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RESOURCE TENURE ISSUES IN SOMALIA

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**Boston University
African Studies Center**

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by

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PREFACE

This review of land tenure issues in Somalia has been prepared at the request of the USAID mission in Mogadishu. It is based on a review of the available literature and interviews with government officials, social scientists, members of the foreign assistance community, and private citizens. Much of the work was carried out in August of 1984, when the author was a member of the Somalia Refugee Resettlement Project design team.

It is comparatively difficult to obtain accurate information about land tenure in Somalia. The best study of resource tenure in northern Somalia during the colonial period is I. M. Lewis' A PASTORAL DEMOCRACY. The most important work on land tenure in southern Somalia during the colonial period is Massimo Colucci's PRINCIPI DI DIRITTO CONSUETUDINARIO DELLA SOMALIA ITALIANA MERIDIONALE. A useful historical and ecological reinterpretation of these works is provided by Lee Cassanelli's THE SHAPING OF SOMALI SOCIETY. The most comprehensive attempt to analyze changes in agricultural tenure is Marco Guadagni's SOMALI LAND LAW: AGRICULTURAL LAND FROM TRIBAL TENURE AND COLONIAL ADMINISTRATION TO SOCIALIST REFORM.

Paradoxically, there is less published information on land tenure available for the contemporary period than for the colonial period. No cadastral survey or comprehensive land use planning has yet been undertaken in Somalia. It is estimated that not more than 10 percent of the land under cultivation has been registered, and even for this land, government records are unreliable and difficult to interpret. Few in-depth microstudies have been carried out in Somalia for any period in comparison with other African nations and virtually none have been undertaken since the socialist revolution. While there is growing recognition that tenure issues are important, not all Somali policy-makers and planners appreciate the need for such studies.

Gathering additional information about local land tenure systems is difficult because it is not legal for Somalis to discuss their traditional clan organization, on which these systems rest. Moreover, information about processes of land registration and conflict resolution is sensitive because they do not necessarily conform to law, policy, or political ideology, and because they are political processes involving the interests of influential individuals and powerful interest groups.

Because of these difficulties and the time constraint under which this study was undertaken, it was not possible to cover all

sources of information on all issues evenly. If further work is carried out on land tenure problems in Somalia, it will be necessary to clarify further the role of the Ministry of the Interior, the Cooperatives Bureau, and the Ministry of Justice. There is also an urgent need for interviews with regional and district officials concerned with land. Most importantly, case studies are needed to clarify the processes by which cultivators obtain, use, defend, and dispose of rights to resources.

In view of these constraints on data collection, this analysis should be viewed as a preliminary attempt to identify and structure resource tenure issues as they are likely to affect the course of rural development in Somalia. Further clarification of these issues is needed, both in national and local perspective, if planners are to take realistic account of the way interests in land and water shape patterns of land use, economic incentives, and the investment strategies of individuals and groups in both the public and private sectors.

In writing this report it has been assumed that the reader has some familiarity with Somalia, its geography, climate, history and people. Readers without this background may find it useful to see I. M. Lewis 1981, and Kaplan 1983, for a general summary and overview of Somalia and its people. For an overview of developmental issues in the Somali context, see Hoben et al. 1983.

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INTRODUCTION

The purpose of this report is to clarify the implications of natural resource tenure systems for refugee settlement and rural development in Somalia. The resources with which it is concerned are pasture, water and arable land.¹

A natural resource tenure system (hereafter termed a tenure system) encompasses more than a set of rules. It includes the processes by which individuals and groups obtain and defend their rights in resources, and the patterns of access and accumulation that result from these processes. Since decisions concerning access to rights in natural resources are influenced by the demographic, social, political, and economic context in which they are made, and these are subject to almost constant change, it should be assumed that tenure systems, too, are subject to continuous change. They must be viewed as dynamic, rather than static, and must be understood in terms of the particular historical and institutional forces that shape them.

Tenure systems have crucial implications for rural and agricultural development in any agrarian society because they are often major determinants of households' food security and income, their economic and political standing, and their incentives for conserving natural resources, increasing production, savings, and investment.

In sub-Saharan Africa, contemporary resource tenure systems are generally distinctive and complex. Often they represent a composite blend of custom, modern law, and administrative practice. Moreover, custom itself is in a state of flux, as familial and community structures are transformed by economic and political change; and administrative practice varies with time and place, as governments respond to changing capital flows and investment opportunities.

Resource tenure in Somalia is no exception. Distinctive customary institutions associated with the nation's indigenous pastoral, agro-pastoral and riverine farming systems still regulate households' access to resources at the local level in many ways. National law gives virtually no recognition to

1. Water here refers to water used for human and livestock consumption. No attempt is made to cover rights to water for irrigation in this report. For discussion of water law, see Colucci 1924, and Caponera, 1974.

customary rights or the institutions that have enforced them. At many points, custom and law contradict one another.

Conflicts generated by these institutional contradictions and by competition for access to scarce land and water resources are resolved through mediation and negotiation within the administration rather than through the courts. Outcomes are influenced by competing parties' ability to mobilize political and economic resources as well as by statutory law and administrative directives. An understanding of contemporary resource tenure in Somalia thus requires a broad understanding of both indigenous and modern institutions and the way they presently interact.

The organization of this report reflects the need to view Somali resource tenure in its wider historical and institutional context. The first section provides an overview of Somalia's indigenous resource tenure systems. It is concerned with the use of land, pasture, and water resources by the nation's pastoral, agro-pastoral, and riverine groups and with the traditional institutions through which individuals and groups acquired and defended their access to these resources. While some of these institutions have been greatly altered during the course of the present century, understanding them is essential because the beliefs, sentiments, values, and strategies on which they rest continue to shape contemporary patterns of resource access and accumulation.

The second section examines the ways that major demographic, technical, economic, legal, and political changes have partially transformed indigenous tenure systems since the turn of the century. The objective of this brief historical analysis is to anticipate the way further changes in these areas are likely to shape and affect land tenure in the future.

The third section is concerned with the land reform of 1975, the way it has been implemented, and problems that have arisen in this process.

The fourth section examines Somalia's experience with refugee settlement in order to see what lessons may be drawn from it that will contribute to future settlement efforts.

The final section summarizes the major findings of the review and comments on their policy implications for rural development with particular attention to refugee resettlement. It also identifies priorities for technical assistance and further study.

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INDIGENOUS RESOURCE TENURE SYSTEMS

The Organization of Subsistence Production

Indigenous patterns of resource tenure in Somalia must be understood in relation to the nature and distribution of the resource concerned, the way they are exploited by Somali families, the rights through which families claim access to resources, and the larger-scale socio-political institutions through which families' rights of access were, and to a varying extent still are, acquired and defended.

In Somalia a narrow focus on land tenure is misleading, for in the harsh and arid environment of the Horn the natural resources essential to human survival include pasture and water for human and animal use, as well as arable, high potential land.

Throughout Somalia these resources are characteristically sparse, widely scattered, unreliable, and unpredictable. Rainfall, and hence pasture and surface water, is meager, seasonal, and shows marked variations from year to year and from place to place. Drought is a persistent threat. Land with suitable structure and sufficient rainfall for cultivation is concentrated in the northwest around Hargeisa and on the higher ground between the Shebelle and Juba rivers (the interriverine region) in the south, but even in these areas it usually occurs in scattered pockets, and crop failure can be expected at least one year in four. Only along the rivers where irrigation is practiced are there extensive contiguous areas of cultivable land.

To cope with this unforgiving environment, Somalis have developed a mobile, multiple, and flexible income strategy. In most of the country this strategy rests on a complex system of nomadic pastoralism, supplemented to a greater or lesser extent with opportunistic cultivation, trade, and migration. In the interriverine area, agro-pastoralism² and simple irrigation are also employed.

2. Agro-pastoralism refers to an agricultural strategy in which families combine cultivation with pastoral livestock production, with these activities generally being undertaken at widely separated locations. This pattern is to be distinguished from mixed farming, in which a small number of livestock are kept at or near the site of cultivation.

In recent decades these indigenous modes of production have been supplemented by off-farm employment on plantations and urban areas, labor migration to the Gulf, trade, and private enterprise, especially transport. For most Somalis, minimizing subsistence risk remains more important than accumulating resources, though for pastoralists these objectives tend to be congruent, as large herds and other forms of accumulated wealth minimize risk.

Somali family organization is well-adapted to the management of this multi-stranded, risk-averse, and flexible income strategy. Members of a family, comprising a man, his wife or wives, and their children, may live seasonally or permanently apart from one another, engaging in distinct but complementary economic activities.

The basic traditional and most frequent residential division of the family is between its "domestic" and "nomadic" sections. The domestic section consists of a married woman, her young children and unmarried daughters and, periodically, her husband. The more mobile nomadic section consists of boys and unmarried sons, joined seasonally by their father.

Livestock are divided between the sections of the family and managed separately, according to their species-specific nutritional and watering requirements and their use. Flocks of sheep and goats, which require frequent watering during the dry season, beasts of burden (camels and donkeys) required for transport, and a small number of milch camels are managed by the domestic section of the family. Camels, which can go without water for over twenty days, are herded by the nomadic section. Cultivation, where it occurs, is the responsibility of the domestic section of the family.

In sum, the domestic section of the family serves to maintain and reproduce humans, and, where cultivation is practiced, to produce crops, while the nomadic section maintains a reservoir of excess milch stock and is a repository of livestock capital that buffers the domestic unit from the risks imposed by an uncertain climate.

Though the domestic and nomadic sections of the family have considerable autonomy in the day-to-day management of their capital (principally livestock), labor, and income, overall management and ownership functions remain with the family head, who may allocate and redeploy his dependents and resources in response to changing conditions, needs, and opportunities.

Each family is an independent economic unit. Nevertheless its head has strong ties with other families headed by his brothers or other close kinsmen, such as cousins, uncles and nephews, related to him by descent from a common ancestor in the male line. These ties enable families to reallocate resources in time of need or

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opportunity, thus pooling their risks and providing venture capital for new investments.

Access to Resources

The most general Somali cultural principles in terms of which family heads obtain access to natural resources can be summarized quite succinctly. The indigenous kin-based and religious institutions through which these rights were, and to some degree still are, secured and defended are more difficult to understand. For they are unfamiliar (to the non-anthropologist), contextually defined (relativistic), and regionally variable.

The basic cultural principles of resource tenure are quite simple. Access to pasture, browse, and naturally occurring water is said to be freely available to all Somalia. Access to man-made resources, including wells and artificial ponds, is restricted to the individual family or larger group that contributes to the effort of creating and maintaining them. By extension of the same principle, date palms, fruit and frankincense trees, and other "improvements" belong to the individual or family that plants and tends them. Ordinary trees, used only for fuelwood and boundary markers, are not individually "owned".

Land that has been brought under cultivation belongs to an individual family, in accordance with the principle that its members have invested their labor in clearing and improving it.³ Normally a man's land was allocated to his sons and wives during his lifetime and passed to his sons, with the approval of elders, after his death.⁴ Residual or reversionary rights in the land, and over uncleared land, are retained by the family's lineage or by a "religious community" to which the family belonged.⁵

In practice, these general principles were qualified by the fact that both the "right" to use unrestricted resources (pasture, browse and natural water) and the "right" to prevent others from using restricted resources (cultivated land, man-made water points and irrigation works) were guaranteed only insofar as the right holder was a member of a "political community" capable of defending his rights and his property against members of other political communities. Free access to pasture meant little if it exposed one to the dangers of a feud or livestock raid.

3. As is noted below, in the interriverine area labor-intensive and conservationist agricultural practices are common.

4. The most complete discussion of individual interests in land under customary law in English is in Guadagni 1979, pp. 62-83.

5. These quasi-corporate communities, organized around a religious leader, are discussed below.

The crucial point to bear in mind is that the individual's rights were guaranteed by his membership in a contractually linked, corporate descent group or religious community, rather than by his identity as a "citizen" of a territorially based political unit.

In the past, the most important "political community" guaranteeing a Somali his security against raid and feud and his access to natural resources was his dia-paying group. This corporate group consisted of a set of agnatic lineages (clusters of families whose heads trace descent to a common ancestor through male links only), linked to one another by a contract (heer) specifying the way compensation payments for homicide (normally paid in camels) were to be collected and distributed amongst kinsmen it covered. Dia-paying groups varied in size from 200 to 5,000 men among pastoralists and from 5,000 to 100,000 among more sedentary agro-pastoralists. Dia groups were governed by elders in council, who could establish regulations and settle disputes with the sanction of force, if necessary.

While the dia group was the most important corporate unit to which a Somali belonged, he also belonged to a nesting set of named groups by virtue of his placement in an all-encompassing agnatic genealogical framework. His placement in this conceptual framework gave him what has been aptly termed a unique "social address," since it enabled him to establish a relationship of common group membership or opposition with any other Somali.

A man's identification with named segments of Somali society at a level more inclusive than his dia group was relativistic and defined by the salient cooperative or competitive issues in a particular political or social context. Nevertheless, in most areas it was possible to identify a named, genealogically chartered, segment of Somali society (encompassing many dia groups, except in the agro-pastoral south, where they were synonymous), associated with a specific territory. For convenience scholars, call this segment a clan.

6. Dia is the Arabic word for the compensation due to the kinmen of a slain individual.

7. The rich complexity of Somali social organization and its basis in descent and contract are beyond the scope of this report. By far the best analysis of the system is to be found in I.M. Lewis' A Pastoral Democracy.

8. In most general terms, this process of establishing a relationship is analogous to that which takes place when tourists who meet in Paris "discover" that they are both American but from different states.

The clan's territory had no clear outer boundary but was defined by reference to the water points and pastures its members used over the course of the year. It would be mistaken to think of the clan as an exclusive territorial unit, for the territories used by adjacent clans generally overlapped. Access to naturally occurring water, pasture, and, in some instances, wells were thus shared by members of different clans.

At a still higher order of political organization, clans formed shifting alliances or more enduring confederations. The main function of these was to provide access to or defend natural resources during time of drought, as is explained below. Finally, at the highest level, all Somali segments are classified into six clan families. While these had important symbolic and occasional political significance, they were not relevant to resource tenure.

An alternative model of political organization to the "clan system", and one that has gained in importance during the present century, was provided by the cooperative community comprising the followers of a charismatic religious leader affiliated with one of the Islamic brotherhoods (tariqa) active in Somalia. More will be said of this form of organization in relation to rural development and refugee settlement below.

Regional Variation

There were and still are significant regional variations in indigenous resources tenure systems. These corresponded quite closely with variations in the agro-economic systems and associated forms of social and political organization. In reality, these variations form a continuum. For present purposes, however, a schematic overview of pastoral, agro-pastoral and riverine tenure systems will suffice.

Resource Tenure in Pastoral Areas In pastoral areas the major form of wealth are livestock. Without access to seasonally changing and widespread resources, however, livestock cannot be maintained. For the pastoral family, then, it is essential to maintain access to these resources as they move about their clan territory in a cyclical, yet ever varied, pattern.

Both the domestic and camel herding sections of the family are nomadic. The domestic section moves along with other domestic sections that together constitute a hamlet. The camel-herding section covers greater distance but at any given time is likely to be camped near other sections of the same lineage.

The general pattern of movement is one of greater concentration in an area of "home wells" during the driest part of the year and dispersion into wet season pastures during the period of highest rainfall. Actual patterns of movement are complex and vary from place to place, as well as from year to year, depending above all

on the availability of pasture and water.

Lewis provides an example of pastoral movements for groups whose annual cycle takes them from the Ogo highlands, which lie behind the northern coast, to the Haud plains stretching away from the mountains to the south:

In March at the end of the harsh dry season people and livestock are concentrated near their deep, man-made wells on the Ogo highlands. In April and May, with the onset of the most important rains, both the hamlets and the camel camps move southward, away from the wells and into the Haud which, at this time of year, has areas of flush pasture and abundant surface water. By June and July the rains are tapering off and the pasture is losing its freshness. The camels range far out in the Haud. The hamlets with their flocks depend increasingly on shallow hand-dug wells.

In August it is hot and dusty in the Haud, but it may rain on the higher parts of the Ogo plateau. The hamlets with their flocks fall back on the home wells. In September the work of camel watering increases. In October if the autumn rains occur on schedule, there is a general movement of hamlets and camel camps away from the wells once again, lasting through November. In December pastures are drying up once more and watering becomes more onerous. In January and February range conditions and water conditions become increasingly harsh, hamlets fall back on the home wells again, and camels, if still grazing far out in the Haud, must be brought back periodically for watering. (Lewis 1961: 33-42.)

As they moved about their clan's territory in quest of pasture and water, family members tried to avoid interaction with members of other dia groups, especially where there was already bad blood from previous conflict. Nevertheless, particularly during the dry season, when competition for scarce pasture and water is at its height, conflict occurred. Within the dia group peaceful resolution of this conflict was possible. Beyond it the situation was more complex, relativistic and variable as it depended on the fluid alliances of clan politics.

While clan membership gave a Somali family the political ties it required to use pastureland, it would be a mistake to think of the clan as a land-holding unit, for there were no political units that were territorially based. Instead the field of clan relations was essentially a political field characterized by negotiation and conflict. Within this field political status was ultimately maintained by the use or threat of force. The issues at stake might include grazing rights, rights to man-made water points, and disputes between individuals; but the character of

their resolution was strongly influenced by the principle that, beyond the dia group, might makes right, rather than the rule of law. In the last analysis, a Somali section's right to use pasture or water when they were in short supply depended on the strength of their group, not on an abstract notion of ownership.

The ultimate test and force for change in traditional Somalia resource tenure was drought. For it was in these periodic times of crisis that access to resources was critical to the survival of families and larger groups. In this sense, it is more important to understand the processes through which individuals and groups obtain resources during drought, when they are scarce, than the "rules" by which access is assured in "normal" times, when they are not.

Using historical data, Caasanelli has shown that, with the onset of drought, pastoral clans moved to their dry season wells earlier than usual, leading to overgrazing, conflicts, and litigation (before colonial authorities) over normally "unowned" pastures, as well as over watering rights (Caasanelli 1982:54).

As drought worsens, Caasanelli found pastoralists have followed a sequenced strategy with interesting implications for refugee settlement in agriculture as well as changes in patterns of resource tenure:

- Lineages limit access to their watering sites more than usual to prevent overgrazing nearby pasture.
- Herds are divided into more specialized management units to exploit every possible ecological niche. Groups cross traditional clan boundaries, provoking conflict, testing old alliances, and making new ones.
- Women, children, and the aged are sent to live with kinsmen in towns or farming communities.
- Large numbers of livestock are slaughtered or sold, and hides are sold to coastal merchants for food.
- If other measures fail, members of one lineage may be forced to become clients of a neighboring clan. This requires them to work and fight with their patron clan, in return for protection and access to water and pasture.

9. It is not possible or, in the context of this report, necessary to go into the intricacies of the Somali clan system. Readers who wish to do so are referred to Lewis 1961.

- Dependents may be sloughed off to live and work with cultivators, but pastoralists do not generally adopt cultivation even in the southern region, where they enjoy a symbiotic relationship with farmers.
- Occasionally groups of pastoralists abandon their traditional territory and alliances altogether and move into a new grazing area, but this is seldom done on a large scale.

(Cassanelli 1983:60-62.)

Resource Tenure in the Agro-pastoral, Interriverine Area The indigenous and contemporary resource tenure systems of the interriverine region in southern Somalia contrast with that of the purely pastoral areas elsewhere in the country, as do the agro-economic and socio-political institutions with which they are associated.

In this region, which occupies approximately 200,000 square kilometers between the Juba River in the south and the Shebelle in the northwest, permanent dry-land and irrigated cultivation play a major role in the economy of most families. Here the domestic sections of families, joined seasonally by unmarried sons, live in sedentary villages, each with its own man-made pond (uq) and wells.

Use rights in cultivated land were, and still are, individually held, and the clans that guaranteed their rights were large, stable, territorially defined, to some degree hierarchical, and stratified. They were land-holding corporations with a permanent administrative structure, and also served as dia-paying groups. The political community guaranteeing a man his right to moveable and real property was thus much larger, more stable, and more localized than in the north. Lewis has argued persuasively that these institutional contrasts can be attributed to ecological and economic differences, as well as to historical factors (Lewis 1969).

The dry land agro-pastoralists of the interriverine region are, for the most part, members of the Digil and Rahanweyn clan families (together known as the Saab). Long occupants of the region, they are believed to have settled there between the 11th and 14th centuries.

The basic mode of familial production in the area is characterized by a high degree of spatially decentralized and well-coordinated integration of cultivation and livestock production.

Lewis notes that "Many of the clanmen in this area ... practice a dual economy. Indeed, the most fortunate not only possess several fields in different

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places which enable them to profit from the unequal seasonal distribution of rain, but also sheep and goats, and herds of camels and cattle. In these circumstances, the head of the family often spends most of his time in his cultivating village, where at least one of his wives is settled with her children, while another wife and her children live as nomads with the flocks and some camels and cattle. A third wife may move with the main cattle herd." (Lewis, in FAO/Lockwood 1968:11-12)

The pastoral sections of families move about seasonally, though they do not generally range as far as in the northern range lands.

The cultivating members of families live in the permanent villages, whose distribution corresponds closely to the distribution of high potential land, in terms of soil structure and rainfall.

In these areas the system of cultivation has been long established, is stable and well-adapted to the environment, and makes effective use of existing resources. In some areas, for example, extensive use is made of a distinctive pattern of dyking to reduce run-off after rainfall. Crop production techniques are labor intensive, conservationist, and are designed to minimize the chance of crop failure, rather than to maximize production (Schmidt 1981). In the area around Baidoa it has been found that approximately 90 percent of the land in the cultivation cycle is under crops in any given year, and only 10 percent in fallow.

In addition to the small ruminants and milch herd that are kept in the vicinity of the village year round, larger livestock are brought to graze seasonally on sorghum stalks, stubble, aftermath, and weeds which, in turn, provides manure for the fields.

Access to water, which is regarded as the scarce and most limited resource in the area, is tied to membership in the local community. Villages, which seldom exceed one hundred huts and are usually much smaller, are based on man-made ponds in areas of dry farming or on sections of the river if production is based on irrigation. In either case, it is water that is regarded as the scarce and most limiting resource. Ponds are symbolically owned by the individual or family that organizes the work of excavation. Access to their water is shared by all families that contribute to their construction and maintenance. A committee elected by these families establishes a code of rules regulating the use of the pond and a maintenance schedule. The rules stipulate fines for wasting water or for polluting it. The committee also appoints water guards, who enforce the rules and make sure that only association members use the water when it is scarce.

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Wells are also owned by the group that digs and maintains them. Herd owners can obtain the right to water their stock on a set schedule through a written contract with the well owner, which sets the rate of payment according to the kinds and number of livestock. Access to wells can also be secured through contracts that give the well owner seasonal access to the herd owner's farmland stubble for his own livestock (Behnke and Kerven 1984).

Rights in arable land must be understood at both the clan and individual cultivator level of organization, and it must be borne in mind that both appear to have been undergoing change for more than a century, due to economic and political events in the region. The use of the past tense in this section is, however, somewhat arbitrary, as many aspects of customary tenure, particularly those governing the rights of individuals still obtain. These are noted in a later section.

An individual's right to cultivate a particular field had dual sources of legitimacy. One rested on his affiliation with the clan that owned it, the other on the labor that has been invested in developing it. The underlying principles of Somali resource tenure were thus both operative.

A man's general right to hold land in a village had to be recognized and defended in virtue of his membership in, or contractual affiliation with the clan that "owned" it, or more specifically, with a constituent "lineage" segment of the clan. While the clan owned a block of land that, in contrast with the situation in pastoral areas, did not overlap with that of other clans, the land of its constituent lineage segments was dispersed, so that each village normally had land and members from more than one segment. Village and lineage segment thus cross-cut one another. Issues of concern to the village as a community were deliberated by a council of elders representing each of the lineages resident in the village. Issues of concern to the lineage, including the allocation of land, by contrast, were the responsibility of a hierarchy of lineage and clan officials that operated at a clan-wide territorial level. Since the clan also served as the dia group, it was ultimately the effective land-holding corporate group. Its constituent segments had the responsibility of dividing the land and resolving disputes between individuals.

This distinctive cross-cutting relationship between local and clan authority seems to have dampened the concentration of hierarchical political power and contributed to the rather democratic, "committee" based, local governmental institutions.

Today, as is discussed at greater length below, the role of the lineage and clan in land matters is unclear, as the government has been attempting to replace it with a territorially based set of modern officials and no longer recognizes claims based on clanship. Inquiry into the role of clans is a criminal offence.

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A man's right to cultivate a particular field marked out by bush, stone, and aloe boundaries, was based on the fact that he or his ancestors have invested their labor in clearing and improving it through years of cultivation and weeding. This right of cultivation in a particular field was inherited by a man's sons, and occasionally daughters, subject to the approval of the elders under islamic legal procedure. Occasionally a man's land was worked jointly for a time by his sons. Cultivation rights to a particular field could be transferred to another clansman. Transfers of cultivated or uncultivated clan land to men who were not clansmen required that they become clients, which constituted a first step towards adoption into the clan.

In the past, uncleared arable land does not appear to have been scarce, though cleared land was always valued because of the labor invested in it. Indeed labor seems to have been more scarce than unimproved land in general. This seems to account for the willingness of resident clans to accept clients and had far reaching implications for the pattern of land use, ownership, and development, particularly in the lower Shebelle area from the mid-19th century onward.

If a stranger wished to obtain rights to arable land and water he had to be adopted as a client by the clan that "owned" it. This entailed a formal ceremony with the clan elders and headmen, at which he accepted membership in a segment of the clan and the clan as a whole, and swore to renounce his birthplace and past clan affiliation and support his new clan in times of drought and war. After this, he was publicly allocated land demarcated by the elders. He was not allowed to dispose of this land, except to members of his new group. Nor was he able to dig wells without permission, a stricture that limited his ability to increase his livestock capital.

Clientship of individuals and groups was an important determinant of economic and social stratification in the interriverine region. Recent arrivals had the lowest standing and, in addition to the disabilities already noted, were not eligible for appointment to the office of battle leader or lineage headman. Client groups of long standing were almost fully assimilated to the clan, except in certain ritual contexts. Through this process of continual accretion by clientship, the genealogical charters of the clans in the region took on a composite form, with only a small core group believed to be the true descendants of the founding ancestor.

Land Tenure in Northwest Somalia¹⁰ Cultivation was introduced into northwestern Somalia from the adjacent highlands of Ethiopia

10. The following description is based on I. M. Lewis 1961, pp. 102-108.

around the turn of the century by religious communities who, then as now, took a leading role in agricultural innovation. Unlike southern Somali hoe cultivation, the northern pattern is based on an ox-drawn plow. Cultivation is always combined with cattle husbandry, and most farmers have some camels and small ruminants as well. As in the south, settlements are based on natural or man-made ponds, and cultivation is permanent, rather than shifting. A nuclear family seldom has more than one acre of land, and many men pursue transhumant pastoralism as well as cultivation, settling one of their wives, together with her children and livestock, on the farm.

In some ways the land tenure system and its relationship to the clan system was transitional between the northern system and that of the interriverine region. The hierarchical system of political leadership and patron-client ties is absent. Nevertheless, lineages began to assert permanent ownership over specific tracts of land, a process which was accelerated by British administrative actions. The result of this process is that the pastoral lineage structure has been "frozen to produce the present pattern of agricultural holdings." (I. M. Lewis 1961, p. 108.)

Land Tenure and the Indigenous Plantation System of Benadir The latter half of the 19th century and the first decades of the 20th witnessed the rise and decline of an export-oriented plantation system in the lower Shebelle section of the Interriverine region that profoundly altered contemporary patterns of land settlement and tenure.¹¹ Since many of the people in the area are from partially distinct ethnic groups in differing stages of assimilation to dominant Somali cultural patterns, it is difficult to disentangle indigenous patterns of tenure from those induced by more recent developments. In addition, the ecological base of some groups is distinctive, as they have relied on a form of rudimentary canal-based flooding irrigation, and, due to tsetse infestation, have few livestock.

From the mid-19th century onward, leaders of the dominant sub-clans along the lower Shebelle tried to encourage the production of agricultural surpluses on the lands they held along the river for the coastal towns and export. Cassanelli reports that "it is not clear to what extent members of the dominant clans took up farming themselves and to what extent they simply exploited the labor of groups of client cultivators previously settled in the area" (Cassanelli 1983:163). In any case, the latter half of the century saw a dramatic economic boom. Wealthy individuals established private plantations of up to 40 ha. (the average was probably between 5 and 10 ha.) on land obtained from their sub-clan.

11. These changes are best described by Cassanelli in Chapter 5 of his THE SHAPING OF SOMALI SOCIETY.

From the outset labor, rather than land, was in short supply, and status depended not so much on the ownership of land as on the owner's relationship to the people who lived on it and worked it. The client cultivators, however, were fully free men with hereditary rights in land and membership in dia groups. To meet the new demand for labor, plantation owners imported large numbers of slaves, perhaps 50,000 in all, between 1840 and 1890 (Cassannelli 1984:5).

With the suppression of slavery and subsequent disruptions caused by Italian attempts to recruit forced labor, large numbers of former slaves and low-status client cultivators resettled themselves in towns formed earlier by run-away slaves and in religious communities led by sheiks following one of the tariiqas active in southern Somalia.

While tariiqas had been active in Somalia as politico-religious movements for centuries, it was not until the middle years of the 19th century that they became the focus of significant agricultural settlement, and it was only in the first two decades of the present century, encouraged by Italian colonial policy, that they came into existence in large numbers. Their founders sometimes received their land from lineage heads in the area. In other cases it was given to them to establish a buffer between rival lineages, whose disputes they mediated. The community's land was thought of as owned collectively, but the sheik and his followers each cultivated their own land.

To some extent then, these religious agricultural settlements, which ranged in size from a few hundred to over 8,000 members and together encompassed between 20,000 and 40,000 individuals in the first four decades of the present century, provided an alternative model of land tenure and social-political relations to the dominant faction-ridden clan model. They served to provide security and access to resources for displaced, low status people who could not easily obtain resources and be absorbed into the overarching Somali clan system.

More recently, agricultural religious communities have proven effective agents of settlement and agricultural innovation in all agricultural regions of Somalia. They also appear to have been the most effective form of organization for spontaneous refugee settlement.

CHANGES IN RESOURCE TENURE PRIOR TO 1975

Political, Economic, and Technical Change

Changes in the law and in the processes through which resources are allocated must be understood against major political, economic, and technical changes that have taken place in Somalia since the turn of the century.

Successive governments, colonial and independent, have attempted to substitute their central authority for the decentralized authority of the clan system. Both British and Italian administrators sought to modify the clan system to suit their needs and to reduce its influence in conflict resolution and political control.

Even before independence, Somali intellectuals educated in the Islamic tradition deplored the divisiveness of the clan system and demanded that relations between groups be based on universalistic Islamic principles. In 1956 the Legislative Assembly made it illegal for political parties to have the names of clans. On March 2, 1960, the assembly of the Trust Territory of Somaliland passed a law abolishing the status of client and guaranteeing each citizen the right to live and farm wherever he chose, regardless of clan affiliation. It is reported that many patron clans in the interriverine area resisted their clients' demand for independence by withholding customary farming and watering rights, excluding them from dia-paying groups, and, in some cases, even forcing them off the land (Kaplan 1977:73).

The attack on the clan system was renewed after the revolution by Somalia's socialist leaders, who saw in the clan system and other traditional divisions of society the bulwarks of social and economic inequality. The use of clan names was made illegal, and an attempt was made to substitute the term jalle (comrade) for kin terms of address.

Today, in settled villages the government asserts its right to appoint village chiefs, though in practice it is often expedient to appoint individuals with traditional legitimacy and influence. In pastoral areas indigenous political institutions, along with the central government, still play a significant role in pasture management, dispute settlement and the maintenance of law and order.

At the same time that these political developments were eroding the clan system that regulated access to land and water, economic and technical change was increasing their value. In the north,

the livestock export trade to the Gulf states increased exponentially. Enclosures of dry season pasture along commercial trekking routes were causing conflict by the 1960s. In response to the same economic opportunities, enterprising households in the north began to construct cement tank reservoirs (berkad) that enabled them to increase and concentrate their livestock production. In Burao Region alone, the number of tanks is reported to have increased from one to over 18,000 between 1954 and 1970.

The construction of water tanks has brought about changes in pasture use and effective pasture tenure. The tanks have made it possible for their owners to keep their livestock in the rainy season pastures of the Haud after surface water and shallow hand-dug wells have dried up. Privately owned water trucks have the same function. The provision of water in these formerly under-utilized areas has doubtless contributed to increased livestock production and export. At the same time, the construction of water tanks by large livestock traders, which permits them to concentrate livestock for movement to the ports, has contributed to "hot spot" environmental degradation.

These developments have also led to changes in land tenure. Enterprising traders have enclosed bottom land pasture along trade routes. This process, accelerated by the changes in land registration discussed below, has created tension between families that benefit from enclosure and their pastoral relatives who do not. The construction of water tanks has also fostered a more restricted concept of land rights. For in spite of customary sentiments that water be shared with kinsmen, the sale of water to kin who ask for it on more than an occasional basis has become the norm.¹²

In the south, from 1908 onward, irrigable land along the Shebelle was appropriated for concessionary agricultural development to help pay the costs of Italian colonial administration. Large tracts of the best riverine land were acquired for the large-scale private production of bananas and sugar. In some cases, clan elders of local land-using groups were given compensation; more recently it is reported that "compensation has only rarely been paid or sought," with the populace 'content' to profit from the labor opportunities and increased circulation of wealth which the projects offer (World Bank 1981:220).

After the Second World War the trend continued. By 1965 there were 147 Somali-owned and 200 Italian-held export oriented banana plantations, averaging 308 ha, of which 51 ha were planted.

12. Problems related to the registration of land and land administration in the north are discussed at greater length in the section on land registration below.

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Still more recently additional land has been appropriated or registered (see below) for government and parastatal enterprises, refugee settlement and private farms.

This continuing process of land appropriation for modern sector enterprise has had a number of social and economic consequences in the Lower Shebelle region. Paradoxically, in some ways these have re-created patterns of employment, land use and land control that resemble those of the 19th century. Local residents have become increasingly dependent on wage labor on plantations as their own cultivation has become marginalized both figuratively and literally. Under a common arrangement families are given small plots of land for their own use in return for the obligation to work on the plantation a fixed number of days. In addition there is considerable seasonal labor migration. While studies are not abundant, there is some evidence that this increasing class differentiation and unequal distribution of access to land and water is contributing to malnutrition among some social groups.

In the Bay Region area of the interriverine agro-pastoral zone, the improvement of transport and commercialization of agriculture occurred more slowly than in Lower Shebelle. Nevertheless, grain and livestock exports from the region have increased. An excellent recent study by the University of Wyoming (Massey et al. 1984) has found that the indigenous pattern of highly integrated cultivation and livestock production still prevails. Commercial livestock production is largely an enterprise of wealthy families. Small holders have concentrated on the commercial production of ghee, for which there appears to be a large domestic market.

The weakening of the clan system, the nationalization of all land ownership and changes in land administration have introduced new uncertainties and fostered the registration of village lands (see below). Nevertheless, the Wyoming team reports that rural people in this region still regard land as privately owned.¹³ While most land transfers are from father to son (or less frequently from father or mother to daughter), recent land sales were reported in 62 out of 80 villages surveyed. Only one-third of the villages reported that they still had previously uncleared land which could be cleared and put into cultivation. Various types of rental and loan agreements were also found to be common, despite their apparent prohibition in the law. (Massey et al. 1984, pp 35-42).

13. The study found that in only one of eighty village meetings was there any indication that land is not considered owned by individuals (Massey et al. 1984, Volume II, p. 36).

Legislation¹⁴

Legislation regulating access to land has reflected its changing economic significance and the changing objectives of successive political regimes. The first law that regulated land ownership was Law no. 820, of 8 June 1911. It stipulated that all land was owned by the colonial government, which had the right to give from 250-2,000 ha to private parties. The owner could use, rent, or sell the land.

Law no. 226, of 24 June 1929, the second piece of land legislation, raised the limit on concessions to 10,000 ha, in order to encourage the growth of large-scale plantation agriculture.

Legislation in the late 1960s gave district commissioners authority to grant 99-year leases to "qualified" applicants. Some commentators believe that this contributed to the enclosure movement in the Northwest (Kaplan 1977:246).

In 1965 a Land Reform Commission was appointed and submitted comprehensive recommendations for reform, which were incorporated in the Draft Land Law of 1966. This legislation was never passed.

Law no. 40, of 4 October 1973, provided for the promotion of cooperatives, and the development campaign of 1971-1973 called for the establishment of hundreds of cooperatives among cultivators and pastoralists, as well. Administrative responsibility for transforming the traditional subsistence sector was initially under the Ministry of Agriculture but was shifted to a bureau in the ruling party.

On January 12, 1975, the President announced that women were to have equal rights in several respects, including the equal inheritance of land, triggering a protest by some conservative Islamic leaders.

14. By far the best analysis of changes in Somali land law from the early colonial period until the late seventies is Guadagni 1979, chapters 2-6.

THE PRESENT SITUATION

The Land Tenure Law of 1975

The legal basis of land tenure in Somalia today is Law No. 73, of October 1975, as interpreted in the Interpretation of Law No. 73: Agricultural Farms, of October 16, 1976. The law, in keeping with the constitution, declares that all land is owned by the State (Law 1.2), and that the Ministry of Agriculture has the responsibility for the administration of the land (Law 1.2).¹⁵ In this capacity, the Ministry of Agriculture has the authority to issue leases to cooperatives, state farms, private agencies, local governments, and private farmers (Law 2.5). Land owned previously, except by cooperatives, must be reregistered within six months (Law 2.5).

Individual persons or families can register only one piece of land (Law 2.6). Leases are for 50 years and are renewable (originally the period of the lease was only 10 years). Leases given to cooperatives, state farms, independent agencies, and local governments are for an indefinite period (Law 2.7).

Private holdings are limited to 30 ha of irrigated or 60 ha of non-irrigated land. Private banana plantations may be up to 100 ha (Law 2.8). Land in excess of this limit is to be nationalized after two years. Cooperatives, state farms, and private and public companies, however, are limited only at the discretion of the Ministry of Agriculture.

The private leaseholder has the right to cultivate the land, build on it, keep livestock, 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 (Interpretation 2.13).

The leaseholder must develop the land within two years and pay taxes, or the land will be confiscated and returned to the state (Interpretation 2.15). The leaseholder may not sell, rent, or subdivide the land or break any condition of the lease, on

15. Discussions with Somalis indicate that this seeping nationalization of all land was not, in itself, viewed with great alarm by most of the population. Perhaps this was because the notion that reversionary rights to unused resources are vested in the effective political group, formerly the clan now the state, has traditional precedent.

penalty of losing it (Interpretation 2.14,2.15). The lease may be inherited by close kinsmen, provided that they notify the registry and cultivate the land.

Other sections of the Interpretation establish a schedule of land taxation (Interpretation 4.12); conditions under which private and national companies can obtain land, limited only by the discretion of the Ministry of Agriculture (Interpretation 1.1-1.4); conditions under which land can be nationalized and redistributed (Interpretation 2.5-2.11); and registration (Interpretation 4.19).

Perhaps the most striking feature of the Land Tenure Law is that it gives no recognition whatsoever to customary rules and procedures or to the indigenous institutions that, to a large extent, still govern access to land and pasture. Pastoralists, in particular, are given no tenurial rights, despite the fact that they constitute more than half of the population and generate more than 70 percent of Somalia's of exports.

A recent report notes that pastoralists' rights were not considered to be significant in project planning at Kurtunwarey, Sablaale, Dujuma, Furjano (for the proposed project) or Qorioley. (DAI 1984, p.25)

The provision that land reverts to the state if uncultivated for more than two years reveals a policy bias towards permanent cultivation and, in the case of previously uncleared land, towards mechanization, since there is an endemic shortage of agricultural labor in Somalia.

The law also favors cooperatives, state farms, parastatals, and corporate agricultural enterprises over private individuals in terms of the size of holdings permitted, the length of lease granted, and access to machinery and credit. Indeed, as first promulgated, the law granted private farmers leases of only 10 years, apparently in the expectation that socialist agrarian reform was imminent.

Finally, it is evident, in light of the experience of other countries with land reform, that insufficient attention has been given to the problem of registration. The tasks of registration and reform are difficult at best. In Somalia, where most land has not been surveyed or previously registered, it is staggering. Yet the Ministry of Agriculture was assigned the tasks of registration and land administration with little attention to how they might be carried out. The responsibilities assigned to the district level representatives of the ministry were particularly problematic, for it is at this level that the conflict between the new law and traditional tenures must be resolved.

To make matters still more difficult there was a fundamental contradiction between the state's desire to eliminate the clan system and its perquisites, while at the same time relying on the clan system as the effective local level governing institution to enforce all government policy, including land registration. Under these circumstances, the process of registration itself could be expected to generate conflict and to shape the allocation of land. This indeed has been the case.

The Process of Land Registration

Under the authority given to it under Section IV of the Interpretation of Law No. 73, the Ministry of Agriculture has established formal procedures for registering land. They are the same, regardless of whether the lease is being sought by a farmer who already cultivates the land by traditional right or by someone seeking to obtain "unused" land, so that it can be developed.

According to the procedures, the lease applicant must first file his application with the District Agricultural Coordinator (DAC). The DAC, together with someone from the district police, should go to view the land, measure it, determine whose lands abut it, assess its agricultural potential and present use, and find out from the community elders and headman whether anyone, other than the applicant, claims the land.

The DAC then prepares copies of a notice to be posted in the village where the land is located, at the district police station, at the district governor's office, and at the DAC's own office. If no objections are lodged during a thirty-day period, the DAC prepares four copies of the necessary documents and a layout plan of the land. These must be circulated to the police superintendent and the district commissioner, each of whom must review them and prepare an endorsement of concurrence, which is added to the file.

The DAC files one set of documents and forwards the other three sets to the Regional Agricultural Coordinator. The latter checks with other regional authorities to make sure that there are no conflicting plans for the use of the land, registers the application, keeps one set of the documents, and sends the others to the Ministry of Agriculture in Mogadishu. There the process is repeated once again to check for conflicting claims for the use of the land. If all is well, the Director of Lands checks the papers, signs them, and forwards them for approval to the minister himself. The signed original lease is returned to the now successful applicant, who must develop the land within two years. The Ministry keeps the application file and maintains a list by district, showing the name of the leaseholder, the amount of land, location, and classification of the land. There is, however, no land map and no way of knowing how much of the arable or cultivated land in a district has been leased.

In practice there have been many problems in carrying out land registration. District Agricultural Coordinators are poorly trained for their exacting work and, like all government officials in Somalia, they cannot afford to live on their salaries.

The complex and time-consuming procedures of registration are often bypassed and leases issued on the basis of a "desk" survey, instead of a field investigation. It is generally accepted that personal connections and unofficial gratuities are essential for obtaining a lease.

Government officials say that manipulation of the registration process by traditional community leaders and merchants is commonplace. Land of families and larger groups is often registered under the name of an individual member who understands the procedure or has the right connection. "Ghost" cooperatives are registered by individuals or groups in hopes of obtaining government assistance in clearing and cultivating the land. In some regions it is common for individuals or even whole villages to file a lease application and pay the annual tax and fees in hopes of securing their traditional rights without completing the costly process of obtaining a lease from the Ministry in Mogadishu.

It is generally believed that district and regional officials, as well as merchants, have a special advantage in obtaining leases for tracts of uncultivated land, despite the fact that the land has been held by local kin groups and used for livestock or occasional cultivation.

Following the recent liberalization of economic policies, there has been a boom in "land banking" by influential and well-connected individuals, often through the formation of private companies, which are not subject to limitations in size. This process is apparently proceeding most rapidly in higher potential areas, where mechanized agriculture has become profitable, and in areas slated for major development initiatives. These include the area around Hargeisa, the hinterland of Mogadishu, and much of the Lower Shebelle Region. The registration of dry season bottom land pasture, ostensibly for cultivation, is reported to be widespread in the central rangelands as well.¹⁶

A 1982 study of land ownership by SOGREAH contains a number of insights into the impact of land law and registration for development planning in northern Somalia:

16. Personal communication, Michael Brown.

The fact that the state has used its overall right to land to set up some experimental farms run by the Ministry of Agriculture does not seem to have posed many problems; these farms are small, and this has not given the local communities the impression of being deprived of a major asset. The local inhabitants stated that expropriation of this kind in the public interest was perfectly acceptable, provided that the land acquired in this way was grazing land, not too extensive and obviously developed as a result (clearing, irrigation).

In contrast, if experimental farms were to be set up on land already cultivated by families, there would be much greater opposition. This is one of the main fears of the local inhabitants with respect to the Northwest Development Project[14]. Most inhabitants feel that the project will lead to the setting up of pilot farms and they are afraid that these will be installed on existing farms, resulting in expulsion of the present farmers. They believe that if this were the case, no financial settlement could compensate for the loss of their farms, as the money paid on expropriation would not enable them to continue in agriculture, since it is impossible to buy land in the region.

The setting up and in particular the expansion of the Tug Wajale State Farm during the seventies made the local inhabitants very suspicious of the government's agrarian policy. However, over the past few years they have been gratified to note that the Farm has been obliged to reduce its cultivated land to practically nothing. Nomads and semi-nomads have taken advantage of the situation to reoccupy the abandoned land immediately.

A much greater cause of resentment has been the prohibition of grazing on tens of thousands of hectares of land granted to the LDA (Livestock Development Agency). It is not that the nomads are unaware of the advantages of this type of measure, but that in this case the aim is to provide fodder for animals destined for export, and these animals belong to a few traders who pay the LDA for the right to graze their animals on the land. The stock-breeders who used to graze their animals on this land feel that the state has not prevented them from using it for reasons of public interest, but to cater for private interests.

However, by far the most important problem caused by the conflict between state and tribal authority concerns new grants of farming land.

The state has granted concessions to certain farmers who are anxious to start irrigated agriculture....When these people are natives of the region and they can find a site on the land which traditionally belonged to their clan where irrigation is possible, they can set up a farm without any difficulty. If they come from another region, however, or if they dig a well in land belonging to a reer (family group) other than their own, they meet with violent opposition from the local inhabitants. Certain people have nevertheless gone ahead once they have obtained official authorisation from the state. Although they are perfectly within their rights according to the law, they are guilty of infringing traditional customs and there are examples of situations where there is considerable hostility between people of this kind and their neighbours.

Hiring a watchman is not always enough to prevent acts of vandalism, and sometimes it is necessary to have good relations with influential officials in order to combat the hostility of the local inhabitants.

In the case of rainfed agriculture, the conflict between state and tribal authority has resulted in paralysis in many villages.

In all the villages where investigations were carried out, the answer to the question "Would it be possible to extend the area of land cultivated if you were provided with the technical means to do so (such as tractors, teams of animals, etc.)?" was "No" without any exception.

In many cases, the reason given was that it was physically impossible, that there was no more cultivable land available in the area around the village. In certain cases, it was also stated that all the land remaining was grazing land. This seems to imply that there is a balance between stock-breeding and agriculture which the inhabitants do not wish to call into question.

However, on further enquiry, it was sometimes asserted that all the land belonging to anybody was already cultivated, and that it was not possible to use grazing land because of the government, even though there is apparently no specific government policy to prevent the extension of cultivated land in order to preserve grazing land.

In addition, it would also seem that in view of the population increase the areas cultivated at present are beginning to appear too small. When the villagers say

that over the past few years (some even say since the new government took over) they have not increased the amount of land they cultivate, it is not because they do not wish to do so, but because they cannot.

It would appear that the reason for this is as follows (leaving aside cases where it is physically impossible, i.e., in certain villages where there is really no more land available):

In the past, when the increase in population made it necessary to extend the areas under cultivation, the reer decided collectively what agricultural land was to be granted to young couples or to families which had expanded considerably. Today, the inhabitants know that the authority of the reer is no longer enough to ensure them the right to exploit the land. They are therefore afraid to begin land clearance without obtaining legal rights beforehand.

However, at the same time, they are afraid to take the necessary steps to obtain this authorization. In order to legalize an old right to land occupation, it is simply necessary to prove that one cultivated the land before the 1975 act was passed. But on the other hand, no-one can be certain of obtaining a new lease and undertaking the necessary proceedings to obtain such land might draw the authority's attention to the fact that there was still land left for cultivation around the village, and in such circumstances who could guarantee that the government would grant the land to the person making the application and not someone from outside the reer, whose presence would thus be imposed from outside, as so often happens in irrigated agricultural areas?

Thus, in this example, the existence of two types of law, official and common, has led to a paralysing confrontation with neither able to overcome the other.

However, these two legal systems are not necessarily contradictory and it is possible to reconcile them.

An initial step in this direction would be for the state to avoid systematically granting concessions to exploit land which before nationalization belonged to a particular reer to individuals from outside the reer.

Another example of possible reconciliation is to be found in the Group Farms. Here the structure of local society is bending to conform with institutional patterns set up by the state: each of the 17 Group Farms in fact covers a traditional reer (and this has

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come about spontaneously). The main reason why the local communities have taken on the form of a cooperative is certainly the need to extend the areas of land which they cultivate. By applying as a cooperative for a new lease, the community was sure that this would be granted and that the state would even finance the necessary land clearance works[15].

(As cited in DAI, Refugee Settlement Paper, USAID/Mogadishu 1984)

The lack of integrity in the land registration process poses a number of problems for agricultural development and settlement in Somalia. The clear policy objective of preventing the concentration of private ownership of undeveloped land is being defeated. The Ministry of Agriculture is not equipped to prevent people from registering more than one block of land in different names or through various corporate or cooperative entities. Nor has it been able to enforce the requirement that new land be brought into cultivation within two years or to prevent a vigorous and speculative land market from developing, despite the prohibition of sale. At the same time, the system creates strong pressures on public officials to divert equipment and agricultural services to the development of private land.

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. This problem is most acute in Lower Shebelle where a great many new public and private enterprises have been planned. It is essential, then, to understand the process by which conflicting claims are resolved.

The Resolution of Land Disputes

The resolution of land disputes, like the process of land registration, is an administrative, rather than a judicial, process. As such, it entails mediation and negotiation, rather than adjudication. It involves the consideration of a broad range of substantive issues, rather than a narrowing focus on the formal principles of the law. Included among these issues are not only traditional notions of equity but an assessment of the relative political influence of the interested parties.

If a conflict cannot be resolved by means of a directive from the DAC, the district commissioner, or the police superintendent, a government hearing is held. In disputes not involving pastoralists the proceedings are conducted by the district commissioner, the DAC, the police superintendent, and the head of

security. A representative of the Ministry of Agriculture may also participate, particularly if the dispute has previously proven intractable. If the dispute involves pastoralists, the judge is included as well. Because of the ephemeral development of district government in some regions, hearings may be undertaken at the regional level, under the chairship of the governor.

The hearing is said to be open and democratic, in that all parties can express their views. The idiom of public discourse conforms to the law and administrative procedures. Cultivators base their claims on "use" and evidence of registration, rather than on traditional claims.

At the conclusion of the hearing, the officials announce their decision, which may support the claims of one party, suggest a compromise, or direct government technicians to carry out investigations or even to provide services to one party in return for his relinquishing part of his claim. This last practice is exemplified by the practice of asking traditional farmers to give up their claims to land to be developed by an outsider in return for government assistance in clearing and cultivating their remaining land.

The board's decision is not effective if it is not acceptable to both parties, for they can appeal their case to the region, the Ministry, the minister, and only after that to the court in Mogadishu. Appeals are not without cost, however, which creates increasing pressure to compromise. If the case entails the loss of land by villagers to outside projects, such as refugee settlement, they may simply continue to prevent the outsiders from using the land by show of force (see below). If it involves an influential claimant, he may try to overturn the decision of the board by presenting his claim to higher officials.

The resolution of a land dispute may thus involve a series of public hearings and behind-the-scenes negotiating sessions held over a period of a year or more. During this process the parties and government officials can assess one another's political and economic resources and reach a "realistic" settlement. This process of dispute settlement is not without precedent in traditional Somali political life. Today, as in the past, pastoral groups have an advantage over sedentary groups because of their mobility, possession of arms and the vast sparsely settled areas concerned. The government generally does not find it practical to disregard the organized expression of pastoral interests except where land is to be developed intensively and is comparatively compact, as is the case with irrigated perimeters.

The outcomes of land disputes thus cannot be anticipated or understood in terms of the formal attributes of the law. Nor will better "enforcement" of existing law reduce the level of ambiguity and conflict.

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It must be realized that the process of land allocation and accumulation in Somalia is a political process, and that development assistance introduces new resources into the areas in which it occurs. The way in which assistance is introduced will have a direct effect on the ability of competing interest groups to obtain and maintain access to land and other essential resources. This is particularly important when the interests of comparatively weak social groups, such as refugees and riverine village communities, are concerned. It is essential that projects affecting such groups give them the knowledge and the means to enjoy the rights they are, in principle, guaranteed by the law.

LAND TENURE ISSUES IN THE SETTLEMENT OF REFUGEES

Experience with agricultural land settlement in developing nations shows that land tenure is not only a critical determinant of technical efficiency, economic viability, and the size and distribution of agricultural incomes but also plays a key role in creating incentives to produce, adopt improved technologies, and invest. Tenurial arrangements must afford farmers reasonable security and give them the opportunity to participate in public decisions that affect their welfare. All of these objectives are usually best met by a land tenure system that promotes individually owned and operated farms based on the issuance of freehold or long-term leasehold titles (World Bank 1978:35-36).

It has also been found that in lower-cost settlement efforts, where settlers' contributions are larger, compared to those of government, it is "both appropriate and necessary for incentives purposes to grant more extensive land rights to settlers" (World Bank 1978:35). Tenure arrangements that fail to provide farmers with the opportunity for secure investment in their land are unlikely to attract and retain settlers.

Somalia's experience with refugee settlement is in keeping with these general findings. A brief review of this experience illuminates tenurial problems that have arisen in the past and points to ways they can be avoided in the future.

Drought Settlements

Though the settlement of nomads has long been a government goal, it was not until the drought of 1975 that large-scale settlement occurred. During the drought's most desperate period, in March 1975, refugees flowed into some twenty camps at the rate of up to 5,000 per day. By the time the rains commenced in June, 20,000 people were dead and 270,000 were in refugee camps. Between June and August the camps were disbanded, and an estimated 160,000 people took up their pastoral life once again. The remaining 120,000 refugees agreed to be settled in three fishing co-operatives (15,000 total) and in three agricultural settlements.

The goals of refugee settlement were:

- Reduction of the ecological deterioration of the rangelands;
- Decrease in urban migration;

- Provision of social services; and
- Restructuring of tribal society.

Success has been achieved only in regard to the provision of social services, leading to a number of problems beyond the scope of this paper (Ragsdale and Scek ND: 10).

Costs in all drought refugee settlements still far exceed the value of production. The population of two of the agricultural settlements, Kurtunwarey and Sablaale, has dwindled to a little more than half their original number and is predominantly composed of women and children. The third agricultural settlement, Dujuma, has ceased most agricultural operations because virtually all but the land previously cultivated by local inhabitants was found to be saline. Most of Dujuma's inhabitants were relocated and work as seasonal day laborers on plantations.

The agricultural settlements were established as state farms, with the settlers providing the labor. Local inhabitants in the settlement area were not compensated for lands absorbed into the settlement. Later, attempts were made to bring them project services, with some success reportedly achieved at Kurtunwarey.

In a deliberate attempt to eradicate the vestiges of kin and clan ties, a socio-political system based on an arbitrary hierarchical division of the population into groups of 400, 200, 100, 50, and 10 families was imposed. All agricultural decisions were made by management.

With their food security and some social services guaranteed by the Settlement Development Authority (SDA), men did not find the token additional wages they could obtain for agricultural labor attractive. Instead, they followed their traditional pastoral household mixed-income strategy, deploying some members in urban and even overseas labor migration and some, especially women and children, in the settlements. Kinship ties undoubtedly played a vital role in this strategy.

Based on their analysis of settler aspirations, school enrollments, and camp demography, Ragsdale and Scek concluded "that the settlements will serve as a conduit for their ex-nomad populations from rural to urban settings" (Ragsdale and Scek ND:x).

Following a shift in policy, the SDA began a pilot program in April 1980, intended to transform the highly-subsidized state farms into a family-operated tenant farming system. Under the program, 6 ha were reserved for each family, for a total of 350 ha of rainfed land.

The response of farmers to the new opportunity was very positive, though the first crop in April 1981 was destroyed by severe

flooding. In subsequent years, production seems to have improved, though the ultimate economic and administrative costs of the project are far from clear.

More recently, with World Bank funding, the SDA has established pilot projects at Kurtunwarey and Sablaale to test the feasibility of introducing "semi-mechanized rainfed agriculture" on more than 30,000 ha in the lower Shebelle Region.

In a 1984 report, the contractor, John Bingle, Ltd., states that each refugee settler family will require 9 ha of cultivated land in order to comply with the fallow and rotational requirements of the farming system to be used. There is to be a further 3 ha of undisturbed land between the strips of cultivation.

The project management is responsible for sowing crops, ploughing of fallow land, spraying and incorporation of herbicides, spraying of insecticides, and storage of sowing seed. To accommodate this mechanized regime, the cultivated land is organized in strips, each of 4,200 meters by 100 meters.

The tenant settler families are responsible for post-emergent weeding of crops, control of bush regrowth, security of crops against predators, and the harvesting and threshing of crops.

Lease agreements are to be highly conditional, as is normal in highly capitalized projects of this type. They are that:

- The lessee shall have no other land holdings;
- The lessee shall not sell or otherwise dispose of his right to the land or any part thereof, without prior approval from the government in consultation with the Seller Lessee Co-operative Committee;
- The lessee shall perform his duties in accordance with the agronomic and technical directions given by the farm manager;
- The lessee shall hold the lease for a period of 50 years if all the conditions are fulfilled;
- The lessee shall not erect any physical barriers or cause any obstruction to the orderly performance of the mechanized services on the cultivated portion of his lease;
- The lessee may not perform or allow performance of any physical or mechanical procedures on his lease which is not directed by the farm manager;
- The lessee shall be entitled to dispose of the production from his lease in any manner, after the amount of the

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production levy has been received by the farmer manager. (John Bingle: 1984).

It is anticipated that the manager will hold the lease from the Ministry of Agriculture and that the tenants will hold their leases from him. The traditional rights of pastoralists who use the project area seasonally are not considered an issue or an impediment.

This project is of considerable interest, since it may well provide a model for other comparatively highly capitalized settlement and development schemes in Somalia. Its progress should be followed closely. It does not, however, provide a model for the type of spontaneous, low-cost settlement that may take place within AID's refugee area settlement project.

War Refugees

By the spring of 1981 it was estimated that there were 1.3 million refugees from Ethiopia in Somalia. Today it is variously estimated that from less than 300,000 to 700,000 war refugees remain in 35 camps scattered across the country.¹⁷ Their origins and social characteristics will not be discussed here. While studies have yet to be carried out on the location and activities of the "invisible refugees," there is evidence that some have returned seasonally or permanently to their homelands in the Ogaden, some have migrated to regional towns and to Mogadishu, and some have been absorbed into rural Somali society through bonds of kinship, clientship, or tenancy, or by joining one of Somalia's numerous religious communities.

Most of the refugees who remain in the camps do not engage in agriculture. A minority of those in camps adjacent to cultivated land have obtained access to land through a variety of arrangements. Individuals have obtained land through rental, share-cropping, and purchase. The latter seems to have occurred only where the refugees are members of the same lineage as local cultivators or are religious leaders or Somali nationals who have taken up residence in refugee camps to obtain their benefits.

The ways that refugees have obtained land as groups, and the problems they have had in attempting to do so, is particularly instructive for policy makers concerned with prospects for further refugee settlement. Consequently these will be reviewed in greater detail.

17. At the time of writing, the number of refugees in camps was being contested between Somali authorities and various international agencies.

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In order to foster self-reliance and produce food, the government, with donor and PVO assistance, has established more than 50 farms near the camps. Twenty-seven of these occupy land originally cleared by the Russians and later turned into police farms. Perhaps two dozen smaller farms were started on unused land. Other farms have been settled spontaneously, and some of these have received assistance from the Refugee Agriculture Unit (RAU) of the Ministry of Agriculture (formerly a unit in the National Refugee Commission) and PVOs.

While many farms have operated without incident, the land tenure problems that have occurred on others are instructive. The following cases were gathered from interviews in Mogadishu. They are undoubtedly incomplete and almost certainly are in error on some points. Nevertheless, even in broad outline, they illustrate the process of settling land disputes and many of the problems entailed in refugee settlement.

The first case took place near one of the camps at Belet Weyn in Hiran. It illustrates the transactional, bargaining character of land disputes and the way that local cultivators try, in this case with success, to protect the traditional rights no longer recognized in the law.

In the summer of 1982, an expatriate PVO came to work in the camp, with the object of starting a refugee farm in the area. The PVO identified a suitable piece of land and went through a process which secured it a lease from the Ministry of Agriculture. When the refugees selected tried to start clearing the land, however, they were driven off by an angry group of farmers from a community 9 km away.

The police were notified, and they, in turn, told the villagers that the refugee group had a valid title to the land in question. The villagers remained intransigent and the refugees without their land. The governor and regional agricultural coordinator also appealed to the villagers, to no avail.

Eventually, representatives of the PVO approached the regional governor, and he organized a hearing panel, including the district commissioner, the mayor of Belet Weyn and an elder from a village not directly involved in the dispute, the regional agricultural coordinator, and the head of security. The members of the panel and their entourage went by Land-Rover to view the land. After this, they went to the protesters' village and conducted an open hearing under a tree. The villagers staked their claim on the dubious assertion that they had cultivated the land within the past two years, rather than by citing clan rights.

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The panel of officials decided that the land should go to the refugees. The villagers protested volubly and were told by the governor that police would be sent if they interfered with the refugees' use of the land again. In spite of this, when the refugees tried to clear land they were forced off by an angry armed group of farmers. The governor was not in a position to take further action, and he is reported to have changed his position and sided with the villagers.

Almost a year after coming to the camp, the representative of the PVO prevailed upon the Ministry of Agriculture and the Refugee Agricultural Unit to join with regional and district officials in yet another visit to the village. Again the case was decided in favor of the refugees, and again the villagers prevented them from clearing.

In the end, the regional governor offered the PVO two alternative sites, neither of which seemed to them to be suited to cultivation. A year and a half after coming to the region to help refugees farm, the PVO abandoned the project altogether.

A similar case occurred near Afgoi.

Eight educated, urban refugee young men of diverse ethnic backgrounds (Amhara, Oromo, and Somali) persuaded the RAU and PVO to help them start a pilot agricultural project. A lease for 100 ha of apparently undeveloped land was obtained, and after considerable effort, equipment and agricultural inputs were mobilized to help the refugees develop their farm.

When the PVO representative and the refugees went to plan the work of clearing, they found themselves confronted with an angry group of men armed with sticks and knives. A fight broke out, but no one was injured. The leader of the group shouted that they were trying to take his grandfather's land. The intruders beat a prudent retreat and notified the police, who looked into the case and ordered the villagers to honor the refugees' lease, as they had none.

Shortly after these events, the refugees returned, together with a bulldozer provided by their helpers. Again an angry group of men descended on them, this time threatening to kill the refugees and the bulldozer operator as well! An official of the RAU went to talk to the village in which the aggrieved parties lived, but the case has not yet been resolved.

A third case, which occurred at another camp at Belet Weyn, resulted in a mediated compromise.

The difficulty began when a PVO found that the land it thought had been promised for a tree nursery was not available. The governor resolved the problem by directing them towards another block of land. When the PVO tried to use the land, however, they were prevented by villagers who said it was their pastureland.

Through the mediation of the governor, it was agreed that the PVO would settle for less than the 250 ha to which they were entitled, and it agreed to give employment to the villagers in the nursery. It remains to be determined who will control the trees and the profits from their sale.

Three cases from another region illuminate the role of personal influence in determining outcomes and the vulnerability of refugees, particularly if they are not Somali. The region in which the cases all occurred and many details have been omitted for reasons that should be evident.

The first case involves the development of irrigated land along the Juba river with the use of diesel pumps. Camp farms of from 25 to 100 ha were established by the RAU on land that had previously been cleared for a projected East German cooperative farm. Members of a local riverine group appear to have obtained the largest per-family holdings in these farms.

In a related development, an official with great personal influence obtained a lease for a block of over 200 ha of high-potential land suitable for pump irrigation. Removed from office under a cloud, he was appointed to an equally influential post in the same region. With the assistance of government-owned inputs and refugee tenants, the land is presently operated as an irrigated farm.

In a similar case an official who was a friend of the official in the previous case obtained a certificate (or lease) to a high-potential piece of land which had already been leased to refugees but not yet cleared. The refugees refused to recognize the claim. The claimant's influential friend immediately appealed to the Ministry. The PVO representing the refugees' interests did the same.

A private voluntary organization group established group farms on land in the same area. These were on a smaller scale than the RAU camps farms. They allocated up to one ha of irrigated land to each family for the cultivation of high value crops such as onions and tobacco. A comparatively high proportion of the farmers were Oromo, rather than Somali, and had previous experience in food production. Faced with increasing security

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and administrative problems, the PVO ceased operations on these group farms in December 1984. The farmers are said to be paying rent to Somali groups who claim indigenous rights over the land in question and who are better connected with influential officials. One observer noted that when the group farms were started "nobody thought they would be successful." After it had been demonstrated that the irrigated land was highly productive and a new road halving the driving time to Mogadishu had been completed, "everyone wanted to get ahold of the land."

Another case from elsewhere on the Juba river involved semi-spontaneous refugee settlement on the Juba river. In this case a PVO was approached by the leaders of two groups who had begun to farm land outside the camp and sought assistance in clearing additional land, irrigation, and establishing village communities. From a technical point of view the settlements were succeeding well until an unanticipated fuel shortage in late 1984 caused major crop losses. In terms of land tenure, however, one of the settlements has encountered problems that might well be overwhelming if it lacked PVO support.

The community is inhabited by members of the Oromo ethnic group, a group of cultivators with a tradition of animosity towards the Somali. Perhaps because of their apparent vulnerability, a man of moderate influence obtained a lease for the land occupied by this group and ordered them to leave it. They are said to have responded by threatening to throw him in the river. In any case, the matter has escalated to the ministerial level, once again with the PVO supporting the cause of the refugees against the claimant.

More recently members of the community were prevented from tending their fields on the opposite bank of the river after an apparently unrelated security problem some miles away. Since local farmers were exempted from the evacuation notice, the settlers believed they were the objects of discrimination.

Similar problems have arisen at Qoorioley, where PVO officials have encountered pressures against allocating cleared land to low-status refugees, despite the fact that records show them to be more productive farmers than their more fortunate camp-mates.

SUMMARY AND CONCLUSIONS

General Conclusions

The most general finding of this review is that in Somalia today there is no single coherent resource tenure system. Instead indigenous systems coexist and at times conflict with statutory law and administrative procedures. The most fundamental conflict between indigenous and modern concepts of resource tenure centers on the role of the "clan system." In the indigenous system, an individual's access to use free or unowned resources and his right to prevent others from gaining access to the resources he owned were guaranteed only insofar as he was a member of a corporate, descent-structured political community. In the modern system the clan system is given no recognition. Instead, resource rights are vested in the state.

Moreover, there is a contradiction between the state's desire to eliminate the clan system and its need to rely on it to a considerable extent in some regions to maintain the peace at the local level.

The law also differs with tradition and practice in its failure to give legal recognition to pastoral rights in range land, in its failure to recognize that many Somalis require access to land and water at more than one location, and in forbidding private land transfer by rental or sale. Further problems are created by the fact the official land registration system is under-developed and lacks integrity.

Conflict generated by these institutional contradictions and by competition for resources are resolved through arbitration and mediation within the administration, rather than in the courts. The outcome of this process is influenced by the disputants' ability to mobilize political and economic resources, as well as by customary sentiment and the law and administrative directives.

Development assistance introduces new resources into this political process of resource allocation. The way in which it is introduced can have a profound influence on the ability of competing interest groups, public and private, modern and traditional, to obtain and maintain access to essential land and water resources.

This point, important for any rural development project, is crucial for projects that touch the interests of comparatively weak social groups, such as refugees, displaced or disorganized riverine peoples, and farmers in remote areas. It is essential

that projects affecting such groups provide them with the knowledge and the means to enjoy the rights they are, in principle, guaranteed in Somali law.¹⁸

The Feasibility of Settling Refugees in Inhabited Areas

Problems entailed in settling refugees raise two issues. First, is there unused high potential land in these areas? Then, is there land which is not claimed already by local inhabitants?

The belief that there is abundant unused land suitable for crop production in Somalia should be viewed with caution. Presently accepted figures are based on crude surveys and estimates that have become enshrined in planning documents through repetition. Closer examination (as for example in the Hunting Technical Services survey of the Bay region, mentioned above) has revealed much local variation in soil quality and rainfall, which is masked by broad classification but is vital to actual potential. Nor is high potential land of value without water for human and animal consumption. Indeed, water is the limiting factor of land exploitation in most of the interriverine area where cultivation is possible. In Somalia's harsh and variable climatic conditions, average rainfall and river levels are misleading. Avoiding risks of crop failure and drought through storage and geographic mobility must be of paramount concern to cultivator and planner alike.

These constraints on settling new lands can undoubtedly be overcome through careful studies, the provision of water, and construction of roads. All of these activities are costly. The question is not whether new land is available, but how much will it cost to develop it? Experience to date indicates that both irrigated perimeters and mechanized farming approaches to new land development in Somalia are costly per household settled and are difficult to justify on purely economic grounds as well.

It can be taken as axiomatic that Somali agro-pastoralists and full-time cultivators have, through experimentation, accumulated a detailed knowledge of their local environment and its resource potential. They have occupied the lands best suited to their needs. It is unlikely that there are large amounts of high potential land that can be brought under cultivation with traditional technologies in the inhabited areas of the interriverine area. Windshield surveys have proven misleading on this point in the past (see Hoben, et al., 1983, Chapter V).

18. It is interesting that, in a general sense, most of the problems and policy issues encountered in Somalia are characteristic of other sub-Saharan African land tenure situations today. For an informative discussion of these issues see Bruce, 1984.

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The answer to the second question is negative -- there are no lands in Somalia where pastoralists or cultivators do not already have long-established rights. It is evident from the cases in the previous section that, though the law does not recognize these rights, local people are prepared to defend them with vigor. It is also evident that district and regional government must give de facto, though not de jure, recognition to these traditional claims, as well. The degree of recognition varies with the strength of the traditional group in question. Marginal groups, such as riverine villagers, refugees, and perhaps former clients, fare less well than others in the dispute settlement process.

The question of whether a lease can guarantee access to land is thus problematic. The answer depends on the political and economic resources of the leaseholder, relative to that of other claimants. A highly capitalized settlement project or private farm is unlikely to experience problems, once land development has commenced. Marginal groups, such as refugees, are at greater risk of being challenged.

If land is to be secured for project-related or settlement purposes, it is essential that the claims of local inhabitants be fully investigated and that resources be made available to them, if necessary, to reach an equitable agreement.

Any refugee settlements project should include funding for technical assistance with three objectives:

- Increasing the capacity of the district and regional agricultural coordinators to comply with existing registration procedures;
- Educating local groups and refugee settlers about their rights and the procedures required to secure them; and
- Increasing capacity of these groups to register their land and defend their rights.

The project should also provide funding and appropriate technical assistance for a study of land tenure issues in the district(s) or region(s) concerned. The objective of the study should be to clarify the way different kinds of individuals and groups obtain access to land, water, and other resources, such as fuelwood; how their access is affected by developments within and beyond the project area; and how planners and administrators can best take account of local residents' needs and interests. The conceptual framework of the study should be grounded in the issues raised in this preliminary analysis. More detailed scopes of work should be prepared after project implementation sites have been selected.

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The study should be based on a combination of in-depth participant-observer and survey methods. It is especially critical that these be designed so as to capture the far-flung residential and income-generating strategies typical of Somali households. The study should be moderate in cost (\$50,000), realistic in its approach, and centered on policy, rather than on disciplinary objectives. It should be undertaken in the initial phase of project implementation and should be designed to engage the active interest and participation of local government officials.

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