



Excerpts from:

Land and Conflict in Jubaland

Root Cause Analysis and Recommendations

Final draft, May 2018

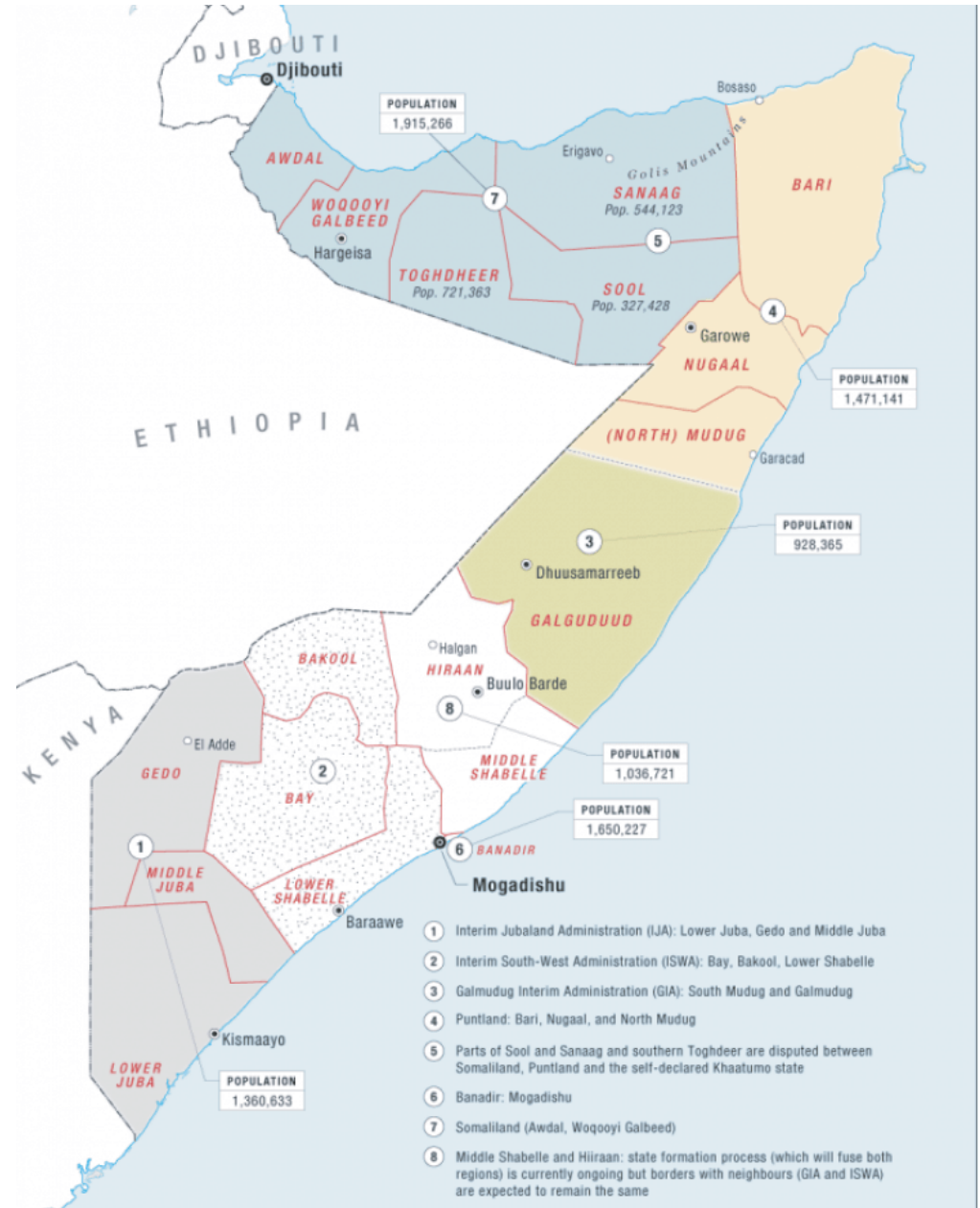
1. Aims and Objectives of the Study

The aim of the study is to investigate the land-related causes of conflict in the Jubaland State of Somalia. The study findings are expected to guide the work of the UN in peace building and land conflicts management and to inform land policy processes and other land governance interventions in Jubaland and Somalia as a whole. The study has three specific objectives:

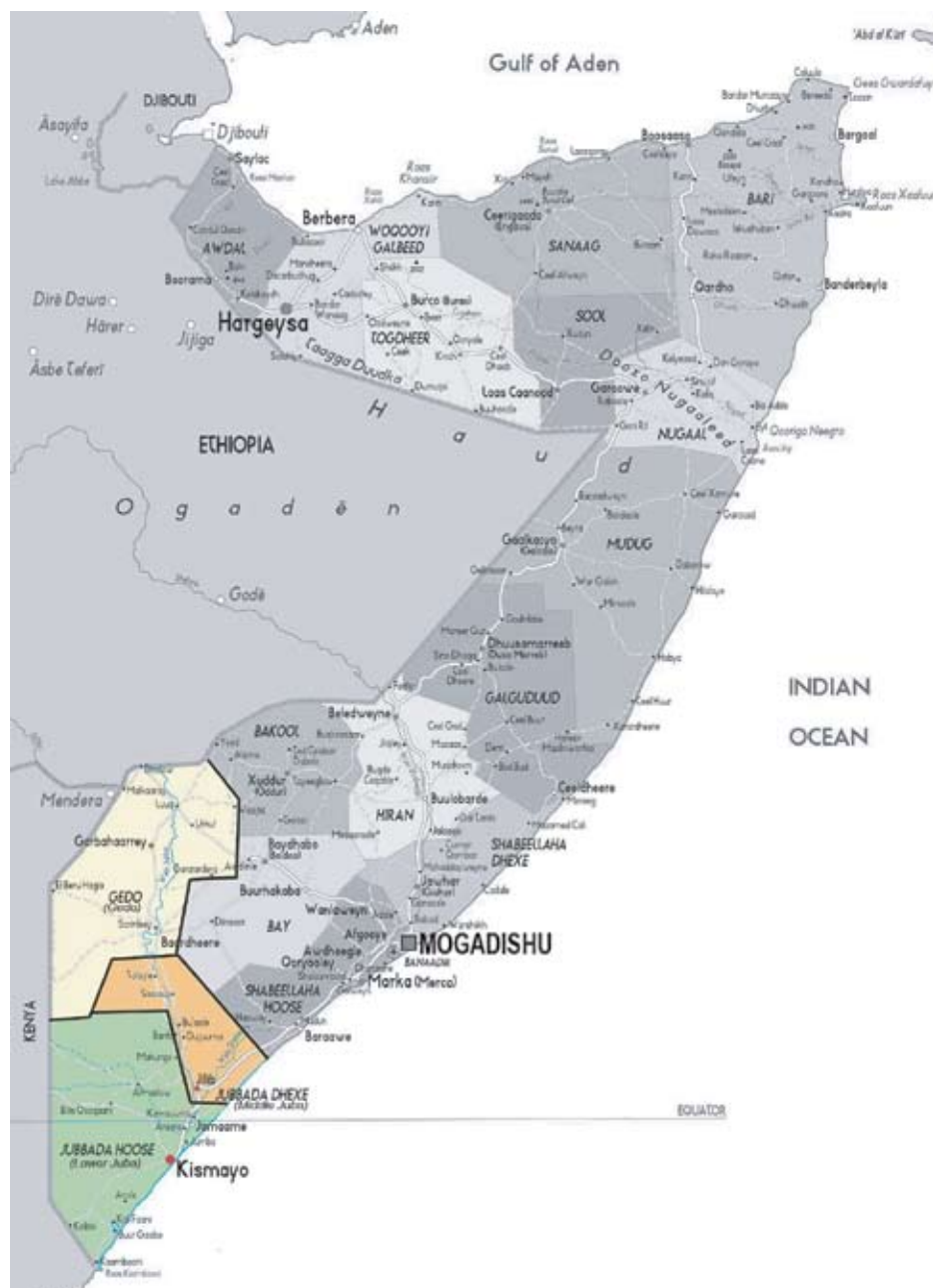
Assessment of the land governance systems - The study investigates the type of land institutions, their mandates and capacities; the legal frameworks supporting land governance and the views and perceptions of key stakeholders pertaining to the performance of the land sector. The study also analyzes the key institutions involved in the mediation and management of the land disputes, it gives insights on the functioning of traditional land disputes resolution approaches and their linkages with the formal land governance systems.

Investigation of land tenure, land use patterns and land conflicts - The study investigates the status of the land rights regimes, how the housing, land and property rights protected are and what are the main land tenure disputes. The study looks at the nature and extent of land conflicts in the study area, how land rights of minority groups are protected and how these groups are affected by land conflicts.

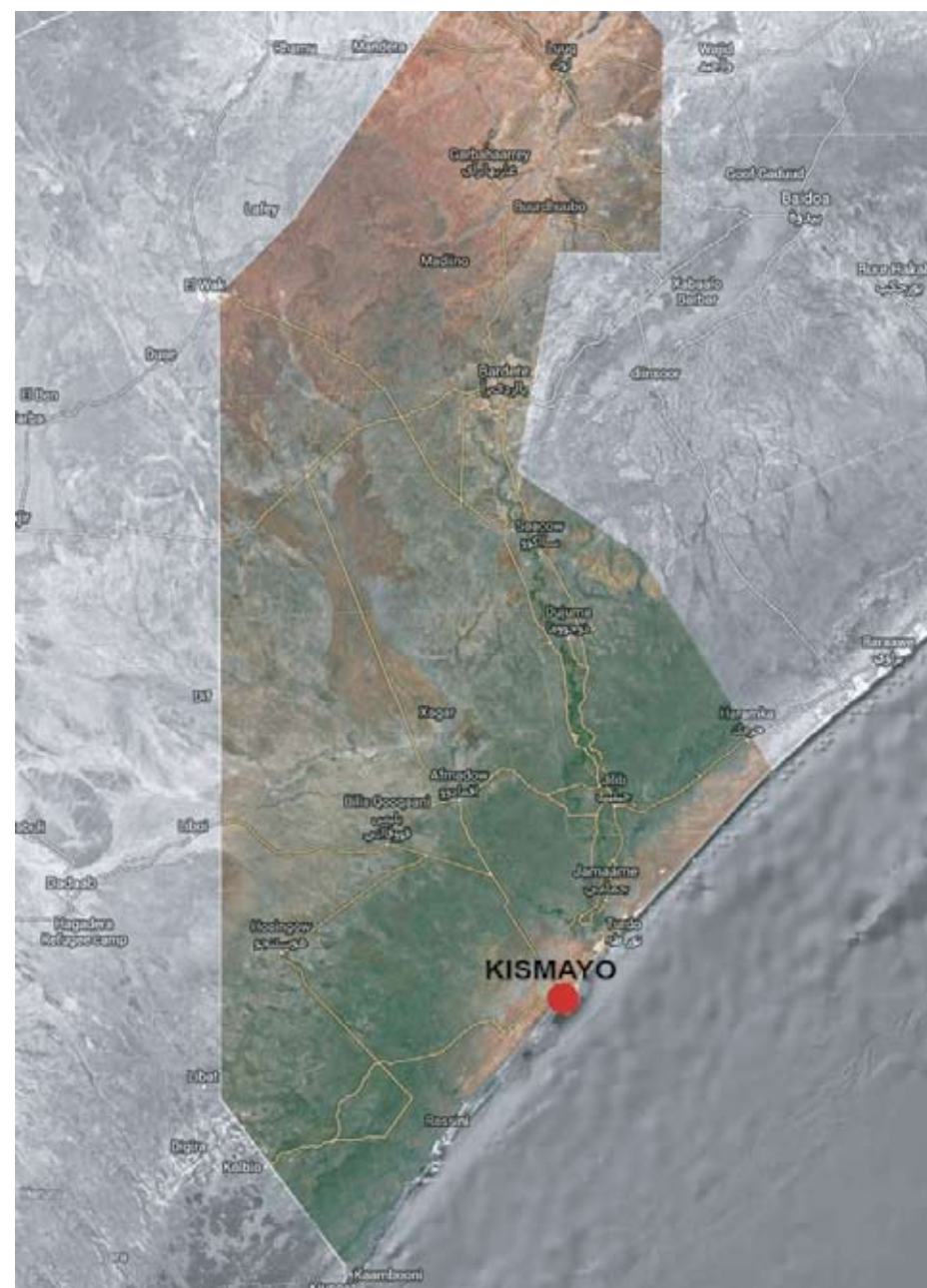
Documentation of the patterns of land disputes involving pastoralist communities – Land needs and claims of pastoralist and sedentary communities are investigated, including conflicts over land use with farmers and other groups, such as urban residents and charcoal producers. The study also looks at how droughts and insecurity contributes to the scarcity of pastures, thereby leading to more conflicts. The study revisits the dominant and minority clan narrative with a view to establishing its implications on pastoralist related land conflicts.



Map of the Federal Republic of Somalia: federal and state administrative levels



Administrative map of Jubaland



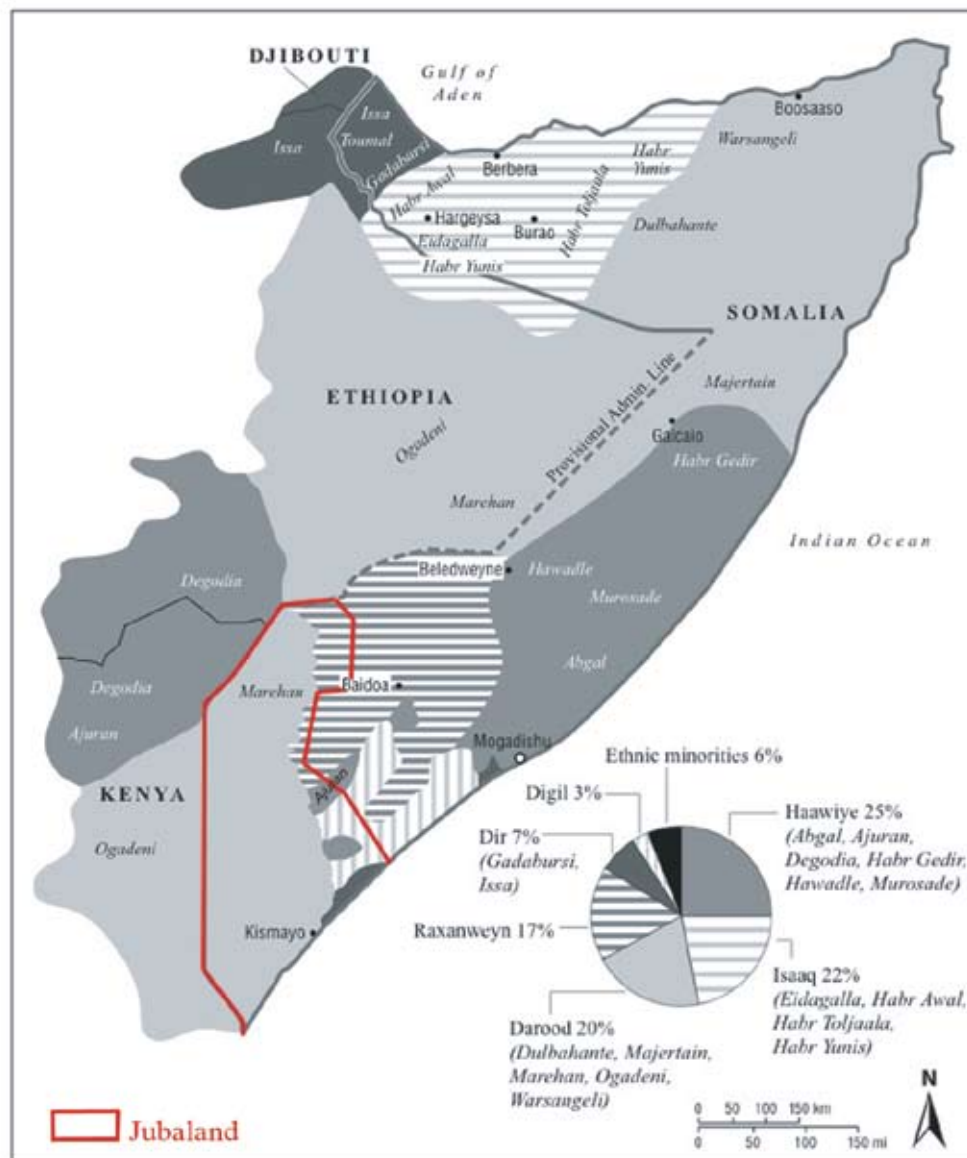
Physical map of Jubaland

Summary of the stakeholders analysis for the land sector	
Institution	Main observations and areas for improvement
State Ministries dealing with land issues	<p>Their mandates need further refinement. Also, the mandates should neatly fit into the established framework and functions of land governance institutions, focusing on, physical planning (urban planning), land administration (land surveying & land registration) and land disputes resolution.</p> <p>State institutions require tools to support their functionality. Such tools include written mandates, written job descriptions of key staff & clear legislation guiding their work.</p> <p>State capacities to deliver in physical planning and development control, land administration (land surveying & land registration) and land disputes are generally non-existent.</p> <p>At the time of undertaking the study, no state institutions were involved in land disputes resolution outside the courts.</p> <p>A key point of strength is UN-Habitat Somalia Programme's intervention in helping in the development of the Land Law.</p>
UN Agencies & Civil Society Organizations	<p>The provision of shelter to IDPs has no close supervision on the ground. Some structures in IDP settlements have collapsed before they are occupied.</p> <p>In the absence of appropriate state capacities to guide physical planning and undertake development control functions, some IDP sites have had to be shifted from one site to the other due to non-suitability of selected sites.</p> <p>Linked to the above, the application of Physical Planning Standards has generally been missing or inadequate inside IDP camps.</p> <p>Non-state institutions also need to be mindful of how land acquisition for IDP settlement contributes to land conflicts through land claims by host communities on the same land.</p> <p>The progress and impacts of civil society organizations' peace building and conflict management work is largely not documented.</p>
Private Institutions (Notary Public)	<p>There are allegations that the office of the Notary Public is not manned by lawyers as is required by law.</p> <p>The functionality of the Notary Public is generally compromised, with allegations of corruption leveled against the institution</p>
Private developers	<p>In the absence of formal channels of land allocation for investment; private sector players have been acquiring land through un-procedural means.</p>
Traditional Mechanisms of disputes resolution	<p>The major strength is that the structures have deep historical knowledge of land conflicts and have experience in land disputes resolution</p> <p>The main weakness is that clan elders tend to favour their clan members in dispute resolution</p> <p>There is no documentation of impacts and key decisions on land conflicts handled by the structure</p>

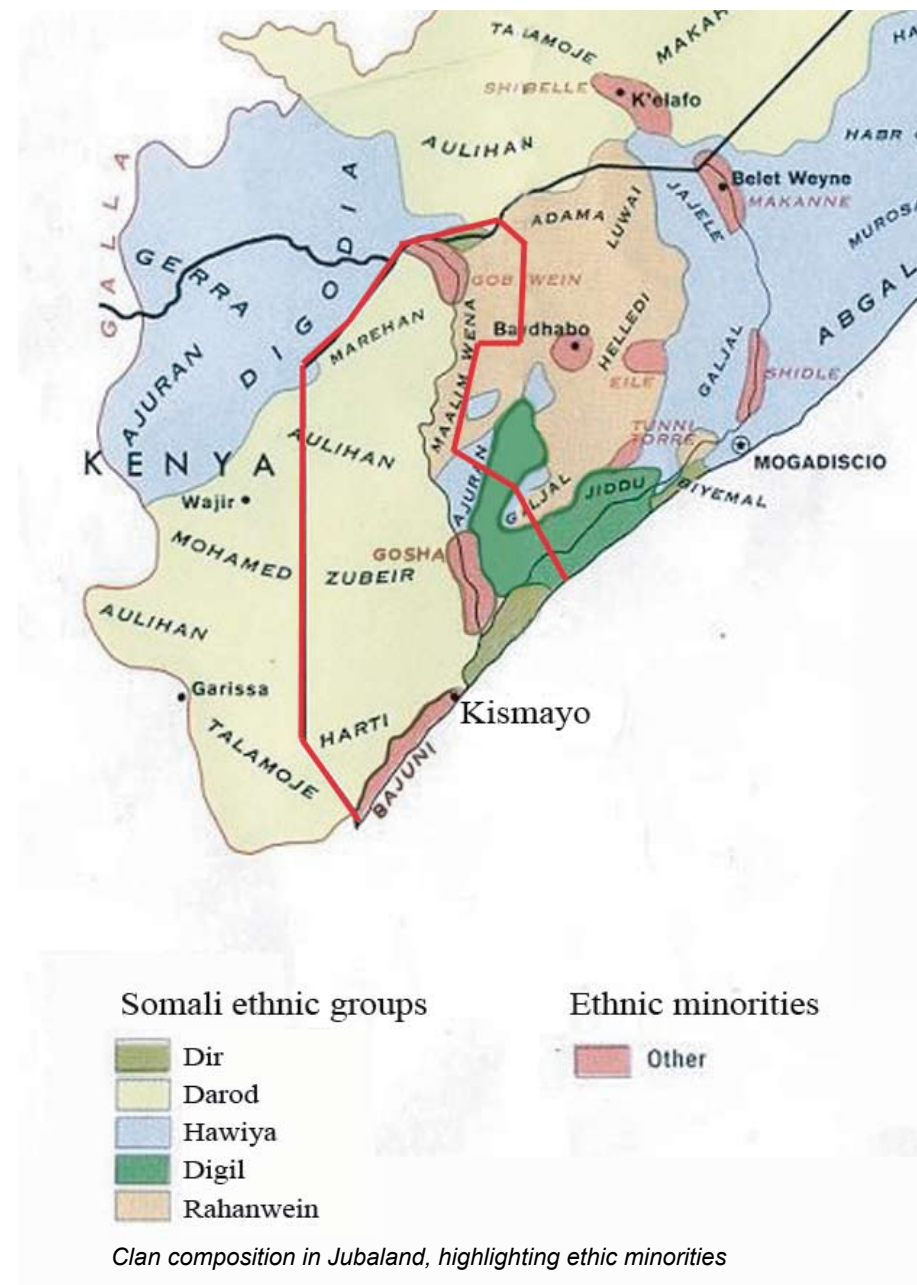
Source: Field Survey, August – October 2017

State institutions working on land governance		
AGENCY	MAIN FUNCTIONS ON LAND	OTHER LAND RELATEDFUNCTIONS
Ministry of Public Works & Housing	Mandated to provide land allocation and housing to all residents living in Jubaland. Supports the Municipality (Land Department) in issuing of rights to urban land	Supports the issuing of rights to land & property to IDPs /Returnees.
Jubaland Refugee & IDPs Affairs Commission (JRIAC)	Coordinating with INGOs working on Shelter programmes in Jubaland Involved in mediation of land conflicts between IDPs/Returnees and Host communities/ Government Agencies	Work closely with UNHCR in Providing livelihood opportunities , education and health facilities to IDPs /Returnees
Judiciary – Court system	Providing remedies / solutions to land disputes on registered land in Kismayo/ Jubaland	Referring land disputes on unregistered land to traditional mechanisms
Police Commissioner	The Police Department receives & refers land cases to either traditional elders or courts, depending on whether the dispute is happening on registered land or unregistered land.	Main function is enforcement of the law. The Police department is also involved in other conflict cases which might have a nexus with land matters.
Ministry of Interior	The Ministry supports land allocation and the issuing of 'title deeds,' with Municipality – Land Department on solving land disputes. The Ministry collaborates with the Ministries of Public Works and Housing	The Ministry of Interior is responsible for policing, emergency management, national security, registration, supervision of local government, and conduct of elections, public administration and immigration matters.
Ministry of Agriculture	The Ministry is responsible for maintaining food security through supporting farmers and pastoralist to produce agricultural products and thus boosting the economy	The Ministry works with other Ministries whose activities interact with agricultural land.
Ministry of Fisheries/ Marine resources	The Ministry requires land for marine / fisheries operations along the beach area.	The Ministry is responsible for protection of fisheries / marine resources. It is also mandated to promote business related to fisheries /marine resource extraction.
Jubaland Land Use and Dispute Resolution Commission (yet to be established)	The Commission should encourage the development of policies on land use and tenure systems in Jubaland to ensure its fair and equitable use. The Commission shall foster reconciliation, unity, healing and ensure that the matters relating to property dispute are addressed through a legal and state directed process.	TBD

Source: Field Survey, August 2017



Clan composition in the Somali region



Clan composition in Jubaland, highlighting ethnic minorities

The clans

The official discourse presents the Somali people as falling into four major clans - namely the Dir, Darod, Digil & Mirif and Hawiye – split themselves into sub-clans, sub-sub-clans, etc. A fifth group, comprising of several minority clans, completes the set. Such set-up, formalized by the new Federal constitution, has implications on how positions of power in key government institutions are shared amongst different clans. This clan-based approach – that only time will tell if successful - is a new political and governance model in the making, yet to mature and where there is space for continuous review and upgrading.

Evidence from literature demonstrates that clan politics is a pervasive phenomenon that manifests itself in many facets of life including types of past and present land conflicts. Undoubtedly, the ubiquitous nature of clan issues are reflected in both urban and rural contexts. Clan issues often determine how settlements are organized in urban areas, with people opting to settle in clan-based neighbourhoods⁶. “Groups claim that a town or area is historically their domain, and that they therefore possess special rights to political authority and economic resources in the face of competing claims⁷”.

The collapse of the state institutions and the years of conflict led to a situation where the state authority gradually declined to a point where the clan substituted government as the most influential authority among citizens. In this context, clan identities and related politics have been assuming more and more importance and continually manipulated, fostering clan-based fragmentation and a strong clan-based narrative in both development and humanitarian communities. Clan dynamics are critical in the land conflicts landscape and hence assume a central role in peace building and conflict management.

Beyond the clans

Yet, other scholars have noted that the ‘clan card’ has been overplayed. “The situational and flexible nature of Somali social structure continue to elude outside mediators, as well as social scientists who seek rigid classifications. [...] Proliferation, fragmentation and in some cases consolidation of clan identities were strongly influenced by the presence of outside, resource-rich groups such as the United Nations and Western development agencies⁸”.

There is need for caution in terms of interpreting issues and events through the clan-lens all the times. There are diverse dimensions on the significance of clan issues in land conflicts. Whereas there are clear cases where land conflicts are fuelled by clan-based tensions, the study also shows evidence of collaboration across clan lines with reference to specific types of land conflicts, a case in point being the operations of land gangs in the land grabbing business (see 2.2.3).

Whilst pastoralists and crop farmers may be associated with specific clans, the conflict between them is mainly founded on the conflicting nature between pastoralism and crop farming as forms of land-uses.

Responses and solutions to the conflict may not make the necessary breakthroughs if conceptualized as responses to social and political rivalry fronted as a clan issues. Rather, it may be more productive to approach the conflict from the root cause perspective, thereby allowing technical responses.

2. ANALYSIS OF THE LAND-RELATED ROOT CAUSES OF CONFLICT IN JUBALAND

The root cause analysis presented in this study has been developed using the '**Root Cause Analysis of Land and Conflict for Peacebuilding**' tool developed by the Global Land Tool Network.

The tool is an **interdisciplinary framework** aiming at building a common understanding and thinking strategically about how to address land conflicts. Programming often addresses symptoms or triggers of conflicts, while the focus should be on targeting root causes and their proximate factors. The root cause analysis tool developed by GLTN makes it possible to ask the right questions for programming in a country or an area where land is part of the conflict and to distinguish root causes, proximate factors and triggers.

COMPONENTS AND DEFINITIONS



DEFINITIONS

Root cause: It is a long-term invisible factor underlying violent conflict. It can be historical, political, economic or social. Land can also be a potential root causes of conflict.

Proximate factor: It is immediately responsible for causing the conflict, but it exists only because there is a root cause of conflict. There are many different types of proximate land factors depending on the nature of the root cause.

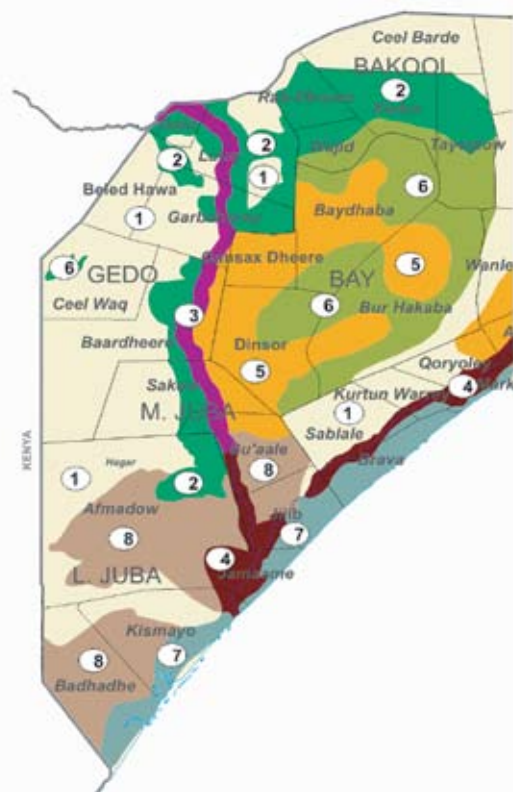
Trigger: Triggers are flashpoints that feed into the root cause and proximate factors of the conflict and fuel a response from the population that leads to violent conflict.

Out of the 15 generic root causes of conflict included in the tool, the research work carried out in Jubaland identified 11 root causes of conflicts that are present in the state. The study categorized the root causes in environmental, socio-economic and governance related.

	ROOT CAUSES OF CONFLICT IN JUBALAND	Section of the report
	ENVIRONMENTAL	
1	Scarce natural resources including land and water	2.1.1
2	Natural resources exploitation	2.1.2
	SOCIO ECONOMIC	
3	Population pressure	2.2.1
4	Poverty	2.2.2
5	Criminality and terrorism	2.2.3
6	Unregulated and exploitative investment	2.2.4
	GOVERNANCE-RELATED	
7	Weak governance	2.3.1
8	Weak land administration	2.3.2
9	Politics of exclusion	2.3.3
10	Capture of state instruments	2.3.4
11	Chaotic urbanisation	2.3.5

2.1 ENVIRONMENTAL CAUSES

This chapter illustrates the environmental root causes of conflicts, the land related proximate factors and the most common triggers that lead to violent conflicts in Jubaland.



LAND USE / LIVELIHOOD ZONES

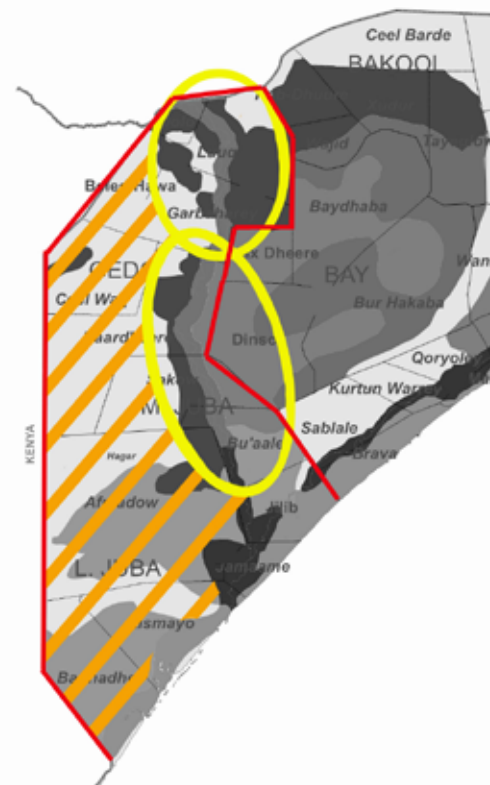
1. Inland pastoral: camels, goats, sheeps, cattle
2. Agropastoral: goat, camel, sorghum
3. Riverine pump irrigation
4. Riverine gravity irrigation
5. Sorghum, high potential agropastoral
6. Low potential agropastoral
7. Rainfed: maize, cattle and goats
8. Pastoral: cattle and goats

ANALYSIS OF THE LAND USE-RELATED CONFLICTS IN RURAL JUBALAND

The map on the left indicates the livelihood and land use areas of Jubaland.

The map on the top rights represents the primary types of land conflicts taking place in Jubaland, on the basis of the evidence collected during the study and explained in the narrative parts of the report.

Land use related conflicts are aggravated during droughts. The map at the bottom/right represents the impact of the October 2016 - June 2017 drought. Although drought incidence varies across the seasons, the map gives an impression of the level of acuteness that conflicts can reach in such periods.

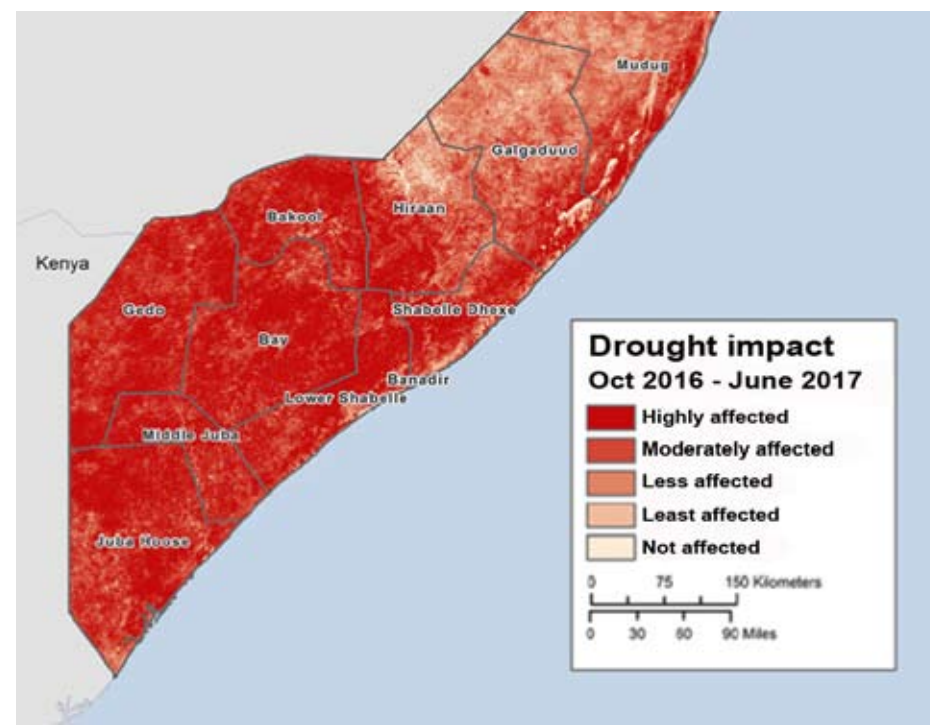


CONFLICTS IN RURAL AREAS






-  FARMERS / PASTORALISTS CONFLICTS
-  CONFLICTS AMONG PASTORALISTS
-  JUBALAND BOUNDARIES

LAND USE / LIVELIHOOD ZONES

1. Inland pastoral: camels, goats, sheeps, cattle
2. Agropastoral: goat, camel, sorghum
3. Riverine pump irrigation
4. Riverine gravity irrigation
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6. Low potential agropastoral
7. Rainfed: maize, cattle and goats
8. Pastoral: cattle and goats



Drought impact Oct 2016 - June 2017

-  Highly affected
-  Moderately affected
-  Less affected
-  Least affected
-  Not affected

0 75 150 Kilometers
0 30 60 90 Miles

2.1.1. Scarce natural resources including land and water

Data collected during the study shows that a major cause of land-related conflicts is the **scarcity - and resulting competition over the use of - land and land-based resources**. These conflicts occur among pastoralists, crop farmers and other natural resources' user such as charcoal producers. In some situations, the conflicts assume violent dimensions and turn fatal.

The United Nations Economic Commission for Africa notes that in Africa pastoral communities have a long history of conflict, traditionally related to land alienation and encroachment on rangeland for agriculture and urban expansion. In current times, the intensity of such conflicts is increasing as the competition over scarce resources is on the rise, aggravated by climate change and environmental degradation. This analysis well describes the Jubaland scenario.

Of Somalia's estimated 11.1 million, some 6.7 million people, representing 60% of the population, are pastoralists, with livestock contributing 40% of Somalia's GDP (while about 60% is agriculture based). 14% of this GDP is from exports, coming mainly from livestock and fresh vegetables. Pastoralism is an important source of livelihood for the population and a key base national economic development for the state.

While the importance of pastoralism is recognized by the Federal State of Somalia and by the Jubaland State, no equivalent recognition is given to the **land rights of pastoralist communities**. The 1975 Land Law officially transferred control of land tenure from customary authorities to the state. The impact of the law was felt both in urban and rural contexts. Increased tenure insecurity for landholders without registered rights was one of the results, with pastoralists being among the worst affected.

Both primary and secondary sources of data confirm that environmental factors, especially **droughts**, are a major driver of pastoralists-related conflicts. The Federal Government of Somalia's Strategic Plan 2017-2019 notes that "pastoralists face continuously natural and climactic shocks

(droughts, floods, range degradation and low rainfall) and livestock diseases including trans-boundary threats." This also resonates in the fact that conflicts associated with pastoralists mostly happen in the dry season and escalate in the years of drought.

Human and natural factors have fuelled **environmental degradation** in Somalia, described by UNEP as characterized by deforestation, desertification, soil erosion, inadequate and dysfunctional system of protected areas, which are the effects of political and economic mismanagement of land tenure and an almost complete **breakdown of legislative and traditional controls governing use and access to natural resources**. The resultant effect of such negative environmental factors is scarcity of pastures and water, which then causes tensions and conflicts over access to such resources.

The growing practice of **private livestock enclosures** – emerged as a response to protracted droughts that forced pastoralists to look for alternative methods to access pastures - contributes to the loss of grazing lands and grass harvesting on communal land is increasingly problematic as enclosures are shrinking communal rangeland to the benefit of only a minority. Deforestation and grass harvesting have reduced vegetation cover, especially of palatable plants.

Conflicts for **water and pastures** also arise among different pastoralists groups and evidence shows the relations between the type of livestock that pastoralists keep and the conflicts that can arise.

Despite the existence of the **Xeer Law** that regulates the sharing of pastures, the conditions attached to the resource sharing arrangements can be disrespected or broken, sparking conflict. It seems evident that, in spite of providing useful entry points and mechanisms for conflict prevention, mitigation and resolution, the Xeer Law alone and the work of the traditional actors that implement it are no longer sufficient to prevent and contain the conflicts. There can be scope for a call for the re-examination of long standing local practices and their implementation mechanisms. Further to that, new forms of regulations or management

practices (e.g. demarcation of migratory routes, land use planning, etc.) may be required to keep peace among Jubaland's pastoralist communities.

The increasing number of livestock for internal consumption and export – particularly to Gulf countries – is also increasing the pressure on land-based resources such as water and pastures, making it even more difficult to maintain the fine balance among different communities.

Conflicts between pastoralists and farmers are also very common in Jubaland, creating the most common type of land-related conflict in rural areas. The moving herds of cattle, often composed by large numbers, are not easy to control and encroach with farms. Farmers' fences are often not strong enough to deter animals from destroying crops. In situations of scarcity, the use of water often sparks fierce conflicts between the two groups and conflicts can arise both along the migratory routes or at points of destination. It is worth noting that the migration routes of pastoralists are both within country and across national borders. Pastoralists in Jubaland migrate to Kenya, an issue that brings along additional complexities in terms of land-related conflicts, cross-border dynamics and interactions with criminal activities.

Conflicts between pastoralists and urban residents located in peri-urban areas also arise, aggravated by the expansion of urban areas into surrounding rural areas. The unplanned nature of urban expansion is a major contributor to such conflicts.

2.1.2 Natural resources exploitation

Charcoal production is one of the main natural resources exploitation factors contributing to violent conflicts in Jubaland. Charcoal production leads to deforestation and environmental degradation. Every year thousands of hectares of forest land are lost to charcoal production a lucrative trade that provides a considerable amount of employment in rural areas and not only services the population of Somalia but also goes for export. This has accelerated the loss of traditional grazing lands, alongside other factors such as overgrazing from **increasing numbers of livestock**.

While being an important source of income for the depressed economy, charcoal production is directly opposed to the interests of pastoralists and therefore disapproved by pastoralist communities. For this reason, conflicts between charcoal producers and pastoralists are prevalent in Jubaland. Key informant interviews with pastoralist communities and elders confirmed that the scarcity of pastures commonly leads to scarcity-induced land conflicts and tensions and misunderstandings often arise between pastoralists and people in the charcoal business. At times traders in charcoal business are forced to suspend their business for fear of violent attacks and killings from pastoralists. The Al Shabaab group adds to the complexity of the issue as it opposes charcoal business and considers such offense punishable with death.

2.2 SOCIO ECONOMIC CAUSES

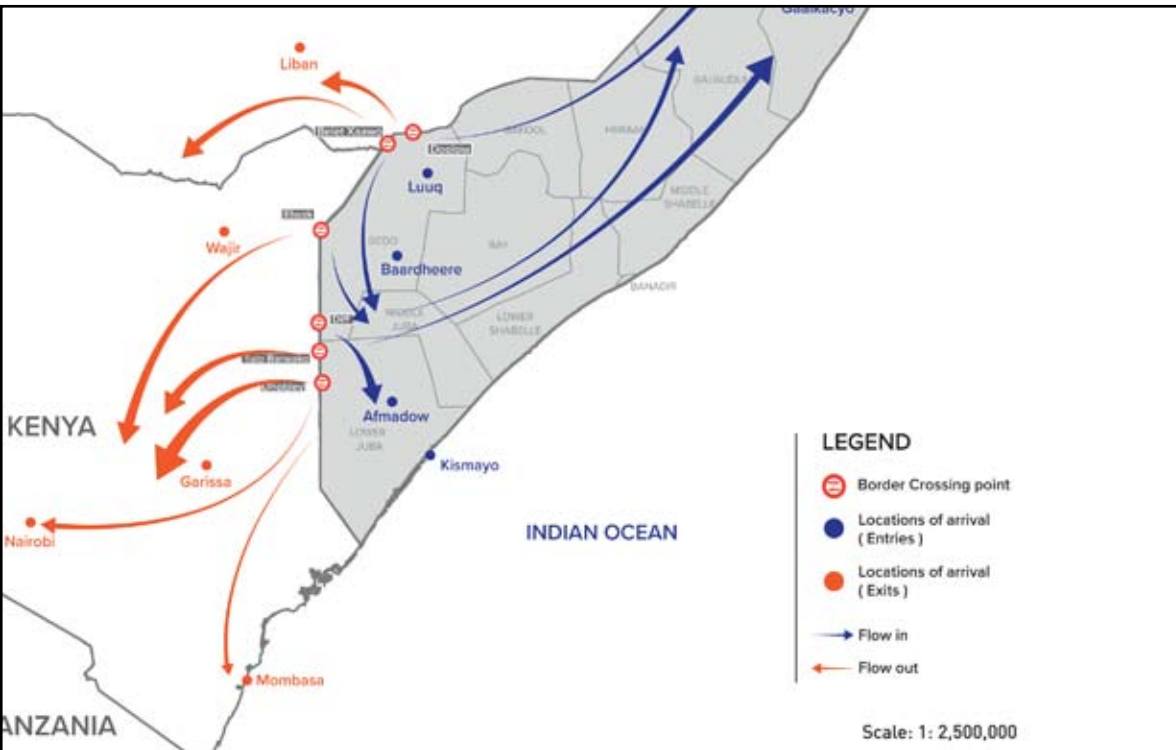
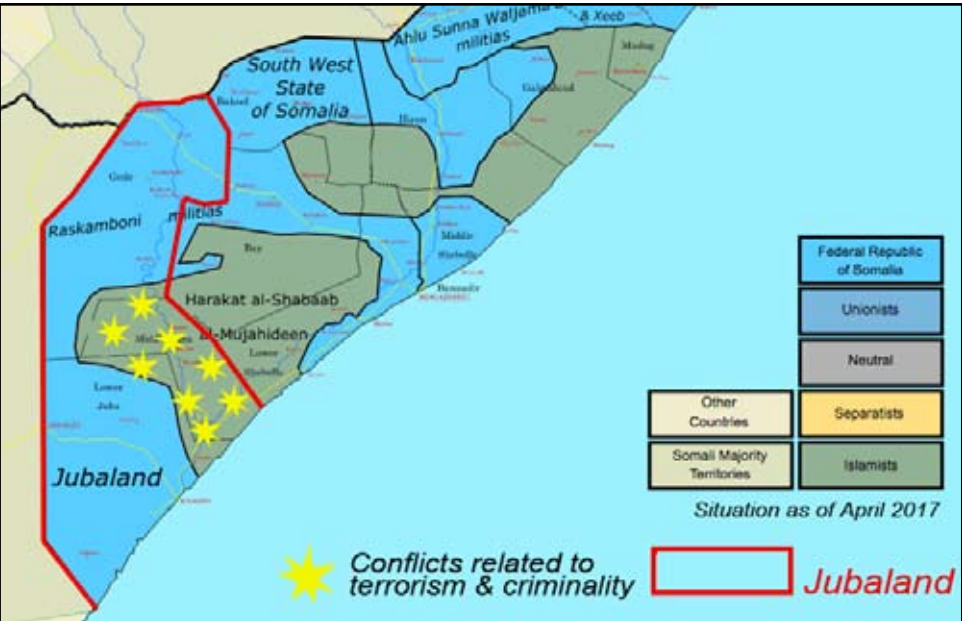
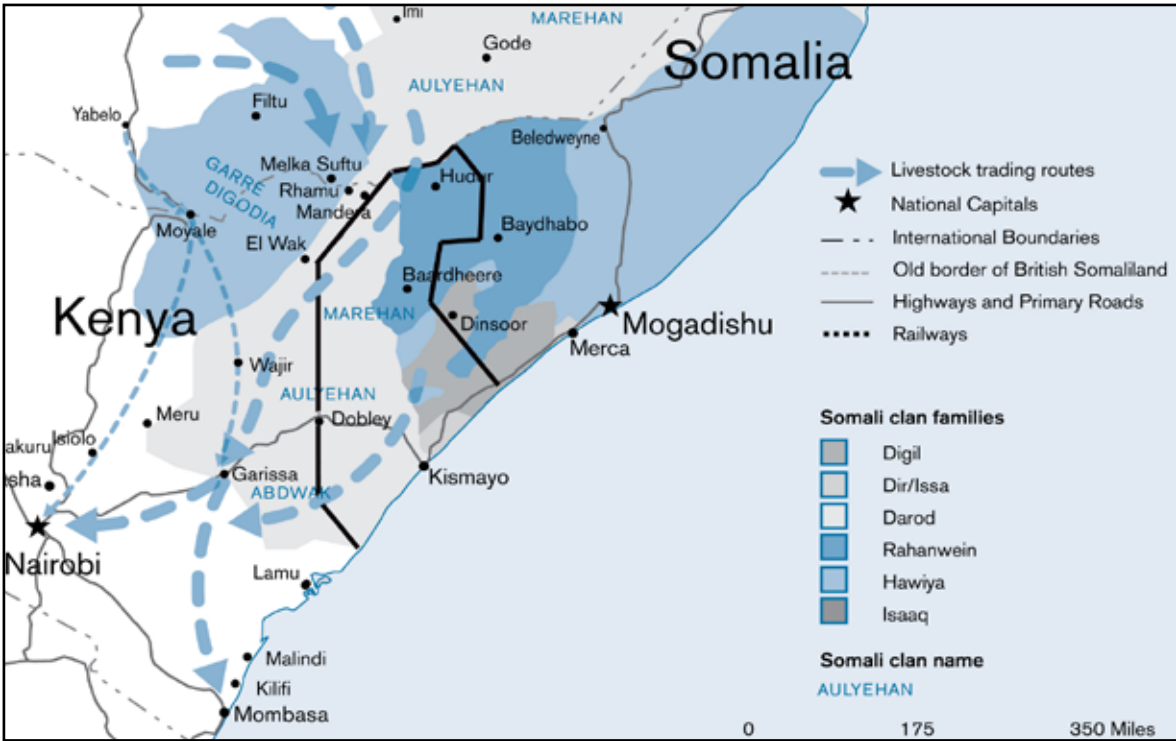
This chapter illustrates the social and economic root causes of conflicts, the land related proximate factors and the most common triggers that lead to violent conflicts in Jubaland.

ILLUSTRATION OF OTHER LAND-RELATED PROXIMATE FACTORS OF CONFLICT IN JUBALAND

The map below shows the incidence of land conflicts resulting from the Al-Shabaab presence in eastern Jubaland, resulting in displacement of people and forced evictions.

The map on the top right side of the page shows the main livestock trading routes. As indicated in the narrative part of the report, pastoralist movements are at times linked with legal and illegal activities. As the prevalence of arms among pastoralists is common, armed conflicts often break out along such routes. Land use related conflicts are also happening along such routes.

The map on the bottom right side of the page illustrates cross border population movements that can lead to land use conflicts over land for settlements and other related land uses.



2.2.1 Population pressure

The **population growth** affects the overall per capita ration of land and have a disproportionately negative effect on the youth, which constitute over 75 percent of the Jubaland population.

2.2.2 Poverty

Poverty and lack of economic opportunities are major sources of conflict. Poverty is not only caused by conflict, but it also fuels conflict, where violence is perpetuated as a survival strategy to gain access to scarce resources. Poverty is one of the main root causes of conflicts and meaningful work on peace building and conflict prevention will have to be linked to economic recovery to remove the risk, especially among the youth, of resorting to use illegal land transactions and land grabbing as a source of livelihood or – worst – joining terrorist groups' militia to earn an income.

2.2.3 Criminality and terrorism

New fringe pastoralism

Trans-boundary movements are a key feature of pastoralist societies, which often brews further conflicts among communities and frictions with state institutions that are often better fit to manage sedentary communities. In Jubaland, all these dynamics can be found. Born out of the trans-boundary movement of pastoralists is what is now known as new fringe pastoralism, which refers to the activities of a small number of pastoralists who have become increasingly involved in both transnational licit and illicit activities, also as a result of the proliferation of small arms ownership among such groups. The illicit activities include facilitating **illegal international migration, human trafficking and trading in arms, drugs and contraband**. The trans-boundary movement of pastoralists in Jubaland has been penetrated by criminal elements, a feature that adds a different dimension to pastoralist activities. Smuggling and other criminal behaviours brings in another dimension of the pastoralist related land conflicts and pastoralists come into conflict with the state. Given the trans-boundary nature of the activity, the scale of

the conflicts with state structures assume international character and controlling such activities becomes extremely challenging for individual states.

Al Shabaab

At the time of undertaking the study, the Juba Valley was largely controlled by Al-Shabaab, except areas in the Lower Juba region (Gobwein). New arrivals of IDPs in Kismayo are largely due to the insecurity caused by Al-Shabaab in rural areas; this makes of the terrorist group one of the main causes of forced displacement. Paradoxically, Al Shabaab has also an important role in relation to dispute **resolution in rural contexts**. Reports were received about rural based communities that owe allegiance to Al-Shabaab as a way of protecting their land rights. Al-Shabaab represents some **form of alternative 'land authority'** active predominantly in the rural areas where it resolves land disputes and collects some form of **land tax**. The tax is paid by farmers regardless of the level farm production and local farmers are abandoning their farms due to heavy tax and frequent rule changes. Given that pastoralism constitutes the dominant land use in rural Jubaland, it is inevitable that interactions with Al-Shabaab affect mainly pastoralists, although farming and urban communities were also affected at the times when Al Shabaab was controlling Kismayo.

Regarding the **management of land conflicts** that erupt in the areas under Al Shabaab's jurisdiction, public perceptions on how the terrorist groups compares with state authorities are divergent. Some informants claim that Al-Shabaab is "fairer when handling land conflicts, with no biases along clan lines". In the view of others "some minority groups owed their allegiance to Al-Shabaab simply to ensure that their land rights are protected against the interests of the dominant clans". Other narratives see Al-Shabaab as being selective in the interpretation and application of religious laws related to land, such as inheritance, as the terrorist group is known for being against ownership of large pieces of land by individuals and often **forces the sharing of such land**. Such focus by the terrorist group on land disputes resolution and protection of land rights of its affiliates shows how crucial is for an administration to secure the land rights of its people to strengthen the social pact that gives legitimacy

and trust in state's institution, a key component of state building and peacebuilding.

Land gangs and land grabbing

Some type of criminal activities are specific to urban areas. Key informant interviews with residents of Kismayo and law enforcement agencies revealed the existence of '**land gangs**' made up of groups of individuals from different clans who engineer land grabbing in groups of 15 to 20 people. These gangs operate in collusion with other structures of society such as clan elders and community dispute resolution structures to facilitate the criminal transactions. In other cases, criminal transactions involve business people from abroad (diaspora) who want land for business and investment. The practice of **land grabbing** has intensified in Kismayo over the last couple of years. In general, the lack of economic opportunities and employment coupled with the high demand for land in situations where land markets are not functional has resulted in the flourishing of criminal activities that involve land transactions. Land market transactions are by and large conducted to sustain livelihoods in urban areas.

Land gangs normally target and grab land which is unregistered and without land marks. Initially, the gangs do their own 'intelligence surveillance' where they collect background information concerning targeted land parcels: whether or not there is someone living on the land, size of the land, any available documentation about the land, details about neighbors living in the area, etc. When the required information is in place, the gangs physically make claims to the land by erecting land marks. The gangs are known to use excessive force, especially gunfire, to deter people from intervening. Land gangs can consist of people from different clan, working together to gain financial benefits through the violently seized land.

The existence of land gangs and cartels was widely confirmed by all stakeholders interviewed in the context of this study. The general perception was that land as an economic resource attracted the interests of both minority and majority clans to use it for business through unlawful / illegal land grabbing practices. In the view of those

interviewed, cases of land grabbing engineered by people from the majority clans (or people with links with the government) might not be solved easily, largely due to favouritism by existing government systems such as the courts and the police etc. In practice, it means some elements within government could potentially be part of the land grabbing gangs.

2.2.4 Unregulated and exploitative investment

The combined **weakness of state institutions, lack of sound administrative processes and rule of law** lead to an investment scenario that is widely unregulated and exploitative. In often cases, the **absence of a functioning land administration system** is such that it is virtually impossible to carry out land-related investment 'legally'. According to the Somalia National Development Plan 2017-2019, a 2014 World Bank Group Survey of five hundred firms in Somaliland concluded that the main obstacles to private sector development included inadequate land titling systems. A similar, if not worse situation, is found in Kismayo.

The relative peace and stability that prevails in Kismayo is a major attraction for investment. Evidence on the ground shows that private sector players and individuals, especially those from the diaspora, need land for investment purposes. Yet, there are no clear formal channels for accessing land for investment, thereby forcing investors to acquire land from what can be described as 'informal channels.' This has aided the development of conflicts as some of the land offered for sale has disputed ownership records, giving rise to more land conflicts.

The absence of clear land markets to facilitate access to land for investment has created complexities. For instance, the Kuqabso Kuqadii Meheysi narrative (you can just grab land and at the end of the day you will get something in return) has fuelled much disorder and land conflicts. In the words of one official "In Somalia there are people whose only business is that of land grabbing. Even if they were not there at time of site planning and drilling, they can still come to you several days after, claiming ownership of the land. We normally give them some small money and they will go. At times when one group goes, another comes to claim

ownership as well". Such a situation impedes investment and causes the slowing down of the much-needed economic growth. Further, existing **practices of managing land conflicts** can breed more conflicts. The practice by some of the private sector players to pay everyone who makes a claim on land acquired can be seen in itself as encouraging 'criminal members' to make such claims even in situations where they are not entitled. The arrangement appears "too loose" and open for abuse by criminal elements of society.

The diaspora and their land needs

Members of the diaspora are actively involved in the accessing of land and can be classified into two main groups: Somalis who owned land and property before they left the country and are coming back to claim their land rights; and Somalis who are coming back to invest in the country and seek to access land through the informal land markets. Overall, the **non-availability of formal land markets** costs Jubaland of the much-needed investment and also denies ordinary citizens their rights to access land for investment and development.

The remittances and the banking system

An important factor leading to land-related conflicts are the significant inflow of **remittances** in the Somali's economy, amounting to an estimated 25% of Somalia's GDP. Remittances are often invested in covering the basic costs of living and education, but also in purchasing land and building properties. In a context where the land registration system is collapsed, purchasing land in a 'legal' way is de facto impossible and the incidence of land conflicts related to multiple and disputed ownerships is extremely high.

Further, Jubaland does **not have a fully functioning banking system** and securing one's future through saving or investment plans in the country is virtually impossible. The **land sector is left to carry the burden of being the economic safety net**. Purchasing or taking over illegally land is often seen as the safest and best investment for the future. The establishment of a functioning banking system would take away some of the pressure on land-based investments, resulting in a more productive and efficient use of land, both in urban and rural areas.

Is restitution an option for returning Somalis?

The UN adopted Pinheiro Principles makes clear position on the rights of IDPs and refugees returning to the country of origin following a period of conflict. The principles provides for the right of all refugees and IDPs to housing, property restitution to the proper owner and reparation for losses.

However, application of the principles is particularly challenging in situations where no comprehensive registration of land and property ownership existed prior to the conflict. Kismayo and Jubaland have numerous land administration and land rights protection challenges. The Jubaland administration will have to balance emerging priorities and direct strategically its resources to improving the land governance and the dispute resolutions mechanisms.

Key question to be addressed are: what emphasis is to be put on the process of restitution of housing land and property rights as opposed as investing on other tenure security pressing needs? What would be the process established for rural and urban lands, and for registered and unregistered land? What would be the 'cut-off date' before which land rights will be disregarded? What would be the most effective approach to address land and tenure security issues with the view of promoting peace and reconciliation and increasing the legitimacy and credibility of the Jubaland administration?

2.3 GOVERNANCE-RELATED CAUSES

This chapter illustrates root causes of conflicts related to governance, the land related proximate factors and the most common triggers that lead to violent conflicts in Jubaland.

2.3.1 Weak governance

Weak governance – in terms of **state institutions and traditional and religious authorities** - is a major issue for Somalia and Jubaland. Jubaland is a state in the making and its institutions, their role and mandates, the way of interacting and collaborating will have to be worked out, building on the current strengths, improving partially functioning institution to make them more effective, transparent and accountable, and radically modifying some aspects that do not work. This is a crucial aspect to be addressed to tackle issues of land and conflict in Jubaland. This report does not analyses overall governance aspects, but it rather focuses on land governance and land governance institutions, although those clearly are linked to the overall governance frameworks.

Weak land governance

Of the different root causes of conflict in Jubaland, weak land governance is one of the most important ones. Land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed. Land and the way it is accessed, used and controlled is a key element of sustainable social and economic development, peace and stability, and the realization of human rights. The elements presented below are the most relevant land governance weaknesses that lead to land-related conflicts.

Plural legal system

Jubaland's land is governed by a **legally pluralistic system** where statutory laws, customary laws and Islamic law coexist, complement each other and overlap in a rather chaotic manner and often get engrained in **common practices**, which seems to constitute the most solid element of such fluid land governance system.

The relationship between statutory and customary and/or religious law is determined by the **status of customary and religious law within the legal system**. This varies across countries, ranging from full or partial recognition to non-recognition of customary and/or religious law. In Jubaland, the legislative vacuum leaves this question unaddressed, creating a large gray area for formal and traditional justice administrators. Such weakness particularly affects areas of land law that are related to personal law and family law that deliberates on marriage, divorce and inheritance, all of which have important land implications. Several attempts, with varying levels of success, have been done by international organisations and governments' initiatives to work in an integrated manner with the legal pluralism that prevails in Somalia. This is an important area that requires the attention of the current and coming Somalia and Jubaland administrations.

Unclear land rights

In spite of the prevailing legal pluralism existing in Jubaland, discussions with key informants about land rights are often restricted to the provisions of the 1975 Land Law enacted by the Siad Barre government, which still constitutes the main legal basis of the prevailing land rights. Under the said legislation, ownership and control of land was transferred to government. The law made it compulsory for all individuals to register their land-holdings within six months from the enactment of the law.

Effectively, the **1975 land law formally eradicated customary land tenure**, substituting it with state leasehold title as the only means of claiming land rights, pushing millions of Somalis into informality. From the legal perspective, all land in Jubaland is public property, with provision for government to issue leaseholds for private ownership. Failure to register land that one was farming meant that claims to such land were lost, while at the same time registered land that was left idle could potentially be repossessed. In practice, despite the enactment of the 1975 Land Law, **most of the land remained unregistered** because of various constraints associated with the cost and bureaucratic procedures of land registration. The land that got registered was mostly the one in urban centres, such as Kismayo, or tracts of agricultural land put to cash-crop farming and for export (investment driven rather than subsistence driven), a challenge that remains unchanged to present days. The registration process responded better to the needs of the urban elites or the groups closer

to the Siad Barre administration, and was not corresponding to the contemporary criteria of inclusiveness and fairness.

Little registration by local farmers and a significant amount of registration by well-connected outsiders took place. The land registration process was characterized by **corruption, lack of transparency and inadequate land administration support**. Wealthy businessman and government officials from the city with affiliations to villages in the Juba would legitimately acquire a small plot by purchase or allocation and then register a much larger area with boundaries of the plots substantially exaggerated in the registration process. Besten's analysis of the land registry also showed that there was no general plan to support the land registration process, with some people submitting only rough maps drawn by the themselves. Consequently, the **flawed land registration process created the basis for the dispossession of the poor** of the land and aftermath of the exercise remain an important determinant of land conflicts in current Somalia, Jubaland included. Such shortcomings are however largely undocumented and seldom held against the legitimacy of the Siad Barre land recordation system, which is still considered the most reliable and authoritative source of land rights documentation.

Based on interviews with key government officials and other key informants, the Siad Barre era land records are the key source of uncontested land documentation that prove land ownership in Jubaland. Following administrations **lacked the required uncontested legitimacy** and land documents issued then do not hold the same level of validity than the ones issued during the Siad Barre government. Because of the protracted conflict following the fall of the Siad Barre government in 1991, land records that originated from that period define what is considered up to current times "registered land". The rest is defined "unregistered land". **Most citizens are settled on the unregistered land**, with no documentation to prove ownership.

Further, **communities have never 'completely' assented** to that situation where all unregistered land is seen as belonging to government. Agricultural land continued to be communally owned and administered through customary practices. Similarly, in current times, when government

'acquires' land and reallocates to other functions – the typical case is land for IDP settlements in peri-urban areas - that same land is claimed by the communities and their customary administrators.

The failure of formal titling, as said, is more visible and more disastrous in urban contexts, but more broadly, the possibility of having a combination of customary and formal land registration systems has been considered by some reviews, building on the notion of hybrid land governance systems that seem reasonably viable in conflict and post conflict countries. Non-formal institutions are often the only ones left standing after civil and hence play an unavoidable role in governance, including management of land disputes in urban settings, but must not be romanticized as they are embedded in social power hierarchies that serve some interests much more effectively than others.

Customary land governance is clearly very active both in Jubaland rural and urban areas and available evidence suggests that customary and informal authorities are better suited to the ad hoc management and negotiation of chronic urban land disputes than in providing an alternative system of land tenure to formal titling, at least in the short-to-medium term.

Statutory land governance institutions

The little literature existing on land governance in Jubaland depicts generally weak systems and multiple land governance challenges such as the need of greater transparency and certainty in land tenure regimes. The Jubaland Baseline Report notes that "many state **institutions remain weak or lack legitimacy**", including those with a role in land governance.

Some of the causes of such institutional weaknesses are linked to the **political situation** of Somalia as a whole and Jubaland administration in particular. Other weaknesses are inherent to the specific institutions and include **lack of clear roles and mandates** of different public institutions at the federal, state, province and district levels; **weak capacities and lack of resources**. Clarity on what is decided and legislated at the federal level and at the state or district level with regard to land is yet to be made.

In Jubaland there are several government ministries and departments involved in the land sector. State institutions are new and significant work is still required to build a solid land governance system, **define adequate policy, legal, administrative and institutional frameworks**, develop the required capacities and human resources. The mandates of the key ministries are still evolving, so are the related coordination functions and no written job descriptions of key officials in the land governance ministries exist.

Observations of the Saferworld Report illustrate that “the **lack of job descriptions** and clarity of roles and responsibilities had created tensions between ministries and civil servants, thus enabling the population to understand how best to relate to and engage with government will be challenging. This will inevitably lead to obstacles in holding authorities accountable for their responsibilities given that people let alone civil servants and appointed officials will not know who should be responsible for tasks. Whereas the functions of key government ministries and departments complement one another, some of the **overlapping mandates can contribute to the escalation of land conflicts**. Some reported cases of institutional conflict are, for example, when the Ministry of Agriculture allocates land for crop farming pastoralists might feel aggrieved and left out as the same land is needed for the grazing of their animals. Another example refers to the acquisition and allocation of land by Jubaland Refugee & IDPs Affairs Commission (JRIA) for the settlement of IDPs and returnees; the study identified several cases where host communities contested the allocation of what they considered their land to IDPs and returnees.

Public perceptions about the **performance, transparency and accountability** of land ministries tend to vary based on individuals’ or clans’ points of view. The Constitutional review is currently taking place at the federal level; once completed, the definition of roles and responsibilities of different institutions and levels of government will be clearer, setting up the foundation for strengthening land related institutions as well.

Policy and legal frameworks

There is no current land policy and land law in Jubaland. Related physical planning and land administration frameworks are also lacking and the practice is to rely on the ‘remnants’ of the law from the Siad Barre era, both in rural and urban contexts. A review of available government documents makes reference to the Surveyors Act Cap 63 of 1964 and the Physical Planners Registration Act No 3 of 1964; yet these could not be identified during the preparation of this study. In the making are two pieces of legislation that speak to land issues in Jubaland: the Land Law and the Local Government Act. Notable is the fact that there is no similar ongoing process on the development of the Federal Land Policy yet, although it would have been appropriate to start with the development of the Federal Land Policy prior to the development and enactment of the land laws at the state level in Jubaland and other states of federal Somalia.

From focus group discussions and interviews with key informants emerged a **worrisome range of conflicting assertions about land governance decisions made by government**, with no written proof of their authenticity (or lack of it). This gives the image of an extremely fragmented land governance sector in which key informants have a very limited factual knowledge of key land governance decisions and where inconsistencies and gray areas are many. Such factor undermines the trust of the public in the land governance sector and creates a fertile ground for land-related conflicts to emerge. The **culture of verbal communication** within government institutions is part of this problem, together with the lack of certainty and predictability of land-governance related decisions.

2.3.2 Weak land administration

Weak land administration is at the core of many land-related conflicts in Jubaland and Kismayo particularly.

Land registration system

Challenges regarding titles to registered land are possibly the single land governance challenge that heats land-related discussion of Jubalanders. This single aspect catalyses so much the discussions that it is often

difficult to approach land governance from a broader perspective. Land registration is one the most pressing problem that Jubaland will have to solve in the short term, for two key reasons: unlocking the social and economic potential of its urban and agriculture land and gain the required legitimacy in the eyes of the population.

The DDG 2017 describes the issue as follows: “Land title governance is a broken system. Government registration records of urban land titles are either lost or in private Somali hands and kept abroad, where those in possession of the records charge fees to verify claims. **Occupation, sale, and resale of property** since 1991 has made it difficult to provide original ownership. Deaths of original land owners in the diaspora lead to **multiple competing claims** by their surviving kins. **False documentation** is ubiquitous, so possession of a deed is no guarantee of ownership.

False claims on real estate are very common, especially during sale of the property, and force the buyer to pay out costly compensation that is really a disguised form of a nuisance tax. **Corrupt local courts** cannot be counted on to resolve disputes fairly. And serious land disputes can and do result in violence. The importance of threats of violence in resolving land disputes has benefited stronger clans at the expense of weaker clans unable to mount a credible threat. The returnees fall into this latter category and so will be very vulnerable to land grabs if they attempt to buy real estate.

Such dysfunctional land registration system causes and it is aggravated by the common practice of **illegally occupying or grabbing land** by physically fencing it out on the ground with perimeter walls or land marks, especially in urban and peri-urban areas. Land grabbers often use their alleged ownership to sell the land that gets bought ‘legally’ by third parties, creating an intricate scenario of land claims and land rights: a breeding ground for conflicts. The construction of such **perimeter walls** constitutes a significant monetary investment and a particular form of ‘public announcement’ on the ownership of such land. This proves the confidence that people have in the informal land rights system that prevail in Jubaland and confirm the tension between de jure and de facto land rights.

One key informant made the observation that “registered land is scarce and expensive, and few can afford it. The only land available is unregistered land; yet that land is highly prone to contested ownership. The contested land ownership is difficult to solve, as parties to the conflict often have no papers to prove ownership, with both claiming to have arrived on the land first.”

Land dispute resolution systems

Land disputes resolution is a very important element of the land and conflict dynamics in Jubaland and a key area of focus for the Jubaland administration. As a demonstration of this, key informant interviews with top government officials noted that the President of the State of Jubaland has set aside two days a week, Mondays and Wednesdays, to meet with citizens and listen to their complaints which, in most cases are about disputes and conflicts over land. Minority groups are also taking advantage of such forum to present their land claims to the President through this streamlined procedure according to which citizens are only required to go through the security checks, after which the access to the President is guaranteed. Land disputes in Jubaland are currently handled by a **range of processes and stakeholders** that can be categorized as formal and customary or traditional.

The formal land dispute resolution system

The judiciary in Jubaland is composed by District, Regional, Appeal Courts and the Supreme Court, although the latter has not yet been established. Each court is headed by a president (Gudomiye) and composed by judges and court clerks. Land issues are only heard in Regional and Appeals Courts as the District Courts are not mandated to do so. It is to be noted that **courts only deal with registered land**, while unregistered land disputes are addressed by traditional clan elders. This practically restrains the area of action of courts to urban areas under the control of the Jubaland administration, as courts do not actively operate in **Al-Shabaab controlled areas** because of security reasons. According to some key informants, Jubaland courts handle about ten land-related cases per week, normally filed at both the Regional and Appeals Court.

Some respondents are satisfied with the clan composition of court personnel, a guarantee of **fairness, respect and dignity**, while according to others minority clans are excluded. The recruitment of court personnel's is based on merit, but fear of retaliation by unsatisfied customers is reported as a key challenge to ensuring the quality of personnel. The interviews carried out during the preparation of this study indicate that Jubaland judges and supporting **staff are generally unskilled**, with insufficient knowledge of both basic legal principles and applicable ordinary laws, and registrars are not trained for the job. For most litigation cases handled by the courts there are **no public records** and therefore it was not possible to assess the reasoning, fairness and objectivity of land disputes resolution through the courts. Overall, the study found the Jubaland judiciary ineffective.

The customary land dispute resolution system

Customary law and traditional dispute resolution mechanisms are crucial in the management of land disputes in Jubaland. Somali customary law, also known as *Xeer*, represents a key instrument to manage conflicts, land disputes included. *Xeer* is constituted by **traditional norms, rules and obligations developed by traditional elders** to govern inter and intra-clan relationships and mediate peaceful relations between Somalia's clans and sub-clans. In Kismayo, for instance, the traditional dispute resolution mechanism composed has at its helm the Guurti Plus Committee, composed of some 60 members from all clans in Kismayo, including majority and minority clans, and more recent additions of women, business and religious leaders.

The Guurti Plus Committee operates through the smaller unit of 10 members and handles all types of land conflicts: boundary problems in urban contexts, conflicts between croppers and pastoralists, contested ownership of plots, land grabbing, etc. A major factor affecting the work of traditional mechanisms in dispute is the manifestation of **clan bias**. To remedy the situation, it is common practice to bring in arbitrators from clans that are involved in the conflict. The **interaction of the traditional dispute resolution system with government institutions** is generally limited to the referencing of cases. The Land Department of the Kismayo Municipality noted that a closer collaboration with traditional structures

is not possible as their *modus operandi* is fundamentally different: the government must follow the laws, while the traditional mechanisms are open to negotiation on all aspects. For instance, in cases where parties fail to agree on ownership of land, the Guurti can simply divide the land into two, and apportion each of the parties a piece. In situations of land grabbing by youth, it is common practice of the Guurti to ask the owner of the land to pay the youths some money to facilitate their disengagement from the conflict.

Traditional dispute resolution mechanisms are currently handling all forms of disputes that involve pastoralists, crop farmers and charcoal producers in Jubaland and, on this basis, clan elders call for more support to such structures, with more involvement and support from the state, to enable customary land structure to better manage disputes and be better able to carry out even technical interventions such as participatory land use planning. As for the formal dispute resolution system, **traditional mechanisms do not document** the efforts made and the impact of their peace building and conflict management work. There is no inventory of cases handled or final verdicts reached.

According to the elders interviewed, the Guurti structure was the only functioning mechanism at the height of the conflict in the absence of a functioning government. Members of the Guurti Plus Committee have extensive knowledge and experience in land disputes resolution. However, the despite the significant role played by the traditional structures in disputes resolution, the public seems to be in favour of the formal structures of government and districts administrations and Jubaland administration to lead on service provision, dispute resolution and local management of resources such as land. There seems to be clear scope for **modernizing and improving the traditional methods** of dispute resolution and for better collaboration between government and the traditional systems of dispute resolution and land governance in general.

2.3.3 Politics of exclusion

Politics of exclusion is an important root cause of land-related conflicts that finds fertile ground in the weaknesses of the land governance and

land administration described above. Jubaland has a long history of politics of exclusion.

Smallholder farmers and rural communities

Without going further back in time, the **land dispossession** carried out under Siad Barre are clear examples of politics of exclusion. The 1975 Land Law that effectively **eradicated customary tenure** and put all lands under state ownership created the conditions for a land registration process that suited best the urban elites and the rural large-scale investors to the disadvantage of broader sectors of the society. The establishment of several large state farms and the widespread practice of **land grabbing by outside speculators** manipulated land registration laws to acquire property rights in the valley. State led land expropriation was characterized by the establishment of parastatal agricultural projects. Three well known state farms are known to have expropriated some of the finest riverine agricultural land in the Lower Jubba.

Smallholder farmers are among the key categories that experienced land dispossession as a result of politics of exclusion. For a long period, the Jubba Valley represented a neglected region until the potential for irrigated agriculture in the area became a focus of the Siad Barre regime. A study on Lower Jubba highlights the interests of **internationally financed commercial and parastatal agriculture** to the detriment of powerless smallholder farmers. Such dispossessions also reflected **clan dynamics**, where the minority Gosh (Bantu) clan became a victim of dispossession by the dominant ethnic majority (Somali) clans.

Minority clans and groups

The politics of exclusion continued following the collapse of the Siad Barre government, when the state authority gradually declined to a point where the **clan substituted government** as the most influential authority among citizens, with very clear disadvantages for minority clans and groups. One factor lying behind the protracted nature of the conflict in Lower Jubba is the complex clan composition of the area. The riverine areas of southern Somalia lack the homogeneity of the northern regions. There is a diversity of oral and material culture and a diverse complexity of social organisation not found among the more homogeneous northern

pastoralists. It is an area where pastoral, agricultural, and coastal traditions meet and create a cosmopolitan culture often described as a melting point.

Unfortunately, however, land governance and land conflict resolution are easier to handle if conflicting parties are from the same clan and as such, individual from minority clans have often been marginalized. The Bantu people (also known as Tima-Jereer or Gosh) are part of the minority clans found along the course of the river Jubba and, alongside other minority groups, have experienced disproportionate suffering as a result of the protracted conflict in Somalia. As the weaker clans with no significant military prowess, minority groups have suffered extreme displacement and threatened land rights. Available literature suggests that minority clans constitute dominant resident in 'IDP settlements'. Also, the perception is that minority clans are sometimes intimidated by the majority clans, forcing them to sell their land at a very cheap price and relocate to rural farming areas. It is also evident that the minority clans living in rural farming areas of Saa Moja in the outskirts of Kismayo town, for instance, are subject to discrimination and mistreatment from the majority clans.

Displaced people

Voluntary and involuntary migration is an entrenched feature of Somali society, and Jubaland is no exception. The involuntary movements caused by war and violence resulted in the monumental problems related to access to land and tenure security of the various categories of displaced people who can be broadly categorized as IDPs, returnees, refugees and migrants. Each of these categories has similarities and differences when it comes to challenges related to access to land and related conflicts, aggravated by poverty and relations with 'host communities', or communities in a position of power. Such movements often also have a rural-to-urban nature: there was and continues to be a significant movement of the population from the rural to urban areas, as poor rural people, due to deteriorating security conditions, have been forced to leave their property and move to urban and other safe areas - including IDP camps - to look for safety, better living conditions and employment opportunity.

Displaced communities or excluded communities?

The narrative of the government and of humanitarian and development organizations in South Central Somalia refers with the generic term of 'IDPs' to a wide category of people that have very diverse displacement backgrounds and often have as the only common characteristic the fact that they are living in substandard 'temporary' settlements (commonly called IDP settlements) and that they are poor.

The study findings corroborate the commonly held view is that people from minority clans (or the less politically powerful groups) dominate the population in IDP camps in Kismayo and have therefore become known as 'IDPs'. Some of the inhabitants of such so called 'IDP settlements' have been living in the area for decades, others have fled from the insecure country side, others have left economically stagnant areas of Jubaland, others are returnees.

This raises the question of what can be legitimately called 'IDP settlement' (presumably a temporary settlement whose inhabitants will likely go back to an area of origin after the situations that have caused the displacement stabilize and normalize) and what should instead be considered a poor and underserved neighbourhood that should be upgraded, serviced and regularized in terms of land tenure.

The study findings seem to indicate that often the so called 'IDPs' are in fact second class citizens discriminated and stripped of their full rights, including land rights, by being considered 'temporary guests' in an area dominated by other clans. This seems caused by the fear of dominant clans that accepting a large number of 'IDPs' (mostly belonging to minority clans) as equal citizens will overturn the current ethnic composition of cities and areas experiencing the highest inflow, putting them at risk during the future election cycles.

A frank review of the concept and practices related to IDPs and IDP settlements should be undertaken by UN agencies and also governments, as it would be possible to address some of the issues of access to land and tenure security through political solutions that guarantee protection of the weaker groups.

Along these lines, Peter del Clercq - Deputy Special Representative of the United Nations Secretary - General (DSRSG) for Somalia stated: "We look at the whole range of issues that will make the IDPs become normal citizens, normal residents of the big cities. But also look at durable solutions where people can return [...] realising that actually many of the IDPs will never go back. Even those that have lost their livelihoods are likely to be integrated into the cities⁵¹"

Internally Displaced Persons (IDPs)

Social, economic and spatial integration of IDPs has largely not been possible in South Central Somalia, Jubaland included, for reasons that may include the fact that they do not have security of tenure for the land on which they are living, that they are of different ethnic or tribal group from the people amongst whom they settled and are **perceived as outsiders**, or because local authorities are prepared to offer them 'temporary sanctuary' but not permanent residency. Minority clans constitute the dominant population in IDP settlements in Kismayo, though members of other clans are present as well. Kismayo is the main location that receives population fleeing the Al-Shabab controlled rural areas, mostly ending up in IDP settlements.

It has been primarily the responsibility of government to provide land and security to allow for the establishment of IDP settlements. In recent times, in response to the crisis, the state through the Ministry of Public Works has allocated land for the returnees, supported by appropriate land ownership rights. However, whereas government owns all unregistered land in the country, **communities have claims** on most of the targeted land. A common trend has been for host communities to make claims on specific parcels of land within the IDP settlements, creating land conflicts. When combined with the already volatile security situation that is left unchecked, minor land issues and disputes have the potential to lead to full-blown conflict that may sparkle at the household level but escalate in the communities along clan lines.

There is little clarity about the status of the land that has been allocated for use by IDP settlements, neither is it clear how the land rights of affected communities have been dealt with. Discussion with JRIAC showed that **no compensation** was paid for all land acquired for the settlement of IDPs and returnees, a situation possibly linked to the fact that IDP settlements were authorized on unregistered land. However, this is potentially inconsistent with the provision of the Constitution which stipulates that compensation is payable if property is legally expropriated, and that affected parties have a right to just, fair and timely compensation. The failure of doing so, fuels land conflicts.

Whereas the lack of law and order is an issue affecting the whole of Jubaland, the situation seems to be more pronounced in IDP settlements. For such reasons there are ongoing discussions to relocate IDP settlements in Kismayo to new sites on a more permanent basis, which will also allow residents to get some land for farming in the proximity of their house.

Further, as a matter of policy and practice, international agencies target IDPs and returning refugees in terms of providing land and shelter inside the IDP settlements. This approach is seen by many respondents as **sidelining the host communities** that are often not much better off than the IDPs, creating grievances and conflicts. Discussions with civil society organizations working with IDPs showed that in response to the perceived discrimination, host communities have been known to penetrate IDP settlements, leading to the swelling-up of population inside the settlements. To some extent, external support interventions in IDP settlements lack close supervision and often fail to capture some of the local-level land conflict dynamics.

Returnees

Jubaland hosts a **large number of Somali returnees** coming from outside the country. The most numerous group is composed by those coming from the Dadaab Refugee Camp in Kenya, the majority of whom end up in Kismayo. More than 44,000 people have been voluntarily repatriated from the Dadaab and Kakuma refugee camps in Kenya to Kismayo from 2014 up to July 2017.⁴ Only in the first four months of 2017, ten thousand returnees have reached the city, and similar has been the number of people displaced into the district directly affected by drought.

It is common for returnees to seek access to land through the markets as they seek to re-establish themselves in the country of origin, also thanks to the reinstallation grants and subsistence allowance that most returnees receive in the first six months after repatriation. In addition, some returnee families receive allowances for the construction of a house or purchase of land, and some have been eligible for vouchers to cover costs of school fees. Returning refugees and other Somali members from

the diaspora often bring with them financial savings aiming at purchasing land for investment.

Yet, with a **mal-functioning land market**, such returnees often buy unregistered land which is prone to contested ownership. Evidence has also shown that a significant proportion of the returnees settle in IDP settlements, which also are at the heart of land-related conflicts between the displaced and the host communities. In such circumstances, pressure on land resources will grow, leading to both increased prices for land while at the same time fueling the illegal land markets transactions. The inflow of returning refugees is therefore a key risk factor contributing land-related conflicts in Kismayo, particularly in peri-urban areas. Another dimension of the land-related conflicts between returnees and host communities is related to their **ethnic composition**. According to ReDSS (2016), such returnees are originally from the Juba Valley largely from the Digil-Mirifle and Bantu minority clans, and hence are not the original inhabitants of Kismayo. Their arrival will probably end up destabilizing the fragile governance equilibrium of the city and trigger a negative response from the dominant clans in Kismayo, especially the Darood.

2.3.4 Capture of state instruments

The protracted conflict in Somalia resulted in the **substitution of the state** by various forms of armed groups in decision making in critical areas such as land governance. Under such situations, political and military power, often expressed through ethnic identities, replaced the state as the centre of decision making. The land dynamics Jubaland are often subject to change depending on who is the victor in the battles.

Changing government regimes have tended to favor their respective clans (or groups), capturing state instruments to advantage of the interests of a particular group. The tendency has been for 'governing clans' to exploit and grab registered or unregistered land, government land, and other open spaces. Any subsequent change in government followed the precedent already set, thereby displacing the defeated clans, effectively occupying the same government land.

Governing regimes normalized land grabbing practices perpetuated by their own clans, while at the same time overturning the gains of the outgoing regimes. Such a situation has contributed to the current problems associated with land conflicts in Kismayo and Jubaland in general. The structural set-up and settlement patterns of the current Kismayo were created out of this particular context, where **clan supremacy and dominance** and the application of such power influenced who settled where at specific points in time. The settlement of the population in Kismayo along clan lines was also born of that historical context of the land conflicts.

2.3.5 Chaotic urbanisation

Last but not least, chaotic urbanisation is one of the important root causes of conflict in Jubaland. This section of the study focuses largely on Kismayo, as other urban centres were inaccessible to the study team.

Conflictual clan dynamics in Kismayo

Kismayo settlement patterns are largely influenced by clan dynamics. For historical, political and security reasons, **people tend to settle in areas where their respective clan constitutes the dominant population**, although this is not a fixed rule and several social processes such as inter-clan marriages have created settlements that are to a certain extent mixed. The dominance of one clan in a particular area ultimately works to strengthen the land rights of that particular clan in the area, while it weakens land rights of minority groups.

Settlements organized along clan lines do not promote the organic integration of communities, and hence overall peace building and conflict management becomes more challenging. **Clan fault-lines**, based on very different narratives about who has claims on the city and seaport revenues, remain the principal danger. Those fault-lines could in the future be successfully exploited, both by disgruntled political figures and by Al Shabaab. In the past a significant level of tactical and tacit collusion has occurred between Al Shabaab and unhappy clan or political leaders over Kismayo.

Inter-clan conflicts are known to be more visible and complex to solve. However, arrangements where clans dominate in specific localities does not translate into conflict-free situations. Further, where land conflicts exist between individuals, in the end they assume a 'clan flavour' as members of society tend to side with and seek the protection of members of their own clan.

Whereas many of the land conflicts are micro in nature, putting mostly individuals or small groups of people against one another, there are higher-level land conflicts that collectively pits one clan against another; the leadership of respective clans, inclusive of elders and political leaders, becomes a key actor in the land conflicts discourse, which creates unhealthy dynamics and further complicates addressing conflicts. The cosmopolitan nature of urban communities world-wide makes the **clan a 'deficient' agent in managing land governance in urban landscapes** and it would be in the interest of sustainability divorcing clan narratives from urban development approaches.

Dysfunctional land registration

Kismayo Town can be divided into 5 main villages. Fanole is made up of the commercial (central business district) and residential land uses and has most of the registered land. All the other areas are predominantly residential areas. Estimates by government officials indicate that Kismayo's land is 70-80% unregistered. As described in Section 2.3.2, the collapse of central government saw the **country losing its land records**, as government and municipal officials fled to the neighbouring countries and further abroad. The current perception is that it is only the former officials that have extensive and reliable knowledge on land records that is 'authentic' when solving historically-based ownerships of land in Kismayo and Jubaland. The narrative is that, in practice, clients normally contact them to verify their land ownership documents and thereafter submit them to the municipality as evidence or proof of land ownership. An analysis of the available land records reveals that they are very old, tend to vary in form and are not sophisticated in terms of accuracy. On the average, the written text provides details of the owner, size of the plot and the identity of the owners of the four neighbouring plots. Some land records do have the property diagrams while others do not provide the same.

Discussions with the Municipality of Kismayo confirmed that the changing

regimes facilitated the issuing of **'false' property documents** to support access to land by members of their own clans, a view point grounded in the lack of legitimacy attached to the land administrations that followed the fall of Siad Barre. In deciding land disputes that involve registered land, the courts are known to seek advice from the Municipality - Land Department, who then scrutinize the property records in question and make appropriate recommendations to the courts. The land records for neighbouring plots are sometimes used to prove the 'rightful' property records as they also describe the ownership details of abutting plots. The categorization of land as 'registered' and 'unregistered' has implications on the type of land disputes and how they are managed. Registered land is affected with land disputes associated with 'fake property documents' and illegal occupation of vacant land. Land disputes on unregistered land concern land grabbing, boundary problems and contested land claims. Most people are settled on unregistered lands which are – according to the old but still recognized as valid legislation – state lands.

However, the **simplified categories** of 'authentic / false' property rights between which the administration has to choose when adjudicating individual properties and 'registered' and 'unregistered' land are **not sufficient** to offer adequate elements for the resolution of land and property disputes in urban areas at the scale and speed required.

The situation emerged is particularly problematic in urban areas, like Kismayo, where the volume of contested land claims is very large. In practice, communities are settled on the land on the basis of different social arrangements, which constitute a particular form of de facto land rights. Communities are settled according to clan lines, primarily for human security purposes. These arrangements provide protection of the rights to occupy land via the agency of the clan.

Grabbed open spaces and vacant land

All or nearly all open spaces and vacant lands in Kismayo have been grabbed or claimed. Field visits to IDP settlements in Kismayo came across situations where members of the host communities would simply claim, for instance, that a particular house in the settlement was located

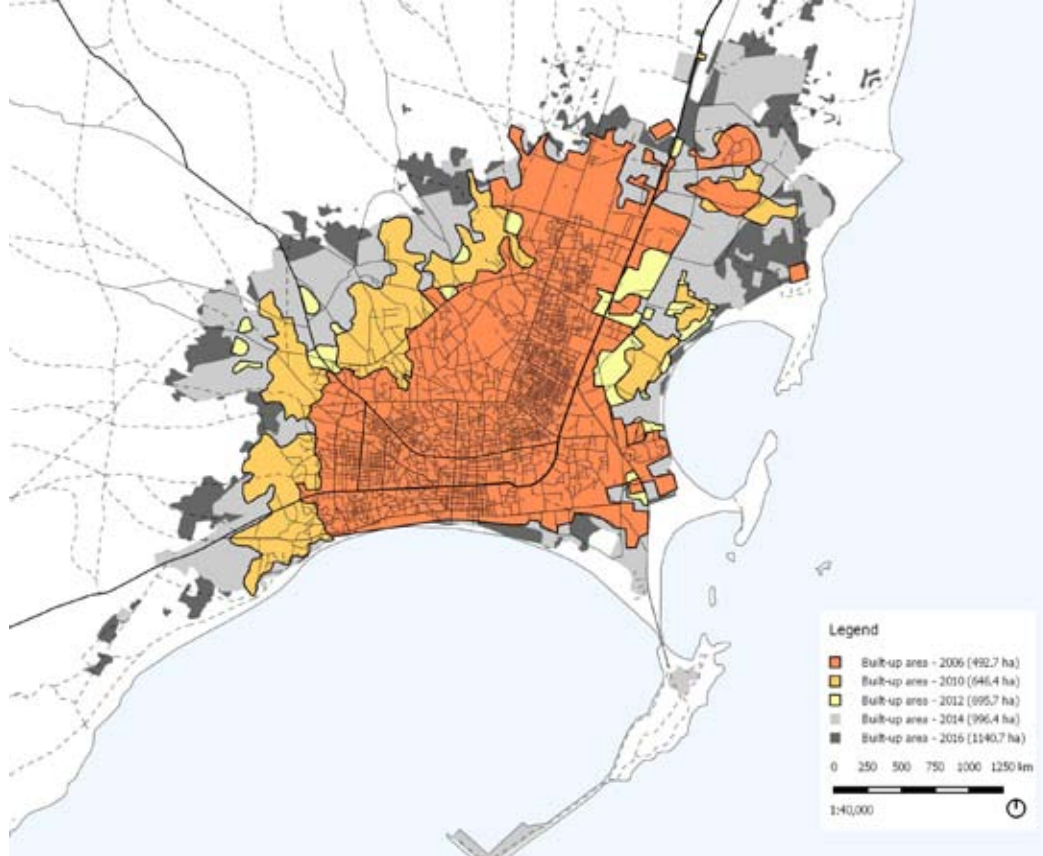
on what used to be one's "former garden." A key point to note is that the use of political and social factors and other forms of making land claims are not mutually exclusive in terms of their application. In practice, the multiple forms of claiming land ownership reinforce one another. Thus for instance, the use of clan relations to claim land ownership can be applied jointly with the construction of land marks. The **occupation of open spaces and vacant land**, whether government or privately owned, represent a very common typology of land conflicts and a direct contestation of the formal land rights system as supported by the legal frameworks. The land governance discourse in Jubaland does not make reference in any way to the payment of compensation for the destruction of improvements on the land or for vacating land 'illegally' occupied. The study came across several examples where demolitions or relocations were ordered at the instruction of government and no compensation was paid.

Pastoralist land use in urban centres

Conflicts between **pastoralists and urban residents** located in peri-urban areas also arise, aggravated by the expansion of urban areas into surrounding rural areas. The unplanned nature of urban expansion is a major contributor to such conflicts. Although some respondents note that pastoralist activities have minimum impact on urban settlements and contribute little to the conflict over land use, extensive evidence of conflicts and tensions between pastoralists and other types of land users exist in urban centres, particularly Kismayo. The practice of **constructing land marks also causes problems with the movement of camels in peri-urban contexts** and at times injuries to the animal, resulting in conflicts between land 'owners' and herders.

Haphazard spatial urban development

Until the 1990s, the city has developed in a quite organized, compact fashion (approx. 160 people/ha), with a good network of roads and public spaces. In the last fifteen years, a dispersed, low-density development has sprawled towards the inlands, characterized by poor roads and services and lack of environmental hazard considerations. According to the Displacement Tracking Matrix, as of June 2017 there are over 100 IDP sites in Kismayo. The sites are grouped into four geographic clusters



across the town, each with its own leader. Such settlements can be categorized into three different groups, based on their physical organisation and land tenure: Older sites are usually small to mid-size unplanned settlement on private land. New site are divided between small, spontaneous settlement on private land, and new large planned sites built by humanitarian agencies on land allocated by the government. Many of such **settlements are developed in unsuitable locations** and lack the necessary services and access to livelihoods. If not area-wide planning is undertaken and such settlements are reconnected and integrated in the city as regular neighbourhoods, they will develop into peri-urban slums.

The need of a strategic spatial development plan is very apparent. **Unregulated urban sprawl will result in increased conflicts over land use** and inefficient urban development, ultimately segregating further the poor, damaging the overall social economic development of the city, and only serve the better-off income group, fostering segregation and conflict. An area-based, multi sectoral approach will complement the traditional humanitarian focus on the affected individuals with a broader lens that considers the whole population of an existing urban system and tries to meet both short-term humanitarian and longer-term development needs of urban populations and their environments.

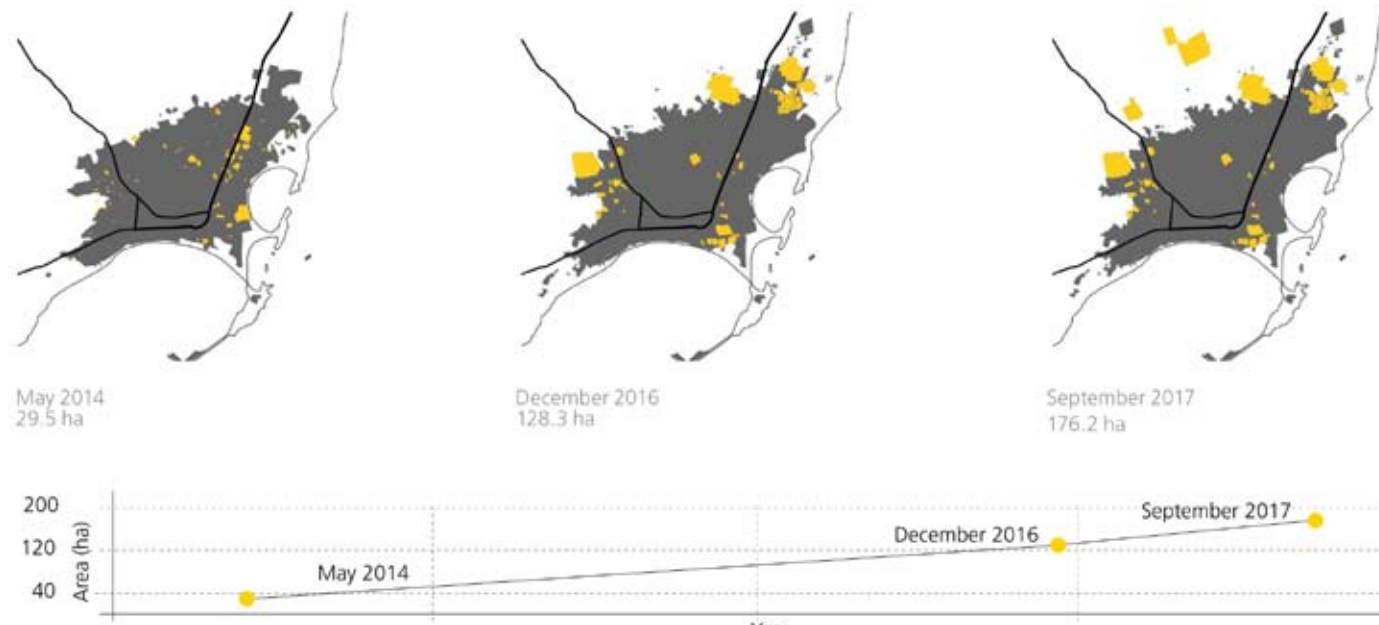


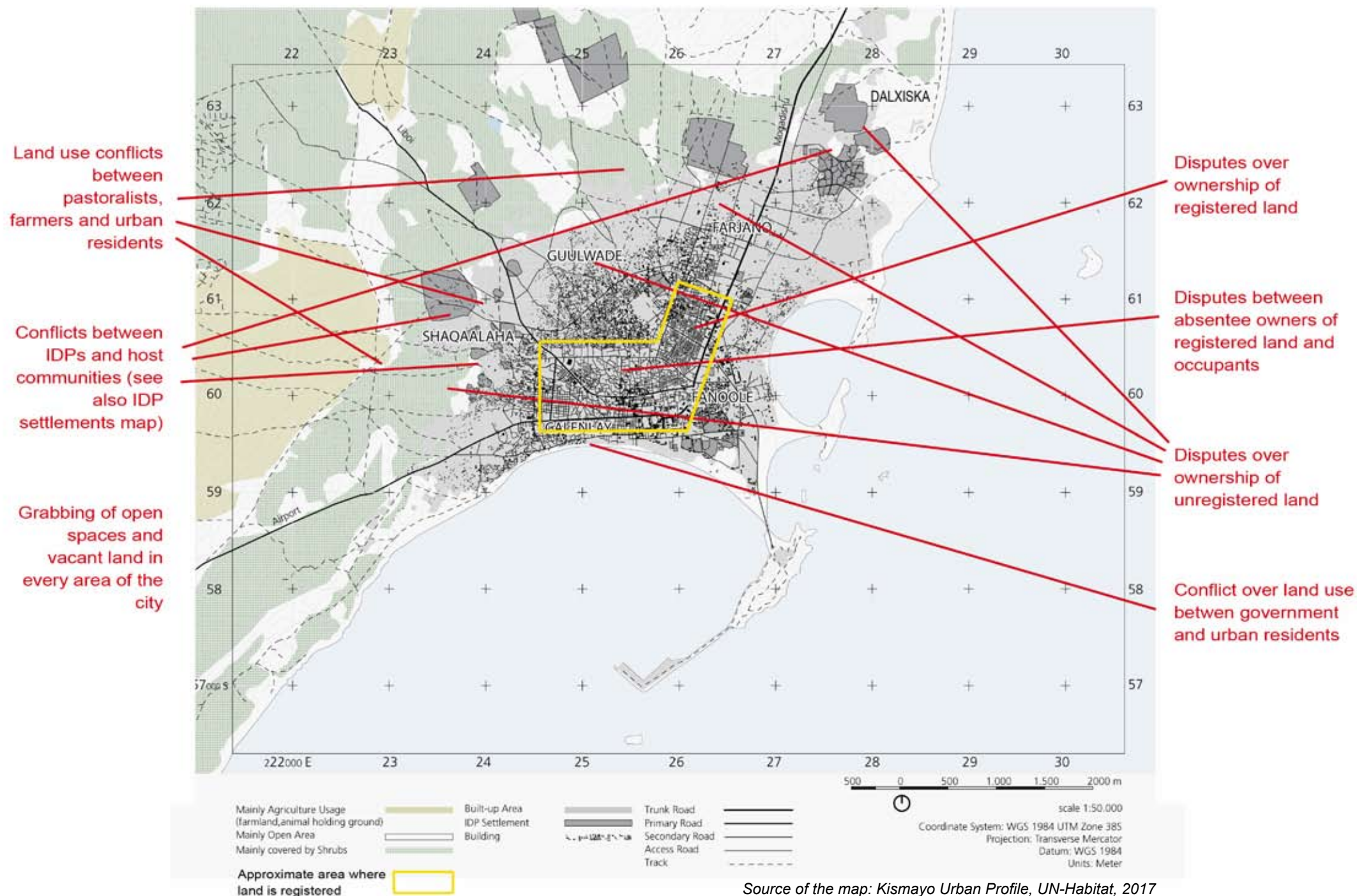
ILLUSTRATION OF LAND-RELATED PROXIMATE FACTORS OF CONFLICT IN KISMAYO

The map above shows the urban sprawl that has taken place in recent years on unregistered land (orange, yellow and grey areas). These areas are affected by conflicts over land ownership / occupation, land grabbing, land use, and forced eviction of vulnerable IDP communities.

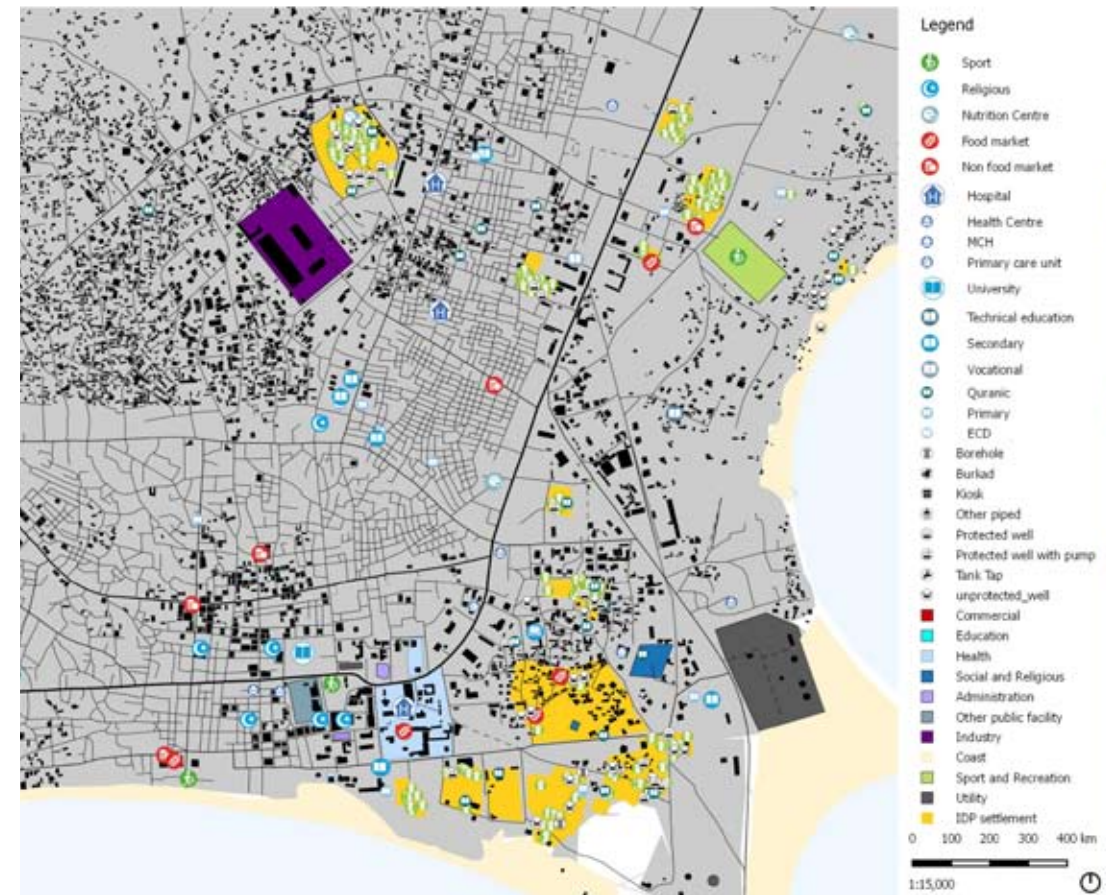
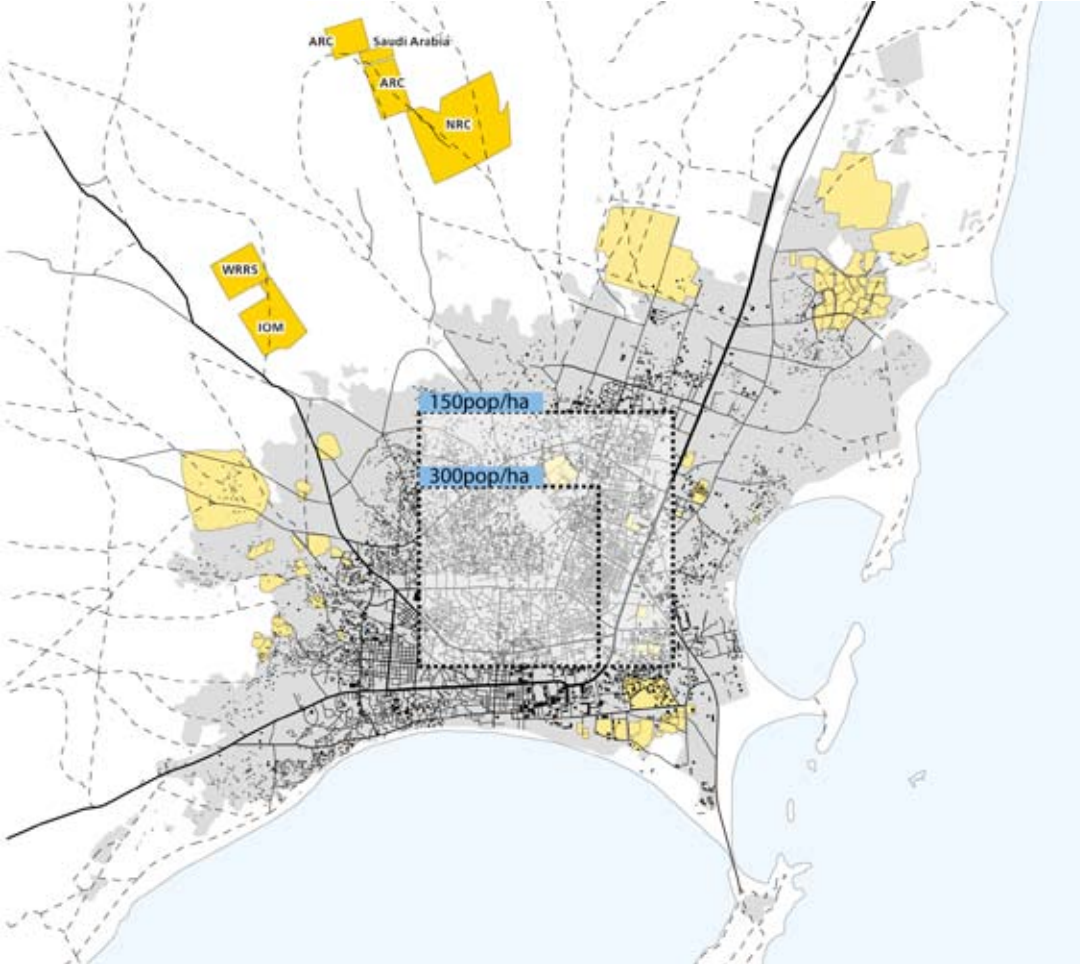
The set of maps below show - in yellow - the mushrooming of segregated IDP settlements. Conflicts in such areas are related to tenure insecurity, frictions with host communities, and forced evictions.

Peri-urban areas are expanding in an unplanned manner on unregistered often grabbed land. This sets the scene for future conflicts, aggravated by the lack of services, facilities and infrastructure.

SCHEMATIC REPRESENTATION OF THE MOST COMMON TIPOLOGIES OF LAND CONFLICTS IN KISMAYO



Source of the map: Kismayo Urban Profile, UN-Habitat, 2017



Top left: Density of urban development in Kismayo

Top right: Detail of peri-urban area where IDP settlements and host communities are settled.

Bottom right: Detail of inner urban area where IDP settlements and host communities are coexisting

Source of the maps: Kismayo Urban Profile, UN-Habitat, 2017

3. RECOMMENDATIONS

The recommendations presented are resulting from the root cause analysis outlined in Chapter 2. Recommendations are intended to guide strategic discussions and interventions by a broad group of actors composed by different levels of government, non-state actors, and development and humanitarian organisations, including the UN. They address different domains, from security to economic development. More information is given on land-related recommendations. Although they are presented by theme, the root causes and related recommendations are interconnected. The implementation of the recommendations needs to be phased into the short, medium and long term horizon; some indications about this are given in the recommendations' narrative.

3.1 Outline of the recommendations

ROOT CAUSES OF CONFLICT	LAND-RELATED PROXIMATE FACTORS	TRIGGERS OF VIOLENT CONFLICTS	RECOMMENDATIONS
ENVIRONMENTAL			
Scarce natural resources including land and water Natural resources exploitation	<ul style="list-style-type: none"> ■ Scarcity of land for pastures; ■ Unrecognized and undefined land rights of pastoralist communities; ■ Environmental degradation; ■ Breakdown of legislative controls governing use and access to natural resources; ■ Increasing inadequacy of Xeer Law and its implementation mechanisms related to use and access to land and water; ■ Private livestock enclosures and exclusion of others from using land perceived as communal; ■ Unsustainable increase of livestock; ■ Destruction of the environment by charcoal production 	<ul style="list-style-type: none"> ■ Droughts; ■ Destruction of farms by livestock; ■ Excessive consumption of water or pasture by a group to the detriment of another; ■ Destruction of grazing land and livestock environment by charcoal producers 	<ul style="list-style-type: none"> ■ Mitigate the impact of droughts, especially in conflict-prone areas; ■ Assess the capacity of the territory and its resources to sustain the main land uses ■ Put in place / strengthen existing regulatory mechanisms to manage the use of land, water and natural resources (and related enforcement mechanisms); ■ Regulate livestock and farming activities and agree on / demarcate migratory routes in a participatory manner; ■ Regulate charcoal production; ■ Strengthen dispute resolution mechanisms;

ROOT CAUSES OF CONFLICT	LAND-RELATED PROXIMATE FACTORS	TRIGGERS OF VIOLENT CONFLICTS	RECOMMENDATIONS
GOVERNANCE-RELATED			
Weak governance	<ul style="list-style-type: none"> ■ Weak institutional governance; ■ Weak land-related institutions lacking legitimacy, with no clear roles or mandate, little capacity and resources ■ Legally pluralistic system (statutory, customary and religious laws); ■ Established common land governance practices that do not follow the laws; ■ Unclear land rights (ownership, customary and use rights); ■ Lack of / limited legitimacy of government administrations dealing with land governance; ■ No adequate policy, legal, administrative and institutional frameworks; 	<ul style="list-style-type: none"> ■ Large inflow of population due to returns, further displacement, migration; ■ Inflow of external capital and interventions requiring large portions of land (for agriculture, humanitarian interventions, infrastructure, etc.); ■ Conflicts over land ownership or land occupation escalate into violence and killings (and potentially assume community / clan dimensions); ■ Elections (or coups); 	<ul style="list-style-type: none"> ■ Strengthen institutions; ■ Develop adequate policy, legal and administrative frameworks; Strengthen and capacitate land institutions (mandate, technical and client-orientation capacity, resources); ■ Harmonize, align and ensure coordination among statutory, traditional and religious institutions, with particular focus on their land governance and dispute resolution functions; ■ Analyse and reform the land rights system and the related land tenure categories, to increase the protection of HLP rights for all;
Weak land administration	<ul style="list-style-type: none"> ■ Majority of land is unregistered; ■ No functioning land registration system and impossibility to acquire land ownership legally; ■ Widespread land grabbing; ■ Highly dysfunctional land markets; ■ Customary land disputes resolution system functioning but with important limitations; ■ Formal land dispute resolution system (courts) partially functioning and only in urban areas; ■ Disconnect between formal and customary land dispute resolution system; 	<ul style="list-style-type: none"> ■ Conflicts over land ownership or land occupation escalate into violence and killings (and potentially assume community / clan dimensions); ■ Forced evictions; ■ Politicization or manipulation of land disputes; ■ Reforms introduced change the power balance of groups and clans; 	<ul style="list-style-type: none"> ■ Revise the land tenure categories and their attributes; ■ Establish fit-for-purpose land administration, including incremental approaches and by improving what is in place; ■ Strengthen dispute resolution mechanisms; ■ Develop the capacities of the different actors involved in land administration and land disputes resolution; ■ Promote coordination, alignment and harmonization among the different laws used;

Politics of exclusion	<ul style="list-style-type: none"> ■ Land dispossession to the detriment of smallholder farmers and weaker rural communities; ■ Marginalisation and blockages in accessing land for minority clans and other minority groups; ■ Exclusion of 'IDP communities' and returnees from accessing the full range of land rights and marginalization in 'IDP settlements'; ■ Spatial, social and economic segregation of vulnerable communities; 	<ul style="list-style-type: none"> ■ Forced eviction of 'IDP households / communities' at the hand of 'host communities' or more powerful groups; ■ Elections or coups; ■ Radicalization and violent extremism; 	<ul style="list-style-type: none"> ■ Ensure that minorities and displaced people are included in the governance systems and their rights are protected; ■ Revise the definition of 'IDP' to better reflect the complexities on the ground and to redefine the HLP rights of marginalised communities; ■ Prevent and address the segregation of vulnerable communities;
Capture of state instruments	<ul style="list-style-type: none"> ■ Armed and terrorist groups take up government's functions; ■ Clans or groups capture state instruments to the advantage of their particular group; 	<ul style="list-style-type: none"> ■ Confrontations escalate into violent conflicts; 	<ul style="list-style-type: none"> ■ Increase the legitimacy and capacity of state institutions; ■ Combat armed and terrorist groups;
Chaotic urbanisation	<ul style="list-style-type: none"> ■ Dysfunctional land registration; ■ Contested land claims on a large scale; ■ Grabbed open spaces and vacant land; ■ Conflictual land dynamics render urban land management and dispute resolution challenging; ■ Land use conflicts between pastoralists and urban residents; ■ Haphazard spatial urban development; ■ Urban expansion taking place in an unserved and unsustainable manner, including in unsuitable land; ■ Spatial, social and economic segregation of vulnerable ('IDP communities') 	<ul style="list-style-type: none"> ■ Conflicts over land ownership, occupation, use or land grabbing escalate into violence and killings and potentially assume community / clan dimensions; ■ Spatial, social and economic segregation leads to social unrest, violent demonstrations or attacks to individuals, groups or institutions; ■ Radicalization and violent extremism; 	<ul style="list-style-type: none"> ■ Establish fit-for-purpose land administration; ■ Plan city growth and extension to address current and future problems (lack of services, spatial and socio-economic segregation, unsustainable land use, etc.); ■ Promote compact and integrated urban development that features mix land use and mixed social composition; ■ Ensure that land markets are well regulated and functioning; ■ Strengthen dispute resolution mechanisms; ■ Combat land grabbing;

ROOT CAUSES OF CONFLICT	LAND-RELATED PROXIMATE FACTORS	TRIGGERS OF VIOLENT CONFLICTS	RECOMMENDATIONS
SOCIO-ECONOMIC			
Population growth	<ul style="list-style-type: none"> ■ Youth bulge without secure land rights; ■ Landless poor and minorities; ■ Return of refugee and displaced families to areas of origin or alternative locations; 	<ul style="list-style-type: none"> ■ Migration and displacement to areas already occupied by other groups; ■ Famine; 	<ul style="list-style-type: none"> ■ Improve youth's access to land and livelihood; ■ Provide suitable land and tenure security for refugees, displaced population and landless poor; ■ Make area-wide spatial plans to accommodate population growth and their land needs; ■ Put in place strategies aiming at a sustainable and adequately distributed population growth;
Poverty	<ul style="list-style-type: none"> ■ Inadequate housing and basic services; ■ Mushrooming of underserved neighbourhoods (IDP settlements); ■ Discrimination against the poor with regard to access to land and housing; ■ Food insecurity as result of limited access to land for farming and livelihood; 	<ul style="list-style-type: none"> ■ Diseases' outbreaks; ■ Forced evictions or exclusion of the poor from urban or rural land; ■ Grabbing of land on which the poor is settled by powerful groups or individuals; ■ Social unrest; ■ Poor forced to join criminal / terrorist groups to earn a living; 	<ul style="list-style-type: none"> ■ Promote sustainable economic growth and employment; ■ Combat land grabbing and exclusion of the poor from the land; ■ Monitor and prevent forced evictions; ■ Plan for adequate human settlements both in rural and urban areas (healthy, close to livelihood opportunities, accessible to all, etc.)
Criminality and terrorism	<ul style="list-style-type: none"> ■ Illicit activities (illegal migration, human trafficking, trade of arms and drugs) linked to a particular land use (pastoralism); ■ Revenues from land and natural resources used to fuel terrorist groups; ■ Parallel land management and dispute resolution system run by terrorist groups as a way to claim legitimacy; ■ Land grabbing by organized criminals; 	<ul style="list-style-type: none"> ■ Escalation of land use conflicts because of high arm prevalence; ■ Terrorist groups acquire the necessary resources and support to challenge and attack state institutions or opposing groups; ■ Confrontation around land grabbing leads to violent conflicts that may escalate along clan lines; 	<ul style="list-style-type: none"> ■ Combat criminal and terrorist groups; ■ Disarmament of groups involved in illicit activities; ■ Develop the capacities of state institutions and traditional structures for dealing with land management and dispute resolution (mandate, technical knowledge, resources, etc.); ■ Combat land grabbing;
Exploitative or unregulated investment	<ul style="list-style-type: none"> ■ Illegal or irregular land acquisitions; ■ Land grabbing; ■ Corruption of land professionals and institutions dealing with land; ■ Increased pressure on valuable land; ■ Disproportionate pressure put on land by the lack of banking and alternative investment systems; ■ Lack of protection for land owners and occupants; 	<ul style="list-style-type: none"> ■ Forced evictions; ■ Investors acquiring land to the detriment of vulnerable people; ■ Very visible inequalities in terms of land access; ■ Corruption results in land-related decision widely considered as unjust; 	<ul style="list-style-type: none"> ■ Combat land grabbing and forced evictions; ■ Promote transparency in land transactions / combat corruption; ■ Ensure that land can be legally transacted; ■ Put in place fit-for-purpose land administration and land governance systems; ■ Protect vulnerable communities from eviction; ■ Develop the banking system

3.2 Further information on key land-related recommendations

3.2.1 Reconceptualize the fundamentals

If Jubaland wants to ensure that its land and land-based resources become drivers of social and economic development and foster peace rather than conflicts, there is the need of **reconceptualizing the way the land rights system is set up** (who is entitled to what, where) and what are the related land tenure categories. Several countries in Africa and beyond went through such process, embracing the concept of the **continuum of land rights**.

Two main types of land tenure are currently recognized: public land and individually registered land. The continuum of land rights, instead, is an inclusive concept that recognizes the existence and validity of a range of types of land rights (rights of use, occupancy, lease, ownership,...), qualities of rights (formal, informal, customary, short or long duration) and rights holders (individuals, groups, clans, urban communities...). The continuum of land rights approach advocates for the **identification and progressive strengthening of the range of appropriate and legitimate land tenure arrangements** existing in a specific context as the most effective, scalable and time efficient way to improve access to land for all in a relatively short time frame. The rights so identified, can be progressively upgraded over time, through incremental approaches.

Land tenure arrangements in Jubaland are frequently described in opposing terms: legal/illegal, registered / unregistered, by law/by practice (de jure/de facto). However in practice a wide and complex spectrum of tenure categories exists between these extremities, in a 'continuum'. Registered individual ownership can be seen as one of the appropriate and legitimate land tenure categories, each of which has its advantages and disadvantages.

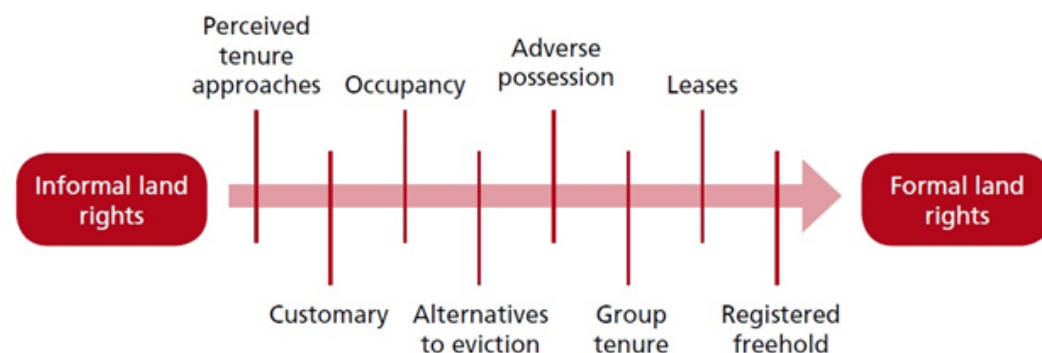
In the context of Jubaland, registered individual land rights are considered the most secure type of land tenure. However, who wants to secure such type or rights needs to go through lengthy and costly procedures. While this might be appropriate for urban centres, where competition over land

is high, it cannot be implemented at scale in rural areas, where probably clear and well documented group rights would be a better option.

The most appropriate form of land rights' recognition depends on context, on what best suit the social, cultural and economic needs of local communities, what are the existing capacities of recognizing and managing such rights and the requirements of the land administration authorities.

It is recommended that Somalia and Jubaland authorities – formal and traditional - go through such reflections through a **participatory approach** that involves all key stakeholders. This will lead to the identification of the most common types of land tenure. This will form the basis of the decisions about which ones should be recognized and regulated by the policy, legal and institutional frameworks. The **attributes** of each type of tenure should be defined: who can access it (e.g. all Somalis, some groups of Somalis only, Somalis and foreigners, etc.), under which conditions, for how long, what rights and responsibilities are associated with it, which institutions administer it, etc.

Diagrammatic representation of the continuum of land rights (global model)



The continuum of land rights has been widely embraced by global, regional and national institutions and organisations, even if at times presented with different wording. Key resources on the continuum of land rights have been developed by the Global Land Tool Network.

3.2.2 Policy, legal and administrative frameworks

On the basis of the decisions taken on what described in Section 3.2.1, **adequate policy, legal and administrative frameworks need to be developed.**

The absence of clear land policy and legal frameworks in Jubaland is fomenting conflicts. However, to be effective, such frameworks need to be based on and aligned with policies and laws established at the federal level, which has time and sequencing implications. How federal land governance frameworks and institutions should interact with the Jubaland's ones is not yet clear, but it is hoped that the federal constitutional review underway will address issues of subsidiarity and accountability.

Hooked in the constitutions – federal and Jubaland's – a comprehensive **land policy** for the State of Jubaland will have to be developed in due time and then translated into appropriate legislation that addresses in an incremental way the core land issues identified in this report: land use management, physical planning, land administration, land disputes' resolution, land rights of all, including those of minority groups, youth, women and displaced people (IDPs, returnees, refugees, migrants,...) and the landless. The policy will have to address both rural and urban areas (or separate policies will have to be developed) and technical as well as human rights challenges.

Such process will require time and it is important that **adequate time and resources** are allocated to it. The existing GLTN tool on land policy development⁶⁹ could assist such process and learning exchanges with countries that have been undergoing similar exercises in comparable contexts could take place. In the meantime, other **short and medium-term interventions both at the state level and at local levels** can be established, in preparation for the policy and legal reforms to take place and to address immediate needs. Some of these interventions are listed in the sections below.

Dealing with the legal pluralism

Constitutions, policies and laws will have to define how Jubaland will deal with the prevailing legal pluralism. The roles, duties and responsibilities of traditional land governance and dispute resolution mechanisms will have to be assessed, appreciated, deliberated on in a participatory and inclusive manner, and clarified.

The **various institutions and legal frameworks** (statutory, Xeer, religious) have different outreach in different areas of the country (e.g. rural versus urban areas, different regions, different issues, etc.); they are better understood by some parts of the society and less by others (e.g. communities, women, judges, traditional decision makers, etc.), and have different levels of enforcement (depending on their set up, level of understanding by the public, perceived legitimacy, and other context specific factors).

In an ideal context, where policies and legislation are in place and institutions are fully functioning, statutory laws would be optimally placed to regulate access, use and control over land. This is not yet the case of Jubaland. Laws alone – even if they were in place – would not be sufficient to govern the different land issues in an effective manner. The effectiveness of laws depends on the awareness about them, the presence of implementation mechanisms, the ability of people to invoke them, and to what extent cultural norms and traditions are practiced instead of the statutory laws. In many areas of Jubaland state institutions, including the judiciary, have a weak presence beyond urban centres⁷⁰.

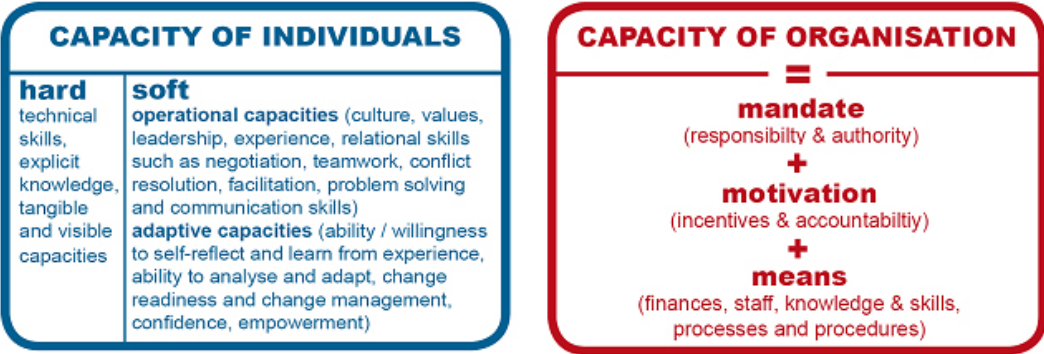
For this reason, it is important to take into account what traditional / customary and religious laws and practices are in place in Jubaland and how they impact decisions made on land. **A (progressive) harmonization and alignment of the different systems should be promoted**, to ensure that – through different institutions and interventions – the overall objectives of the Jubaland administration are achieved. Specific aspects of the different frameworks might have to

be adjusted, corrected or minimized and considerations about gender equality and minorities’ rights should be promoted.

The Jubaland’s State should **clarify how the statutory, religious and customary mechanisms relate and interface with each other** to avoid jurisdictional confusion and forum shopping in terms of dispute resolution, law application and enforcement. Although there are some cases where people benefit from a general flexibility in the discretionary application of different sources of law depending on the need, it is overall found that citizens – women and vulnerable ones in particular - often lose out in their rights to land in context where there is little clarity on the existing rules and regulations and their application. Ambiguities created by the legal pluralism often open the door for the accommodation of the stronger groups of the society, either the elites, the predominant ethnic or religious groups, or the supporters of a patriarchal model of society.

3.2.3 Strengthen land institutions

Federalism, as the basis of Somalia’s governance structure was enshrined in the 2004 Transitional Charter and the constitution of the Transitional Federal Government created in 2004 and dissolved in 2012. The Jubaland Provisional Constitution recognizes that the Jubaland State is a member state of the Federal Government of Somalia and the political governance model under implementation in the state of Jubaland is



an extension of the federal level, power-sharing deal within Somalia. Beyond that, it is not very clear how the **nexus between Jubaland and Federal Government** is expected to function and how this will impact the respective institutions. To strengthen land institutions in Jubaland, it will be important to **clarify this relationship**, develop their **capacities** and **harmonize, align and ensure coordination among statutory, traditional and religious institutions**, with particular focus on their land governance functions.

The issue of **mandates, clarity of responsibilities** and functionality are not yet there. In general, there is need for more internal open debate and external support for land institutions in Jubaland, to ensure that they acquire the legitimacy they will need to adequately service their country. Capacity development and **resources** also need to be mobilised internally and externally in support of the land institutions and their personnel. Some of the areas identified for development are training on ‘hard’ and ‘soft’ skills, documentation of the work done, exposure to best practices, and propension to listening and embrace alternative views on specific topics.

Large tracts of lands are managed by clan elders; the current scenario seems to indicate that such system will be the only viable one in the short to medium term, particularly in rural areas. The **mandate of traditional authorities should be clarified**, their practices assessed and improved, their **interactions with statutory authorities clarified and formalized**. Capacities of traditional land administrators should be developed.

The Jubaland Land Use and Dispute Resolution Commission

It has been mentioned that efforts towards the establishment of the Jubaland Land Use and Dispute Resolution Commission have started. It is important that such initiative is handled carefully to avoid a scenario where the Commission fails to deliver on its mandate, causing further conflicts and mistrust in the Jubaland administration.

The **mandate** of the Land Commission needs to be carefully designed

taking into consideration the timeframe of the constitutional reviews and the policy and legal reforms. Its mandate can be defined as **incremental**, with functions that change in the years ahead on the basis of the progress on these other important and complementary areas and periodic reviews. The Jubaland administration needs to be crafty in assessing what can be delivered by the Commission in the current context, and what will only be possible once the different frameworks have been setup and the situation has stabilized.

The role and mandate of the Land Use and Dispute Resolution Commission need to be defined so that its **functions do not compete or conflict with those of other existing ministries** or other land governance bodies, which will result in an institutional conflict and further paralysis. The **collaboration and coordination between the Commission and the traditional structures** of land management and disputes resolution will be crucial for success and create a solid base for the way ahead.

3.2.4 Manage the use of natural resources

Environmental causes are often at the basis of land-related conflict in Jubaland. Conflict prevention and peacebuilding initiatives must address such dynamics in the medium-to-long term, while mitigation and conflict resolution measures need to be put in place in the short term. As multiple conflicting land uses are unavoidable in the short-to-medium term, regulatory mechanisms to mechanism to manage the use of land, water and natural resources need to be put in place or strengthened.

Livestock activities, charcoal production and farming activities need to be regulated, to ensure a balanced access to land and land-related resources by the communities that entertain such activities, on the basis of an analysis of the capacity of the territory to sustain such activities, to avoid depleting the region's natural resources and fostering future conflicts. Enforcement mechanisms should accompany the regulatory aspects.

Whereas the movement of cattle is at the direction of the cattle owners,

there is place for technical interventions to facilitate such movements in a peaceful way. Examples of such **technical interventions** include the demarcation of livestock migratory routes (already being successfully implemented in similar context such as Sudan), management of grazing and crop farming through **land use planning** and appropriate **regulations, and renegotiation** and renewed definition of the rules to share land and natural resources between different land users. State authorities and, especially, traditional authorities have a key role to play in such negotiations and their **enforcement**. While such initiatives should be progressively be scaled up to cover the whole of Jubaland, local areas interventions can be established in locations that are particularly prone to conflicts.

3.2.5 Strengthen dispute resolution mechanisms

The conflicts can be classified into categories of high-profile, politically sensitive land conflicts and low-profile land conflicts. Low-profile land conflicts occur between individuals, are localized and have no potential of undermining general peace and stability. High-profile land conflicts have high-stakes, pitting groups of people or clans against others and have the potential to escalate and threaten lives, peace and stability.

Dealing with the whole domain of land conflicts requires multiple interventions, starting from policy and legislative development, institution-building, land use planning, land administration, political negotiations, law enforcement, etc. Such interventions reinforce each other and combined are implemented in the short, medium and long term.

A key element underpinning the success of the above-mentioned interventions is a functioning dispute resolution system, composed by well-coordinated justice administration institutions (formal, traditional and religious) that refer to a unified or harmonized body of law, and staffed with well trained personnel.

Coherence needs to be brought to the statutory, religious and customary systems of dispute resolution in Jubaland. Legal procedures need to be streamlined so that they cannot be manipulated to exclude

weak individuals or groups. A hierarchy between the different dispute resolutions mechanisms needs to be established and the way they interface with each other needs to be clarified. **Checks and balances** need to be put in place to rigorously assess the validity, strengths and weaknesses of traditional and religious dispute resolution mechanisms, so that measures for improvement can be put in place. Traditional and religious mechanisms should not perpetrate and legitimizes costumes that are against the law and discriminatory towards women and other vulnerable groups.

Working on aligning and rendering more effective different dispute resolution systems, however, should not divert attention and funding from **strengthening the formal court system**, which should remain the overarching mechanism. The necessary human, financial, legal, and technical resources have to be availed to put the justice mechanisms in the condition of doing so. The work of other mechanisms should rather feed and complement it in areas where the state institutions are still too weak to arrive.

A **comprehensive range of interventions** have to accompany formal and non-formal courts, including accessible and affordable legal aid, legal information and counselling, legal assistance, representation and mediation⁷⁴, etc. Legal accessibility needs to be improved through the simplification and popularization of laws and decrees, and vulnerable people need to be supported in accessing justice. Different types of practical support needs to be provided to women in their access to justice.

Capacity development of justice administrators

Legal professionals such as judges, prosecutors and lawyers and religious and customary justice authorities must be **trained** on key aspects related to their profession, including dealing with specific land issues, gender and human rights. The dissemination of good examples of previous land cases that were deliberated in accordance to the different constitutional, policy and legal provisions – once they will be in place – would be a useful avenue to improve the capacity of the different justice administrators in dealing with complex land issues. In particular, the study found that **traditional practices of managing and negotiating the sharing of**

pastures are no longer as effective as they used to be and need further analysis, rethinking and reinforcement.

3.2.6 Fit-for-purpose land administration

Jubaland remains embroiled in a protracted conflict; most land is held under informal land rights and it is not realistic to expect that formal land administration in its current state of disarray can protect land rights. The answers to contested land tenure problems and contested land claims may not lie in the formal land administration system in the interim period. Jubaland needs to **shift towards a system where land rights are managed along the continuum of land rights** by a range of stakeholders with clear rules and regulations. This includes statutory and traditional authorities and communities themselves, especially in rural areas.

As described in Section 2.3.2, the conventional land administration has failed. After the **revision of fundamentals**, highlighted in Section 3.2.1. which will create the basis for action, a fit for purpose land administration system needs to be designed, piloted and implemented. Particular focus needs to be put on the **land records system**, design, set up of the offices and functions and identification and training of the personnel.

In Jubaland, most of the land conflicts are happening on unregistered land, it being the majority of the land and widely affected by land grabbing. Yet, there are also conflicts on registered land, consequence of contested land records, boundary problems and other challenges associated with land administration's failure. Jubaland needs support in the implementation of a simplified land registration system that is cost effective, quickly implementable with the resources and capacities available, but good to ensure peace and stability in society.

Appropriate, **low-cost, fit-for-purpose land registration models** applied in other comparable contexts exist that can be used in constructing land records in conflict and post-conflict situations. UN-Habitat's Land and GLTN Unit, in collaboration with key partners, has developed and tested over the years approaches that can help addressing land administration issues in scenarios comparable to Jubaland. These

are the Fit-for-Purpose Land Administration and the continuum of land rights approaches and the **Social Tenure Domain Model (STDM)**. The STDM is a flexible and easy to manage alternative to the formal cadaster that benefits from modern mapping technologies and open source platforms; it can be operated by communities, with minimum support and supervision from technical personnel and can be easily integrated into local administrative frameworks.

The **key land administration functions** needed in the short / medium term need to be identified and the possible available options need to be assessed, so that a concrete and feasible proposal for the way forward can be formulated by the Jubaland administration with the technical support of specialized UN agencies and other key actors. The selected fit-for-purpose land administration approaches could then be implemented on a pilot basis, to assess its suitability to delivering against the identified needs.

Once a Fit-for-Purpose land administration system is established, a systematic **verification of the existing records** should be put in place in collaboration between the Jubaland administrations at different levels and the federal government. As the magnitude of the task is daunting, alignment of external partners such as development and humanitarian actors is necessary. Often in such contexts, several pilot projects using different approaches and tools are being implemented, undermining the scope itself of the interventions. Adequate, sustainable and predictable funding needs to be made available for such intervention.

A simple data base that captures who owns what land in the government controlled areas, including IDP camps could be developed.

To ensure that land markets are normalized and well-functioning, however, the establishment of a functioning land registration system is not sufficient. **Area plans and urban plans** need to be developed determining which areas can be subdivided and legally allocated for development. Simple norms regulating the amount of plots that can be owned by the same individual in the same location might be put in place as well as basic principles regulating the use of the land.

3.2.7 Area-wide spatial plans and planned urban growth

Area-wide spatial plans to manage land use, accommodate population growth and address their land needs will have to be put in place in the medium-to-long term, starting with the most conflict-prone communities (see analysis maps in this report). At a **smaller scale, plans** for adequate human settlements both in rural and urban areas needs to be made, to ensure that neighbourhoods promote spatial, social and economic integration, are close to livelihood opportunities and accessible, are not established in areas facing natural hazards, etc. The **segregation of vulnerable communities needs to be addressed** and prevented.

The fit for purpose land administration

The Fit-for-purpose (FFP) approach provides a new, innovative and pragmatic solution to land administration focused on developing countries, where current land administration solutions are not delivering. The solution is directly aligned with country specific needs, is affordable, is flexible to accommodate different types of land tenure, and can be upgraded when economic opportunities or social requirements arise.

The FFP approach includes three fundamental characteristics. Firstly, there is a focus on the purpose before designing the means to be most “fit” for achieving it; secondly, the FFP approach requires flexibility in designing the means to meet the current constraints; and thirdly, it emphasises the perspective of incremental improvement to provide continuity.

There are three interrelated and mutually reinforcing core frameworks that work together to deliver the FFP approach: the spatial, the legal, and the institutional frameworks. It also highlights four key principles for each of the three frameworks that need to be established, facilitated and implemented. Each of the frameworks must be sufficiently flexible to accommodate the specific needs and context of the country.

Source: “Fit-for-purpose land administration: guiding principles for country implementation”, GLTN, UN-Habitat and Kadaster International Netherlands, 2017

Compact and serviced urban extensions have to be promoted to address current and future problems (lack of services, segregation, unsustainable land use, etc.). **Mixed land use** and mixed social composition needs to be promoted. Settlement patterns of populations in towns are largely based on clan relationships, inhibiting sufficient and organic integration of the urban residents and adding a layer of complexity that will be difficult for local authorities to manage. Under such conditions, mobilization of citizens based on clan affiliations is a risk that needs to be prevented, as it can lead to the quick spread of arising conflicts along clan lines. Urban societies world-wide are cosmopolitan in nature, and hence maintaining a rigid settlement pattern whose form is dictated by clan-based interests and parameters is as inappropriate as dangerous.

3.2.8 Combat land grabbing and forced evictions

From a political economy perspective, land grabbing is deeply rooted in power dynamics of the society. The enabling factors of land grabbing can be found amongst clan structures, common business practices, disproportionate power in the hands of former fighters and other influential personalities in the government or other sectors, wide availability of weapons in the hands of criminal elements of society, and overall absence of rule of law. Land grabbing is also based on the complete failure of the formal land administration system, which makes it impossible for people to access land legally. It will take time for appropriate physical planning and development control functions of local authorities to evolve. Meanwhile, interim measures should be put in place to **contain the situation** with regard to land grabbing, including the issuing of a moratorium on the construction of land marks and the enforcement of prevention measures.

3.2.9 Provide suitable land and tenure security for refugees, displaced population, and landless poor

It is clear that one of the most burning issues to be addressed is the provision of tenure security to the different categories of displaced

people: IDPs, returnees and refugees, with the important addition of the landless poor. As recommended in section 3.2.1, the starting point would be the reconceptualization and definition of the characteristics of these different categories of displaced people and the type of land rights that they can access. To adequately address their needs, a **multifaceted approach** is required: the development of constitutional, policy and legal frameworks; the reform of the land administration system; the development of inclusive spatial / urban plans, etc. These issues have been addressed in the section above.

While long term interventions are worked on, a set of **transitional measures** have to be put in place, to address the short term needs of the displaced in terms of land for housing and livelihood (e.g. small scale farming or workshops, keeping some animals, etc.). **Suitable areas for temporary or permanent settlement** need to be identified and the related tenure security documents need to be developed. The latter can be at the household or at the community level and have to define their tenure rights in to the land, which can be **full ownership, or lease / tenancy agreements** with private landlords or the government, if on public land. To be sustainable, such measures need to clarify rights and duties of the parties, the type of land uses that are allowed and the timeframe of the agreement, to ensure that common understanding is fostered.

Further tenure options can be explored and encouraged. **Individual rental agreements** between displaced households and host community could be regulated and incentivized. Jubaland institutions could develop model rental agreements that can be utilized to formalize tenancy-landlords relationships and define rights and obligations; such contracts could be also registered with the government's institutions to give an additional layer of protection to both signatories.

The **local integration** of families that would like to opt for such options should be encouraged, especially in the case of IDPs and returnees who are Jubaland citizens. For those who are able and willing to go back to their homes, support should be provided.

3.2.10 Improve youth and women's access to land and livelihood

Youth and women are two categories that deserve particular attention. Youth's land needs have to be identified and youth need to be part of decision-making processes that involve access to land and housing. The study did not focus sufficiently on this topic to give detailed recommendations on this regard, but the exclusion of youth from livelihood opportunities and decision-making processes has proven to be a dangerous way to go, especially in a context like Jubaland where risks of violent extremism are very high.

Women's access to land, housing and livelihood also needs to be the specifically addressed. While the study highlighted that women who have access to resources are empowered enough to have tenure security, displaced women, women heads of household, illiterate and disable women are key vulnerable categories that deserve particular attention. Legal and administrative blockages that prevent the women from renting land or housing should be removed and specific targeted support for women should be put in place. This can include: establishing information and support centres to help women identify the best way to access land and housing; supporting the issuing of civil documentation, when they do not have (identity cards, marriage certificates, etc.); supporting women in accessing justice; and monitoring and ensuring that land and HLP processes do not discriminate against women.

3.3 The role of the UN system

The Federal Government and the Jubaland governments will have a lot of work ahead to ensure that land issues are addressed in a way to meaningfully contribute to the peace and stabilization process and to re-establish the trust between the citizens and the state. Civil society and private sector will be equally crucial for the establishment of a functioning land sector.

The UN system will also have a crucial role to play if it intends to meaningfully contribute to the conflict preventions and resolution and to the peacebuilding process in Jubaland. With this study – which complements other research on similar or related topics – the key issues

have been identified. Consultations on the emerging findings have been undertaken in the process of the development of the study, but now the recommendations will have to be tabled and discussed with key stakeholders, including the government, to refine them, identify which are most pressing and to **develop a consolidated road map** for land interventions.

Few rounds of internal UN consultations with key UN agencies active in Jubaland will be required, to define a **common vision** for the way forward and to prioritize the few priority actions to be taken forward. Alignment and coordination will be crucial.

Assistance to Jubaland institutions will be necessary on different fronts: **capacity development; fostering discussions and negotiations on key topics; technical assistance for the identification of key approaches and tools that would be needed; support the implementation of catalytic activities** that would start putting the land reforms in motion.

Engagement in strengthening the **dispute resolution system, area / urban planning, reform of the land administration system, land use planning commission** in selected priority areas and capacity development for government institutions, including the land commission, seem the best entry points for joint UN action in the coming two to three years, while the institutional arrangements get settled and more comprehensive interventions can be planned. Support in the **reform of the legislation and assistance to the temporary or permanent settlements** of the displaced will remain focus area of work for both humanitarian and development UN agencies.