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# Responses to Information Requests

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11 September 2020

### SOM200234.E

Somalia: Requirements and procedures for land transfers, including timelines and whether the title is verified through a lawyer; documents required and issued for a land transfer; average price of land (2018–August 2020)

Research Directorate, Immigration and Refugee Board of Canada

## 1. Overview

Article 26(1) of the *Provisional Constitution* of the Federal Republic of Somalia provides the following: "Every person has the right to own, use, enjoy, sell, and transfer property" (Somalia 2012). In correspondence with the Research Directorate, a senior research associate of One Earth Future (OEF), a US-based "private operating foundation" which "incubates programs designed to foster sustainable peace" including "connecting Somali businesses to lenders abroad" (OEF n.d.), indicates that property rights are governed by a combination of legal systems including *Xeer* (customary) law, Sharia law and secular law (Senior Research Associate 15 June 2020). The US Department of State's *2019 Investment Climate Statements* similarly state that land management systems include "customary rules and traditions used by Somalia's clan-based society, Western[-]style laws from the periods of colonization by the

Italian and British, remnants of the authoritarian rule of the Barre regime, and Islamic law and tradition" (US 11 July 2019, Sec. 5). Sources describe the land tenure systems as "complex" (US 11 July 2019, Sec. 5; IGAD 17 July 2018, 6). The Senior Research Associate stated that property ownership is further complicated by the "noticeable differences" in the interpretation and application of these laws between rural and urban lands, as well as between the northern and southern regions of the Somali Peninsula (Senior Research Associate 15 June 2020).

The Senior Research Associate indicated that "the multiplicity of forms of tenure and methods of transfer creates a great deal of confusion, adds cost, promotes legal uncertainty and hamper[s] the development of an efficient one-stop shop registry system" (Senior Research Associate 15 June 2020). A report on land governance in Somalia by the Intergovernmental Authority on Development (IGAD) [1] in Eastern Africa indicates that the different legal regimes governing land and property have been "a source of confusion" when operating along with the different types of land tenure (IGAD 17 July 2018, 11). A report on land dispute resolution in Mogadishu by the Expanding Access to Justice Program in Somalia (EAJ) [2] indicates that there is "unclear legislation and justice actors ruling arbitrarily" on land disputes in the Federal Government of Somalia and "adding to the confusion" are influential "former powerholders" continuing to issue land deeds and allocate plots (ABA and Pact Jan. 2020, 11).

Freedom House indicates that corruption and "other barriers" interfere with the procedures for registering property and businesses (Freedom House 2019). *Bertelsmann Stiftung's Transformation Index (BTI) 2020*, which "assesses the transformation toward democracy and a market economy" in 137 countries, reports that the Federal Government of Somalia "fails" to protect property rights, and that land conflicts are "prevalent" across Somalia and are "frequently a major cause of conflicts in cities" (Bertelsmann Stiftung 2020, 2, 28). A report on conflict assessment for Somali returnees by Ken Menkhaus, a professor of political science at Davidson College in North Carolina who has served as a consultant for international organizations, the US government and NGOs conducting country risk analysis and conflict assessments (Davidson College n.d.), similarly describes land disputes as a "leading cause" of homicide in cities (Menkhaus Aug. 2017, 24).

The Senior Research Associate stated that most land in the Somali Peninsula "generally" falls under customary land tenure, which only allows land transactions with the consent of a local clan leader (Senior Research Associate 15 June 2020). The same source further indicated that the application of "formal statutes" to land, property and housing is "only mostly evident" in the urban areas of Hargeisa, Berbera, Garowe, Bossaso and Mogadishu (Senior Research Associate 15 June 2020). The IGAD report indicates that the "formal state is beginning to re-assert itself into the land tenure system of South Central Somalia[,] especially

Mogadishu" (IGAD 17 July 2018, 7). The EAJ report states that Xeer law is "not well adapted to the urban social structure" to help resolve urban land disputes (ABA and Pact Jan. 2020, vi).

## 2. Somalia

### 2.1 Registration Authorities

The IGAD report states that land administration in Somalia is "very weak" and no specific ministry is responsible for land (IGAD 17 July 2018, 8). According to sources, there is no functioning land registry (ABA and Pact Jan. 2020, iii; Bertelsmann Stiftung 2020, 28). The US 2019 *Investment Climate Statements* report that while there are no "federal efforts" to document property ownership, land in major cities, including Mogadishu, is "generally documented for taxation purposes" (US 11 July 2019, Sec. 5). Somali Public Agenda, a Mogadishu-based non-profit research organization which aims to "advance understanding and improvement of public administration and public services in Somalia," indicates that the Benadir [Benaadir, Banadir] Regional Administration (BRA) [also known as the Mogadishu Municipality (Benadir n.d.)] and the Ministry of Finance collect the tax from the land buyer (Somali Public Agenda Nov. 2019, 1, 3). A report on access to housing in Mogadishu jointly written by the International Institute for Environment and Development (IIED) [3] and Tana Copenhagen (Tana) [4] indicates that Somalia's Ministry of Finance is responsible for land and property tax and that it is "ideally meant to maintain a list of all transactions," but the list is incomplete as land and property transfers are sometimes conducted informally (IIED and Tana Jan. 2019, 5). The same source further states that the BRA is responsible for issuing land and housing deeds in Mogadishu (IIED and Tana Jan. 2019, 5).

### 2.2 Document Verification, Including Whether the Title Is Verified Through a Lawyer

Sources indicate false land ownership documents are "common" (World Bank 24 Oct. 2019, 23) or "ubiquitous" (Menkhaus Aug. 2017, 18). The Senior Research Associate stated that "it is not possible to fully confirm the validity of the documents" used in Mogadishu and its immediate surroundings (Senior Research Associate 15 June 2020). The EAJ report indicates that there are various methods of verifying land ownership, including asking neighbours to attest to the identity of the owner prior to the civil war (ABA and Pact Jan. 2020, 23). The Senior Research Associate indicated that a committee of clan elders, who have "stakes" in the land involved, can guarantee the title (Senior Research Associate 15 June 2020).

The IIED and Tana indicate that records from a land registry, which existed from the 1960s to 1991, are kept by a Somali living in Sweden, who verifies land deeds through his office in Mogadishu for a "percentage fee" (IIED and Tana Jan. 2019, 6). The EAJ report similarly states that one method of verifying land rights is through Omar Tugunbe, a Somali of the Abgal sub-clan living in Sweden, who brought "significant numbers of documents" from the Mogadishu municipal archive to Sweden during the civil war (ABA and Pact Jan. 2020, 23). The same source further reports that Tugunbe owns a shop in the Karaan district in Mogadishu selling copies of title deeds for "usually" US\$100 each (ABA and Pact Jan. 2020, 23). The same report notes that concerns of manipulation and corruption kept Tugunbe from transferring the records back to the Somali government (ABA and Pact Jan. 2020, iii). A report on business regulations in Somalia by the World Bank states that a former Somali registrar official residing abroad verifies titles for around US\$1,000 to US\$2,000 and takes one month to process; a "certificate of authenticity" is issued after verification (World Bank 24 Oct. 2019, 23).

Somali Public Agenda states that public notaries have "official roles in land dealings" (Somali Public Agenda Nov. 2019, 3). The World Bank report indicates that lawyers can verify the authenticity of titles recorded in the official bulletin, which includes the records of property registered within the past ten years (World Bank 24 Oct. 2019, 23). The same source states that "many" lawyers keep archives or electronic databases of the official bulletins and charge US\$50 to authenticate a title; notaries conduct an authenticity check, as a part of the procedure for notarizing a property transfer, by calling the notary who executed the previous property transfer (World Bank 24 Oct. 2019, 23).

## 2.3 Land Transfer Requirements, Procedures and Timeline

According to the IIED and Tana, land purchases can be conducted "privately" with the mutual agreement of both parties and if the owner has an authentic title deed; the private sale is completed with a witness, a guarantor and, in "many cases," a notary (IIED and Tana Jan. 2019, 5). The same source states that land and property transactions can be conducted informally by having both parties draft the sale contract themselves and completing the sale in front of witnesses; the transaction can be documented by video for additional proof of purchase (IIED and Tana Jan. 2019, 6). According to the Senior Research Associate, since the authorities lack the capacity to enforce legal evictions and may be "compromised by clan affiliation," a "sensible" buyer would be "best advised" to confirm with all parties who have an interest in the land, including family members of the seller, neighbours and clan elders, that the transaction is acceptable (Senior Research Associate 15 June 2020). The EAJ report states

that the police "has little capacity (or will)" to enforce court decisions on land disputes and "[p]olitical, clan, and spoiler interests often block the justice system from functioning" (ABA and Pact Jan. 2020, iv).

The World Bank provides the following procedure and timeline to register property:

- Verify the authenticity of the seller's land title at the office of a notary or lawyer. It takes one day to complete this step;
- The seller is required to obtain a *nulla osta* (tax clearance), which confirms that all property taxes had been paid, from the Ministry of Finance. The ownership title and a fee of US\$20 is required to obtain the *nulla osta*. It takes one day to complete this step;
- Both parties sign the transfer agreement drafted by a notary. The notary verifies the property type by checking official gazette records prior to drafting the agreement. The notary commonly requires a grantor who can confirm the identities of the parties and a broker who can confirm the value of the property and also act as witness. The notary's fee is one percent of the property's value. It takes two days to complete this step;
- Register the property transfer at the BRA. The registration fee is calculated according to the value of the property [5]. It takes one day to complete this step;
- The notary registers the property transfer at the Court of Appeal; although this step is required by law, it is not commonly done. A bank requires registration by the court only if the property will be used as collateral to obtain a loan. The registration fee is US\$20. It takes 183 days to complete this step (World Bank 24 Oct. 2019, 23-24).

## 2.4 Documents Required and Issued for a Land Transfer

Somali Public Agenda states that public notaries are responsible for documenting the transaction and transfer of title deeds to a land buyer (Somali Public Agenda Nov. 2019, 3). The IIED and Tana state that only land and property purchases documented by a notary are considered legal (IIED and Tana Jan. 2019, 5). The World Bank indicates that in order to complete the land transfer agreement, a notary requires the land title with all prior land transfer documents attached, the identification documents of the seller and buyer, powers of attorney and incorporation document [6] (World Bank 24 Oct. 2019, 23). The same source reports that the BRA requires the land title with all prior land transfer documents attached, the notarized sale agreement, and identification documents to complete the property transfer (World Bank 24 Oct. 2019, 23). The World Bank further states that in order to register the property transfer at the Court of Appeal, the notarized sale agreement, the receipt of the property's sale and the parties' identification documents are required (World Bank 24 Oct. 2019, 24).

Information on documents issued for a land transfer could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

## 3. Somaliland

The *BTI 2020* states that private property is protected "to some extent" in Somaliland, and that land expropriated during the civil war was returned after negotiations between clan elders (Bertelsmann Stiftung 2020, 29). The same source further indicates that urban land grab by "politico-economic elites" and "illegal enclosures in the countryside" continue to be reported (Bertelsmann Stiftung 2020, 29). A report by the Institute for Housing and Urban Development Studies (IHS) et al. at Erasmus University Rotterdam indicates that land conflict is common in Hargeisa (Erasmus University Rotterdam, et al. 25 Apr. 2020, 10). Menkhaus similarly states that real estate disputes are a leading cause of homicide in Hargeisa, an "otherwise peaceful city" (Menkhaus Aug. 2017, 18).

### **3.1 Registration Authorities**

The Somaliland Diaspora Agency (SLDA), an autonomous public body established by presidential decree (Somaliland n.d.a), states that any legal land transaction must be registered with the municipality of the city where the land is located (Somliland n.d.b). The IHS et al. indicate that most land purchases are not registered with the municipality's registry office (Erasmus University Rotterdam, et al. 25 Apr. 2020, 10).

The Senior Research Associate indicated that Somaliland has "made the most progress" in restoring "some semblance" of official property registries (Senior Research Associate 15 June 2020). The *BTI 2020* reports that while there is a land registry, it is hampered by the lack of equipment, suitable technology and inadequate numbers of employees with poor training (Bertelsmann Stiftung 2020, 29). The IHS et al. state that Berbera has a land registration system which records basic information about properties, allowing the local authorities to collect tax on land transactions, making it one of the few cities on the African continent with a "viable, functioning and integrated land administration system" (Erasmus University Rotterdam, et al. 25 Apr. 2020, 10-11).

### **3.2 Document Verification, Including Whether the Title Is Verified Through a Lawyer**

The IHS et al. state that guarantors, usually a respected elder within a sub-clan, are consulted to confirm land ownership by the seller (Erasmus University Rotterdam, et al. 25 Apr. 2020, 31). Further and corroborating information, including information on whether the title is verified through a lawyer, could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### **3.3 Land Transfer Requirements, Procedures and Timeline**

The information in the following paragraph was provided in the report by IHS et al.:

Land transfers involve "witnesses of purchase and a countersigning of agreement by a reputable guarantor and notary registration." The buyers connect with sellers "mainly" through familial and personal relationships, or through brokers in some cases. The use of brokers is "near universal" in Hargeisa but "slightly less so" in Berbera. Guarantors are mandatory for property transactions and notaries are "widely used" for property sale. Land registration documents are required to prove ownership in Berbera, where "almost all" land is registered, whereas a notary document is accepted in place of land registration in Hargeisa. The broker "usually" acts as the witness as a part of the brokerage service. Land transaction is "almost always formally registered and taxed" in Berbera, but "more rarely so" in Hargeisa. The "uncertainty and variation" in land registration practice in Hargeisa makes land disputes more common in the capital city than in Berbera (Erasmus University Rotterdam, et al. 25 Apr. 2020, 10, 31).

The SLDA provides the following procedure for land property registration:

- Submit application for the land registration enclosed with copy of the [p]ublic [n]otary [c]ertificate or any other legal evidence certifying your ownership of the land to the office of the District Commission in which your plot(s) [is] locate[d];
- At the District Commission (Waaxda/Degmada), fill in the Land Registration Form;
- Pay SL [Somaliland] Shillings 200,000 [(SQS)] [7] to the District Commission Office on submitting of the form;
- A [m]unicipal [p]ersonnel/Geometer (Joomitir) will follow you to see it and check, measure it and [ensure] that your plot(s) is in line with the proper town map (Town planning);
- The District Commission will sign the form;
- You will pay [a] sum of [US]\$250-350 to the whole process for the 40×60 or 80×60 and 80×80 respectively;
- The [executive] form (Foomka Fulinta) will be filled in and put in the [file];
- Finally, you will take an original copy of your [file] and a carbon copy will be recorded in the [a]rchives [s]ection of the respective Municipal Council.  
(Somaliland n.d.b)

The SLDA indicates that land registration "may not even take you more than two weeks" provided the land ownership is "clear and not uncertain" (Somaliland n.d.b).

### 3.4 Documents Required and Issued for a Land Transfer

The International Growth Centre (IGC), which "aims to promote sustainable growth in development countries by providing demand-led policy advice based on frontier research," at the London School of Economic and Political Science (LSE), states that a licensed notary is required to register or transfer property officially in Hargeisa (LSE Dec. 2017, 17, 9). According to a July 2015 report on the resolution of land disputes in Somaliland and Puntland authored by Legal Action Worldwide (LAW), a non-profit organization of human rights lawyers and

advisors providing "legal assistance in fragile and conflict-affected states," and commissioned by the UN Human Settlement Programme (UN-Habitat), the role of the notary is "limited" to confirming the signature on a document by checking ID; they do not "verify that the land has been transferred to the buyer (for example, by requesting to see a transfer document), which leads to a situation in which many notarized land title deeds may exist for the same parcel of land" (LAW July 2015, 11).

The July 2015 LAW report states that committees in each municipality issue title deeds on "different stationery branded with the name of each municipality, which collect different information for documentation purposes" (LAW July 2015, 5). The IGC indicates that payment of a transfer tax to the Ministry of Finance and to the city of Hargeisa is required to receive notarization papers, which are required to obtain official property ownership documents (LSE Dec. 2017, 9). The same source further states that this transfer tax and the fee [8] collected by the city, based on the size and location of the land, are "one of the main sources of double taxation" in Somaliland, which may discourage the land transfer from being conducted on "the official market" (LSE Dec. 2017, 10).

## 4. Average Price of Land

The Senior Research Associate stated that "until there is a functioning property market, it is going to be difficult to come up with meaningful statistics," but also noted that Mogadishu, Hargeisa, Garowe and Bossaso have the highest land prices, particularly in the most sought-after neighbourhoods within these cities (Senior Research Associate 15 June 2020). The IIED and Tana, citing a document on land and property commissioned by Somalia's Ministry of Finance, state that land prices in Mogadishu have increased "perhaps as much as tenfold" since 2012 (IIED and Tana Jan. 2019, 3).

Somali Public Agenda indicates that land prices in Mogadishu are dependent on several factors, including location, security, road infrastructure and proximity to basic facilities and services, such as schools, hospitals and mosques (Somali Public Agenda Nov. 2019, 2-3). The same source describes Hodan, Wadajir, Waberi, Hawlwadaag, Hamar Jajab, Hamarweyne, and Warta Nabadda as some of the most expensive districts for housing in Mogadishu, due to their proximity to the city centre and facilities (Somali Public Agenda Nov. 2019, 1). A January 2016 article by Sharif Yusuf, a construction industry professional, similarly states that the prices of land for different areas of Mogadishu vary, depending on factors including "political stability, peace, and urbanization growth," with the most expensive neighbourhoods located in the inner city (*East Africa Business Journal* 14 Jan. 2016).

Yusuf provides the price history of a 30 by 12 square meter plot of land on Maka al-Mukarama Street in the Hodan-Waberi district as follows: US\$400,000 in 2011, US\$550,000 in 2012, US\$520,000 in 2013, US\$480,000 in 2014 and US\$450,000 in 2015 (*East Africa*



*Business Journal* 14 Jan. 2016). Somali Public Agenda describes Maka-al Mukarama Street as one of the "most expensive" neighbourhood due to its relative safety and proximity to the security forces (Somali Public Agenda Nov. 2019, 2).

An article on the challenges of building shelters in Mogadishu, written by two of the co-authors of the IIED and Tana report, states that the least expensive newly-built houses in 2018 cost approximately US\$70,000, partly due to the high cost of land, which is "Mogadishu's scarcest resource" (Bonnet and Bryld 28 Jan. 2019). A 2016 Agence France-Presse (AFP) article indicates that a two-storey house costs approximately [US]\$130,000 and a "more simple bungalow" costs approximately [US]\$70,000 (AFP 3 Jan. 2016).

Somali Public Agenda states that the monthly rent for a three- to five-room house in Mogadishu costs between US\$350 to US\$600, depending on its location (Somali Public Agenda Nov. 2019, 1). The IIED and Tana report indicates that an apartment in Mogadishu, usually inhabited by middle-class to upper middle-class individuals, costs an average of US\$350 to US\$500 per month, and housing made from "corrugated iron sheet," favoured by low income to lower middle-class individuals, costs an average of US\$140 per month (IIED and Tana Jan. 2019, 8).

A 2017 Reuters article indicates that the average price of a 12 by 12 meter plot of land along the coast of Berbera is US\$100,000, which has doubled since 2016, due to land speculation sparked by a port development deal (Reuters 4 Apr. 2017). Further and corroborating information, including information on the average price of land in other parts of Somaliland, could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

## Notes

[1] The Intergovernmental Authority on Development (IGAD) is an intergovernmental body made up of Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda, which aims to improve regional cooperation in "food security and environmental protection, economic cooperation, regional integration and social development peace and security" (IGAD n.d.).

[2] The Expanding Access to Justice (EAJ) program is a joint five-year program by Pact and the American Bar Association Rule of Law Initiative (ABA ROLI), funded by the US Agency for International Development (USAID) (ABA n.d.a). The EAJ program aims to improve "access to justice, and promotes effective mechanisms for individuals and communities to address

grievances in Somalia and Somaliland" (ABA n.d.a). Pact is a non-profit international development organization working "on the ground in nearly 40 countries to improve the lives of those who are challenged by poverty and marginalization" (Pact n.d.). The ABA ROLI is an "international development program that promotes justice, economic opportunity and human dignity through the rule of law" (ABA n.d.b).

[3] The International Institute for Environment and Development (IIED) is a London-based "policy and action research organization" that promotes "sustainable development to improve livelihoods and protect the environments on which these livelihoods are built" (IIED and Tana Jan. 2019, ii).

[4] Tana Copenhagen (Tana) is a Copenhagen-based international consultancy company which specializes in "international relations and development assistance" (Tana n.d.).

[5] The World Bank provides the following information on property transfer fees:

<b>Property Value</b>	<b>Registration Fee</b>
US\$1 to US\$10,000	US\$25
US\$10,001 to US\$50,000	US\$50
US\$50,001 to US\$100,000	US\$100
US\$100,001 to US\$200,000	US\$200
US\$200,001 to US\$400,000	US\$300
US\$400,001 to US\$1,000,000	US\$600
US\$1,000,001 and over	US\$1000

(World Bank 24 Oct. 2019, 23)


[6] The procedure described by the World Bank is based on a case study where both the buyer and seller are limited liability companies, which perform commercial activities (World Bank 24 Oct. 2019, 20).

[7] *Newsweek*, an American news magazine and website, indicates that the Somaliland Shilling (SQS), the national currency of Somaliland, is not recognized by the international community (*Newsweek* 9 Mar. 2017). A September 2017 article by the BBC states that US\$1 equals 9,000 Somaliland Shillings (SQS) (BBC 12 Sept. 2017). A January 2020 article by East African Business Week (EABW), a Uganda-based online business publication (EABW n.d.), reports an exchange rate of US\$1 for 8,000 SQS (EABW 15 Jan. 2020).

[8] The International Growth Centre (IGC) states that in Hargeisa, the city takes a fee, ranging between US\$100 to US\$1500, based on the location and size of the property and the rate is determined on an annual basis (LSE Dec. 2017, 9). Unlike other taxes collected by the city, this fee is taken in US dollars and not Somaliland Shillings (SQS) (LSE Dec. 2017, 9).

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**Oral sources:** Associate professor of development and conflict who has conducted research on property in Somalia; associate professor of geography who has conducted research on war-affected land and property rights; Garsoor Public Notary; Heritage Institute for Policy Studies; Mogadishu Law Office; professor of political science who specializes in the politics of the Horn of Africa; Somali Public Agenda; Warsame Law.

**Internet sites, including:** Al Jazeera; Amnesty International; Centre for Affordable Housing Finance in Africa; ecoi.net; EU – European Asylum Support Office; Factiva; *The Guardian*; Human Rights Watch; Norwegian Refugee Council; *Political Geography*; Rift Valley Institute; *Somali Business Review*; UN – Food and Agriculture Organization, Human Settlement Programme, Refworld, UNHCR; Xinhua News Agency.

**Date modified:**

2020-06-01