agriculture are compiling statistics on incidence of registration in the lower Shebelli, analyzing characteristics of registered farms, and evaluating land registration records in the central and several regional land registry offices.

In-Depth Shebelli Research

The Shalambood research site is located in a rectangular 8,500 hectare area on the Shebelli river, bordered on one corner by the Genale dam and the village of Genale, and on the other by the town of Shalambood. The zone contains large Cooperative, private and state farms ranging from 40 to 360 hectares in size, and land held by approximately 3,500 smallholders. This zone on the lower Shebelli river lies at the heart of Somalia's most important food and export crop producing region.

LTC research in the Shalambood area began in January 1987, as part of the USAID/Mogadishu design phase of the Shebelli Water Management project. LTC performed an analysis of land and water tenure issues in the proposed area of agricultural rehabilitation. Four sets of issues were addressed in the study: 1) security of land tenure, systems of land registration, and mechanisms for dispute resolution in the Shalambood scheme; 2) the economic size of land holdings and the willingness and ability of farmers to take advantage of economic opportunities posed by the scheme's rehabilitation; 3) the current system of water distribution, and effects of that allocation on agricultural productivity; and 4) damage to canals and irrigation infrastructure from livestock watering and grazing on the scheme. A formal questionnaire was used to elicit formal responses from a random sample of 56 smallholders. Informal survey methods based on key-informant interviews were also used to collect information from smallholders, large farmers, public officials and village authorities. Findings from that research have been summarized in earlier sections of this paper, and are reported in Roth et al. (1987).

LTC researchers returned to Somalia in May 1987 to begin a second phase of research in the Shalambood area. While the January research examined a broad range of land and water issues in conjunction with the project design activities of USAID/Mogadishu, the current research is focusing primarily on title security and land registration issues, which are of central interest to USAID/Washington.⁶ LTC resident researcher (Jon Unruh) is responsible for the in-country administration of the Shebelli

⁶. The Shebelli Water Management Project involves the rehabilitation of the irrigation infrastructure in the Shalambood project area, and the agricultural input supply, research and extension, and agricultural marketing network of the lower Shebelli. One condition precedent to the contract is that "...smallholders' tenure be secure prior to initiation of any civil works rehabilitation." LTC has been asked by USAID/Mogadishu to locate an advisor to assist the Ministry of Agriculture with the registration of smallholders' lands. While the registration advisor would be expected to maintain close collaboration with the resident LTC researcher, the two projects are distinct entities, having separate agendas and time schedules. Hence, they should not be confused as being one and the same.

portion of the project, and for supervising the field research.

The research approach involves both formal and informal interviews with a stratified random sample of smallholders residing in Shalambood on the lower Shebelli river. Smallholders refer to those residents living in Shalambood, who cultivate land on the scheme, but who are not primarily engaged in commercial export crop (e.g., bananas) production. There is no restriction on land size imposed on the selection of farmers for the random sample, although farms average 1-2 hectares in size. The sample includes 3 strata of farms: (a) smallholders with official leasehold title; (b) smallholders without official title but having tenure security; (c) smallholders without official title who perceive their tenure to be insecure. Each stratum contains approximately 35 farms. Assignment of unregistered farms for stratum (b) and (c) is determined on the basis of attitudinal questions assessing tenure security in formal questionnaires, and the use of discriminant analysis to calculate a security index.

A multiple purpose, three-round questionnaire is being administered to each household/compound in each stratum, giving a total sample size of 105 farms. Formal questionnaires are being administered to the household head, and any family member having managerial control over a parcel of land within the compound. Informal interviews are also being held with government officials, local authorities and other key informants knowledgeable about land tenure. The proposed research would provide the MOA and USAID with policy-relevant data with regards to:

1. existing patterns of resource access and tenure by both titled and untitled, and tenure secure and tenure insecure farmers in the Shalambood project area;
2. the historical development and current trends in the evolution of those tenure patterns;
3. the efficiency and equity impacts of various customary and official (leasehold) tenure arrangements;
4. the costs and benefits, both perceived and realized, influencing the demand for registered title and the durability of land title once registration is in place. Benefits from registered title will depend on: (a) the tenure security posed by formal leasehold title which depends on provisions of the land law and farmers' perceptions of the governments willingness to abide by those provisions; (b) transferability of title which influences efficiency of land allocation; (c) the existence and nature of land markets; (d) mortgageability of title for credit purposes; (e) types and availability of profitable technological options for land investment; (f) farmers access to information about these technologies; (g) cash reserves or sources of credit for financing these investments; (h) a functioning credit market; and (i) the supply of capital inputs and extent of imperfections in input markets.

5. the relationships between registered title and capital investment, agricultural productivity, input utilization, land transactions, land use, capital accumulation, input utilization, and the effects of title security on this relationship.
6. constraints and opportunities posed by existing systems of property rights and their effect on meeting agricultural performance objectives under the scheme's rehabilitation.
7. appropriate holding sizes and land tenure arrangements under the rehabilitation scheme;
8. access to water and land resources by pastoralists currently using the area; and
9. legal or administrative initiatives and resources required on the part of MOA to accomplish the transitions in land and water use involved in the rehabilitation project with a minimum of conflict between individuals and user groups.

Data are gathered on a wide range of socio-economic variables including current land tenure arrangements; irrigation and groundwater management practices; household labor and resource allocation to irrigated farming and other economic activities; absentee ownership, share cropping and related distributional issues; the interrelationship between land use and water use including tenure arrangements; consequences of non-use of resources; and pastoralist access to land and water resources in the project area. Data gathering and preliminary field analysis is expected to be completed by July, 1988. Completion of the detailed analysis of field data is not expected until February 1989.

In-Depth Jubba Research

LTC research in the Jubba is examining land access, tenure and use arrangements in the village of Banta near Bu'alle in the middle Jubba. LTC resident researcher (Catherine Besteman), an economic anthropologist from the University of Arizona, has been residing in Banta since June 1987. The research is an ethnographic study of the history and dynamics of land tenure in the village of Banta on the Jubba river, with special attention being given to inter- and intrahousehold land transactions, and special tenure problems faced by women. While there are only two households with registered land in Banta, there are about 15-20 persons with registered parcels in the general vicinity of Bu'alle, about 8 km. from Banta.

The research approach involves both formal and informal survey methods. Formal surveys are being administered to a randomly selected sample of 40 households within the village of Banta. None of these farmers have registered leasehold land. A multiple purpose, two-round questionnaire is being administered to the household head, and any family member having managerial control over a plot or parcel of land. The study

aims to get at the issue of tenure security provided by customary or informal tenure systems, looking particularly at gender differences. This survey would be accompanied by less formal data gathering through a variety of methods, including documentary research utilizing existing records of land rights (including the Ministry of Agriculture's land registration records), the results of any prior research in the study area, group interviews, key-informant interviewing, observation, and reconnaissance of areas bordering on the sample study area.

While there are farmers in the Bu'alle area with registered land, LTC researchers' decided against incorporating them into a formal sampling frame (to permit statistical comparisons of socio-economic characteristics of titled versus untitled landholders) for four reasons: (a) registered landholders are generally Ministry officials or influential individuals who have government contacts and are more geared to working with official regulations; (b) some of the registered landholders are absentee making it difficult to contact them for interviews; (c) the lack of land maps and clear descriptions of location of parcels in the registry books, has made locating registered parcels difficult; and (d) parcels are registered under diverse institutional forms, including large private farms, cooperatives and smallholders, and exhibit widely varying land use patterns. The sample size of registered parcels would have been too small to draw any statistical conclusions on the causality or effects of registered title.

LTC researchers' decided instead to use informal survey techniques to gather socio-economic data on as many registered parcels as possible, but without the intent of statistically analyzing data, or drawing statistical comparisons between titled and untitled groups. The research will closely look at attitudes of farmers' (both registered and unregistered) toward land registration, analyze the constraints facing introduction of registration in remote areas like the Jubba, evaluate the problems of land speculation or land grabbing in the Jubba region that may be contributing to tenure insecurity and increasing demand for formal titling systems, and examine the tenure security that is provided or not provided by customary tenure systems.

The objective of the proposed research, in addition to providing data for the LTC's Security of Tenure and Land Registration Project, would be to provide the JESS Project and MJVD with in-depth data on existing resource access and tenure in a limited study area. Data would be gathered in the following areas:

1. baseline data on existing patterns of resource access and tenure in the study area, and the efficiency and equity impacts of such arrangements;
2. information on the historical development and current trends in the evolution of those patterns;
3. the likely impact of water management patterns following completion of the dam, on resource use and tenure rights of small farmers;

4. information on farmers perceptions of tenure security, and problems of land speculation and land grabbing that may be increasing, or expected to increase, tenure insecurity as a result of dam construction and development of the valley;
5. presence or lack of markets for input supply, commodity marketing, credit, agricultural research and extension, and capital that may facilitate or restrict farmers' participation in the economic development of the region.
6. opportunities implicit in current land tenure arrangements that may facilitate orderly changes in land use and minimize conflict among individuals and user groups following dam construction;
7. legal or administrative initiatives and resources required on the part of MJVD to accomplish transitions regarding resource use and to ensure efficient and equitable resource use in the development of the valley; and
8. information on access and tenure rights of pastoralists to land and water resources in the area, and an analysis of the impacts of the dam on resource use and tenure rights.

Data are gathered on a wide range of socio-economic variables including current land tenure arrangements; irrigation and groundwater management practices; household labor and resource allocation to irrigated farming and other economic activities; absentee ownership, share cropping and related distributional issues; the interrelationship between land use and water use including tenure arrangements; consequences of non-use of resources; and pastoralist access to land and water resources in the project area. Data gathering and preliminary field analysis is expected to be completed by July, 1988. Completion of the detailed analysis of field data is not expected until February 1989.

Jubba wide Land Tenure Research

This research was undertaken by Dr. James Riddell of the Land Tenure Center, University of Wisconsin, and Mr. Abdi Jamma Samatar, Department of Economics, National University, Mogadishu, during April 1986 and July and August 1987 in the Jubba Valley, Somalia. Research was carried out under the auspices of the Jubba Environmental and Socio-Economic Studies, funded by USAID/Mogadishu through the Jubba Development Analytical Studies Project. The authors' surveyed land tenure conditions in the valley focusing on three central issues: (a) the use made of the 1975 Land Law in the valley, and impacts of the law on land use, land allocation and title security; (b) how land is acquired; and (c) whether unequal social conditions reported in earlier literature (Ferrandi, 1897; Colucci, 1924) on southern Somalia still existed, and if so to assess its impact on agricultural development of the region, particularly with the development of the proposed dam at Baardheere.

The research area comprised six districts: Bardheere, Bu'ale, Saacow, Jilib, Jamame and Kismayo. A total of 103 smallholders and 13 commercial operators in 21 villages were interviewed using both formal and informal research methods. Methodology placed emphasis on selecting villages covering a wide range of ethnic and ecological differences, and diversity in land tenure forms. The study is essentially a composite of observations made by the authors' during their travels along the length of the Jubba river valley. Observations on land holdings, land allocation, land transaction, land use, incidence of land registration, settlement patterns, capital investment, etc., are recorded with considerable detail and insight. Terms and conditions of the 1975 Land Law are contrasted with the realities of land allocation and land use observed in practice. Considerable attention is given to the merits and constraints of the Law for management of land resources in the valley.

The authors' found that land registration is common in the valley, although the registration that exists lacks the legal clarity one normally associates with title. The lack of professionally trained surveyors, good detailed maps of each district and the nature of record keeping, means that it is never possible to establish with certitude just what has been registered. Land speculation is occurring in the valley in anticipation of the dam and road development. The authors' note that such land is often underutilized or not used at all for productive use. They strongly suspect that a number of individuals are using their titles to secure loans for agricultural credit and are then spending the money for non-agricultural enterprises, depleting the scarce supply of capital in the region. Land tenure is generally perceived as secure by farmers who have taken advantage of the registration process. Unregistered land, especially fallow fields, in Jilib and Bu'aale districts is the most insecure in the valley. Results of the research are forthcoming in Riddell and Samatar (1988).

Shebelli-Wide Land Tenure Study

While the in-depth studies mentioned previously are comparative in nature, drawing comparisons between stratified groups of households in a narrow geographic region, the Shebelli-wide study much like the Jubba-wide study of Riddell and Samatar (1988), proposes to evaluate the incidence of various tenure arrangements along the Shebelli river. LTC with the collaboration of the Faculty of Agriculture and the Land and Water Resources Office in the MOA has been working on a study of land registration in the Shebelli river valley. Faculty members and students have been reviewing registry records in Mogadishu and Afgoi, collecting data on the incidence of and trends in land registration over time; size and location of registered parcel; residence of owner; type of registration, either by an individual, state or cooperative; and other characteristics of parcels that may be included and relevant (e.g., whether leaseholds are for urban land or rural land, irrigated land or rainfed land, etc.).

Preliminary analysis of the data reveals that registration has primarily taken place in the irrigated areas by large organizations and private farms. Very few smallholders have registered their land. Moreover, the review of registry records in Mogadishu and Afgoi, has revealed wide discrepancies in the number of registered titles reported for the Afgoi region (theoretically any titles recorded in Afgoi should also be recorded in Mogadishu). Thus, the research is helping to identify strongpoints and weaknesses of the existing land registration system. This effort will be expanded to the district and regional office in Genale (registry office for Shalambood) and perhaps to other registry offices in the Shebelli. This work is contingent on the number of registered titles that exist in registry offices, the orderliness of records, transportation costs to travel to district offices, the number of registration offices, and financial resources of the project.

In addition, the study would include a less intensive examination of resource access and tenure in the larger Shebelli area. Researchers would travel the length of the valley, visiting with farmers, government officials, land registry officers, and local authorities to gain insights into the scope of tenure arrangements existing in the valley. The study would seek to establish the relative coverage of various resource access and tenure arrangements, and hopefully prepare a tenure map of the larger Shebelli area, showing not only individual rights but the approximate areas covered by basic types of tenure arrangements. Combined with the work of the Faculty of Agriculture and Department of Land and Water Resources, the research would provide an overview of the significance and location of registered parcels in the lower Shebelli river basin. The research would facilitate work of the Department of Land and Water Resources in assessing the demand for registry titles, and geographical areas it needs to focus on to more efficiently provide land registry services.

As budgets currently stand, only a small fraction of this Shebelli-wide research will be possible. The LTC research is supported primarily by Somali shillings funded by USAID/Mogadishu. The shillings budget has been hit hard by inflation; logistical problems and the considerable time required for project administration have greatly slowed progress. Reliable vehicles to permit travel to district offices are difficult to come by, and petrol shortages are currently hampering the research. Dollars under the project are very limited, restricting time and travel of expatriate researchers under the project. Unless these constraints are removed, it will be difficult to extend this work much beyond the analysis of land records in the Mogadishu, Afgoi and Genale offices by Somali counterparts.

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APPENDIX A⁷

TRANSLATION: SOMALI LEGISLATION IN RELATION TO LAND

1. Law 73 of 21 October 1975
2. Decree of 16 October 1976
3. Law 41 of 13 September 1973
4. Decree 31, December 31, 1973

Translators' Note:

To the best of our knowledge no official English translation of this land legislation exists. It should be remembered that this is an unofficial translation, having no legal authority. While the translation is adequate to indicate the scope and content of the legislation and has been done with considerable care, no one should act on the basis of this translation without having a Somali lawyer consult the Somali originals.

⁷. This section is an excerpt from Beileh, Adbirahman, trans. "Somali Legislation Relating to Land." Madison: Land Tenure Center, University of Wisconsin, February 1985.

Law 73 of 21 October 1975
Agricultural Land Law

The Chairman, Supreme Revolutionary Council, having seen the first and second policy documents of the revolution; recognizing the necessity of putting together a law that enhances the development of agricultural land and Somali farm production; and considering the decision of the Supreme Revolutionary Council and the State Secretaries, has issued the following law:

Part I: General

Article 1: Definition of Terms

- (1) Land: any agricultural land.
- (2) Use permit: permission to use agricultural land for a fixed time.
- (3) Certificate: evidence of use of land.
- (4) Secretary: the Secretary of State for Agriculture.
- (5) Regulations: regulations which will explain this Law.
- (6) Family: husband, wife, and their biological children.
- (7) Cooperative: recognized agricultural cooperative.
- (8) The Family: the person who manages the family and the tax of the agricultural land under use permit.⁸

Article 2: Land Ownership

Based on the Constitution of the Somali Democratic Republic, whether or not it is actually implemented, land is owned by the Government.

Article 3: Land Administration

The Secretary of Agriculture is responsible for distribution, supervision, and management of the land.

⁸. The term and the definition do not appear to fit each other in the Somali official version.

Part II: Use Permits for Agricultural Land

Article 4: Use Permits

The Secretary of State for Agriculture has the authority to issue land use permits to state farm cooperatives, autonomous agencies, municipal governments, and to private parties whether individuals, families, or private companies.

Article 5: Previously Owned Land

- (1) All those who had access to the use of land prior to this Law, should apply for a new permit within six months from the implementation date of this Law. That is, to have their lands registered.
- (2) Permission to use lands not registered will terminate at the end of the six months mentioned in (1) above.
- (3) This article does not affect the farm cooperatives established by Law 40, 4 September 1973.

Article 6: Limit to Number of Permits

Each family or individual (without a family) can receive only one permit. No land permits shall be issued to absent persons.

Article 7: Duration of Permit

- (1) A land use permit for private use is valid for 50 years and is renewable.
- (2) Land use permits for cooperatives, autonomous agencies, and municipalities shall have no time limitation.

Article 8: Size of the Land per Permit

- (1) An individual or a family can receive 30 hectares of irrigated land or 60 hectares of rainfed land; banana plantations are specially provided for in (2) below.
- (2) The size of irrigated land under banana plantations and other similar plantations permitted for an individual or a family is 100 hectares and that includes any land for alternate farming.
- (3) These size limitations do not apply to state farms, cooperatives, municipalities, autonomous agencies, and private companies.
- (4) Those who have had access to land in excess of these size limitations will be allowed to continue using it for two years from the date of implementation of this Law.

Article 9: Nationalization of Excess Lands

- (1) Any land in excess of the limitations, as explained in (1) and (2) of Article 8, will be nationalized under a circular issued by the Secretary of Agriculture. This will take place exactly two years after the implementation of this Law.
- (2) Details of the nationalization, redistribution, and compensation procedures will be explained by a state circular.

Article 10: Nationalization of Land for the Benefit of the Whole

- (1) Agricultural land can be nationalized for the benefit of the economy in general.
- (2) The procedure and details for such nationalization are explained in a Government decree.

Article 11:

- (1) Lands nationalized under Articles 9, 10, and 15 of this Law will be redistributed among landless individuals and cooperatives, and some will be reserved for state farms.
- (2) Committees at regional, district, and county level are responsible for the fair redistribution of this land.

Article 12: Restrictions on the Use of Land

- (1) Land being used under a permit issued under this Law cannot be transferred, leased, or sold to other parties.
- (2) In cases where the permit holder becomes terminally ill or cannot farm the land for other reasons, then s/he can transfer the right of use to the State or to his/her heirs.

Article 13: The Rights of the Farmer

The user of the land can do the following:

- (1) farm the land under any crops;
- (2) build a home or other building for the protection and development of the farm;
- (3) rear livestock on his farm;
- (4) use his farm as part of a cooperative;
- (5) keep all the produce of his land;

- (6) defend his rights to the land in the courts and in state offices without any sort of discrimination;
- (7) borrow money from the national banks based on the value of his farmland; and
- (8) get some foreign exchange if part of the investment in his farm came from external sources, or if, from his farm profits, he needs to buy some equipment and inputs abroad.

Article 14: Responsibilities of the Farmer

The following are the responsibilities of the farmer:

- (1) The land should be used only for the purposes for which it was given.
- (2) The farmer must farm the land in the most efficient manner.
- (3) The farmer should not rent, sell, or transfer title to his land to any other party.
- (4) The farmer should not unnecessarily partition his piece of land.
- (5) The farmer must appropriately compensate his employees.
- (6) The farmer should pay all appropriate taxes.

Article 15: Cancellation of Use Permit

Cancellation of a use permit may be effected in any one or more of the following situations:

- (1) when the land is nationalized by the State as explained in Article 10 above, or
- (2) when the permit holder fails to observe the limitations of this Law as to how the land is to be used.
- (3) If part of an individual's land is repossessed by the State, a new permit should be issued for the land retained.

Article 16: Inheritance of Land

- (1) Title to the land may transfer to those who have the right to inherit from the owner upon his death.
- (2) The names of the heirs to the land shall be registered as the permit holders of the land.

- (3) In cases where the new permit holders (the heirs to the land) do not want to farm the land, it may be redistributed to landless individuals and families in the area who are willing to farm it as required by this Law. The new holders will compensate the former holders for costs of investments they may have made in the land.

Part III: Taxes and Other Expenses

Article 17: Payment of Taxes

- (1) All the taxes have to be paid by those given the right to use the land.
- (2) Taxes are levied per hectare according to the fertility of the land.
- (3) Details and regulations concerning tax payments will be explained in a government circular.

Part IV: Registration

Article 19: Land Registration

- (1) The Ministry of Agriculture shall have registers in which land use permit holders and the conditions of their permit are entered.
- (2) The Ministry of Agriculture representative of each district should register all farms in that district.
- (3) All land registrations will be based on a certificate of right, authenticated writing or decision from a court concerning the land.
- (4) Any entries made in the land register should be agreed upon by the district commissioner and the regional supervisor of the Ministry of Agriculture.
- (5) A land certificate describing the land will be given to the owner after registration is made.
- (6) A copy summarizing (1) to (5) will then be sent to the Ministry of Agriculture.

Article 20: Registration Public

Land registers are open for public examination during office hours and fees will be charged for additional copies of land certificates.

Part V: Miscellaneous Articles

Article 21: Exclusion of Land from Private Use for Security Reasons

The Chairman of the Revolutionary Council, on the advice of the Ministers of Agriculture, Defense, and Interior, can exclude any given land from private farming for national security reasons. An exclusion statement will be issued in a Presidential Decree.

Article 22 : Delegation of Authority

The Minister of Agriculture can delegate his authority to representatives of Ministry of Agriculture in the regions and districts.

Article 23: Penalties

Anyone who violates these provisions will be penalized by two to ten years' imprisonment or fined 2,000-10,000 Somali shillings. Also, the land use permits of violators will be cancelled.

Article 24: Authority

Civil Courts have the authority to decide civil issues concerning land rights.

Article 25: Regulations

The President of the Somali Democratic Republic has the authority to issue regulations to further explain this Law.

Article 26: Repeals

The Law written in this book supersedes all other laws concerning land previously in force.

Article 27: Implementation

This Law will have effect from 21 October 1975.

Decree : 16th October 1976, by Law 23 on Agriculture

The President of the Somali Democratic Republic, having seen the first and second policy documents of the 21st October 1969 revolution; having seen Law No. 73 which was issued 21st October 1975; having recognized the need for the establishment of a Government Decree concerning agricultural land, a need which was pointed out by the Ministry of Agriculture:

Part I: Land Limitations

Article 1⁹

- (1) "Special agency" on Article 8 of Part 2 of the Agricultural Land Law means an agency in which the Government is part owner.
- (2) "Special agency" on Article 8 of Part 3 of the Agricultural Land Law means an agency of which the Government is a part owner.

Article 2

The National Agency can own agricultural land unrestricted by the Law on Agricultural Land.

Article 3

A special agency will be given agricultural land if it fulfills the following requirements:

- (1) The agency should be recognized by the State.
- (2) The agency should possess the financial capacity required by the agricultural land.
- (3) The agency should offer long-term and short-term plans indicating the best way in which the particular land can be used.
- (4) The agency's internal regulations and activities should be compatible with those of the nation for agricultural lands.

Article 4

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

⁹. Translator's note: Points 1 and 2 of Article 1 above explain the same thing since gaarkac and gaaska means the same thing.

Part II : Repossession of Agricultural Land

Article 5

The Secretary of State for Agriculture has the authority to repossess any agricultural land for national purposes, as explained in Article 10 of the Agricultural Land Law.

Article 6

Any land that is not used for farming or livestock rearing for a period of two years will be given to someone else. The previous owner is not allowed to make any contracts concerning the land with the new holder.

Article 7

The repossessed land will be valued by a committee of experts in the field, appointed by the Secretary of Agriculture, and compensation for improvements will be given to the previous holder.

Article 8

Repossessed land can only be given to persons with the following qualifications:

- (1) those who are adult and Somali by birth;
- (2) those who have no other agricultural land; and
- (3) those who have the economic capacity to pay the compensation to the previous holder.

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 has been less than 10,000 Somali shillings.
- (2) If the expenditure for investment is between 10,000 and 300,000 Somali shillings, the compensation shall be paid within 15 months.
- (3) If the expenditure for investment is larger than 300,000 Somali shillings, 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 have the right to use agricultural land should apply to the appropriate district authorities. He should use official application forms that are sold in district offices. The individual should attach a land identification letter to the application forms.

Part III: Issuance of Permits for Agricultural Land

Article 11

The land given out should be farmed within two years.

Part IV: Tax Payment Procedures

Article 12

Permit holders should pay taxes once a year as follows:

- (1) Cooperatives, individual farmers, and special agencies should pay 5.00 Somali shillings per hectare per year for their rainfed farms.
- (2) Cooperatives, individual farmers, and special agencies will pay 10.00 Somali shillings per hectare per year for their irrigated land.

The tax revenues from individual farmers and cooperatives will go to the municipal treasury. Tax revenue from all other sources will go to the Treasury of the Central Government.

Part V : Implementation of the Law

Article 13

Other land and livestock classifications will be further detailed in a Government Decree.

Article 14

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

Article 15

Everyone is commanded to respect and protect the implementation of this Law.

Mogadishu, 16 August 1976
Jaalle Mohamed Siad Barre

President, of the
Somali Democratic Republic

Law 41 of 13 September 1973
Urban Land Distribution

The Chairman of the Supreme Revolutionary Council, having seen the first draft of the 21st October 1969 and Law no. I of 21st October 1969; and considering the need for unification of the law on land distribution to the urban development of the Republic, has approved the following Law:

Part I : Introduction

Article 1: Definitions

- (1) "Ministry" in this Law means the Ministry of Public Works.
- (2) "Secretary" means the Secretary of State for Public Works.¹⁰

Article 2: Public Property

- (1) Public property is of two kinds: the public domain and the private domain of the state.
- (2) The public domain is national property or property of municipalities particularly designed for social services. The private domain is all other national property that is specifically owned by the nation.

Article 3: Public Domain

- (1) The public domain includes the following:
 - (a) seashores, beaches, ports, rivers, ponds, and any water catchment areas that are not privately developed;
 - (b) roads of all kinds unless privately developed;
 - (c) all town and city airports;
 - (d) all telephone and radio facilities and other telecommunication services;
 - (e) all cemeteries and mosques; and
 - (f) all historical landmarks, Somali art and music, and other historical artifacts.

¹⁰. Translator's note: Another title for Secretary of State is Minister.

Article 4: Private Domain of the State

- (1) Public property that is not public domain is the private domain of the state.
- (2) This private domain includes:
 - (a) properties not owned by anyone else;
 - (b) all mineral sites; and
 - (c) military headquarters, facilities of all kinds, and national defense equipment.

Article 5: Private Property of Autonomous National Agency

There also exist public properties that are privately owned by municipal governments and central government autonomous agencies.

Article 6: Provisions of the Law on Public Property

- (1) The public domain and the property of municipalities cannot be sold commercially and their titles cannot be transferred to anyone else, regardless of who used it or who is currently using it. It cannot be rented out unless this is authorized by special regulations.
- (2) The administration and supervision of the public domain lies with the Agencies for Preservation of Public Properties which have the authority to either keep it or distribute it.

Part II : General Orders

Article 7: Land Ownership

Land in the Democratic Republic of Somalia, regardless of who uses it, is public property.

Article 8: Limitation of Land Use for National Security Reasons

The President of the nation can limit the use of any land for national security purposes by presidential decree.

Article 9: Repossession of Land for Public Purposes

Any land that is found to be required for a national use can be nationalized with compensation to the holders.

Article 10: Ways of Issuing Land Use Permits in Urban Areas

Special laws will be formulated for land use in urban areas.

Part III

Article 11: Land Distribution Without Sale

The Secretary of State for Public Works has the authority to issue land use permits for anyone who fulfills the land use permit provisions of the Law.

Article 12: Land Distribution With Sale

- (1) Land in the urban areas can be bought and the price is per square meter.
- (2) The price per meter of the land given to individuals and national agencies will be explained in a government decree.

Article 13: The Responsibilities of the Person to Whom Land Is Given Without Paying for It

- (1) His/her responsibilities are as follows:
 - (a) The land should be used as designated unless exceptions are made by the Ministers of Public Works.
 - (b) All taxes levied on the land, on buildings or on other properties associated with the land should be paid.
 - (c) Construction on the land should start and continue consistently as required by Law.
 - (d) Construction and land use should be in perfect accordance with the requirements set out in city and town ordinances.
 - (e) Holders that do not respect the above requirements and restrictions will have their land nationalized. Buildings that violate the above laws will be demolished at the expense of the owner.

Article 14: Suspension of Work or Change of Construction Plan

- (1) Ongoing construction can be suspended by the appropriate authorities for investigation of compliance for a period of not more than a year.

- (2) The appropriate authorities can also suspend ongoing construction work for realignment of buildings.

Article 15: Length of Use Permits

- (1) In the urban areas, land use by Somali nationals is permanent provided that all responsibilities are fulfilled by the users. Foreign nationals can use a piece of urban land for a period from 50 years to 99 years.
- (2) Foreign nationals can renew their right of use for less than or equal to the previous use period.
- (3) Any land that is expected to have any natural resources will be controlled with special laws.

Article 16: Recognition of Use Permit and Receipt of the Permit

When the land user fulfills all the provisions of this Law in using the land, the user deserves special recognition for having completed his/her responsibilities.

Article 17: Previous Ownership

Previous users of urban land should comply with this Law within a year from the date of its implementation.

Article 18: Land Distribution Procedure

- (1) Special land use permit application forms should be filled out and filed with a Land Administration Office, either in the headquarters or with a representative at the regional and district offices.
- (2) Land description certificates with a photo of the land (if possible) should be enclosed.
- (3) The Land Administration Office will then carry out an investigation to confirm the information in the application.

Article 19 :Land Distribution to International Bodies, ie., United Nations Agencies, Embassies, Etc.

Land can be distributed to foreign agencies under agreements between the governments or international agencies which those agencies represent and the Government of Somalia.

Article 20: Land Improvement Expenditure

Any previous land improvement expenditure that came from the national account should be paid for by the new holder.

Article 21: Distribution

Land can be given out permanently or temporarily.

Permanent use of urban land can be authorized by the Office of Administration, Ministry of Public Works, or its representatives in the regions and districts.

Temporary use of urban land can be issued by local government authorities. Temporary users of urban land are not allowed to build durable houses on the land.

Article 22: Revocation of Permit

- (1) Violation of any of the land regulations by the user may prompt revocation of the use permit.
- (2) On land repossession, all investments by the previous holder will be paid for by either the State or a new holder.

Article 23: Prohibition of Buying and Selling Land for Commercial Purposes

- (1) A user of urban land whether permanent or temporary is prohibited to sell. Urban land should only be used for the purposes for which it was given.
- (2) In the case where a holder is unable to build on his land, he should return it to the proper authority and claim compensation for any investments made.

Article 24: Settlement Plan

All settlements (cities, towns, villages, etc.) should follow the proper zoning rules issued by the Ministry of Public Works.

Article 25: Violation of Zoning System

Buildings that do not comply with the zoning system may be dismantled unless they are saved by previous laws.

Article 26: Construction Cooperatives

The State encourages construction cooperatives that are composed of workers. The land application process will be facilitated for them and they will have access to materials on credit.

Part IV: Registering the Land

Article 27: Land Registration

All land has to be registered; this is the responsibility of the Land Administration Department and its district and regional representatives.

Article 28: Use of the Register

The land register is open for public examination during office hours. It is only open to those who pay land taxation.

Part V: Final Provisions

Article 29: Delegation of Authority

The Minister of Public Works can delegate his authority with respect to land distribution and land ownership to his representatives in the districts and regions.

Article 30: Issuance of a Decree

The President of the Somali Democratic Republic will, upon the advice of the Minister of Public Works, issue the final order implementing this Law.

Article 31: Penalty

Violators of this Law will be punished as follows:

- (1) repossession of the land (as explained in Article 22);
- (2) a fine of 500 to 5,000 Somali shillings;
- (3) demolition of construction (as explained in Article 25).

Article 32: Repeals

All prior legislation on this topic is repealed.

Article 33: Implementation

This law will be implemented soon and it will be issued in a general circular.

Mogadishu, 13 September 1973

Jaalle Mohamed Siad Barre

Chairman
Supreme Revolutionary Council

Somali Democratic Republic
Ministry of Public Works, Department of Lands and Construction
Decree 31 / December 1973 / N.WHA 3.23.1198

Subject : Nomination of Chairpersons of Regions and Districts

The Minister of Public Works, having seen the first and the second policy documents and the first Law of 21 October 1969; having seen Articles 12 and 29 of Law 41 issued on 13 September 1973, concerning Land Distribution; and recognizing that it is necessary to delegate responsibility to party chairpersons of the regions and districts, has ruled that:

- (1) Based on Law 41 of 13 September 1973, the Minister of Public Works has delegated his authority of land distribution and management to committees in the regions and districts as follows:
 - (a) Regions: regional party chairperson--chair; director of Ministry of Public Works--member; the engineer of the Ministry of Public Works--member; party chairperson of the district-- member; secretary of the municipality--member.
 - (b) Districts: district party chairperson--chair; secretary of municipality--member; a technician representing the Ministry of Public Works--member.
- (2) The City of Mogadishu does not follow the above plan of committee management.

Article 2¹¹

- (1) The permanent document of land distribution will be signed by the party chairperson and the general director of the Ministry of Public Works.
- (2) Any documents associated with land distribution will be administered by one of the regional offices of the Ministry of Public Works.

11. The previous paragraph would appear to be Article 1, though it is not so designated in the Somali original.

Article 3

This law is to be implemented soon and issued as a circular of the Democratic Republic of Somalia.

Mogadishu, 31 December 1973

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Secretary of State
for the
Ministry of Public Works

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