

Somalia Governance Solutions

BRIEFING NOTES

Sharing challenges, Issues, solutions & best practices

Mogadishu - Tragedy of the Land Administration

Challenges, Issues and Solutions

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Briefing notes (BN) are public forum for Somali Intellectuals, scholars and practitioners to share governance issues, challenges, ideas, solutions and best practices to improve the governance for both Federal and Regional Government institutions in Somalia. Somalia has been in a prolonged civil war, where all institutions, governance systems and practices have been destroyed. Building effective, capable and transparent governance system for a post-conflict society is a mammoth task, and government alone may not have the tools and the capacity to reconstruct effective governance institutions. The intent of BN is to help our law and policy makers and government officials on issues that matters by proposing possible solutions and best management practices. Articles posted in the BN are exclusively the responsibility of the author(s) and not necessarily endorsed by ASAS|Foundation.

Introduction

KUDOS to President Farmajo, and thank you for making prompt decision to froze all sales and transfer of government owned lands and properties to private interest groups. It is long overdue action, but never too late to recognize as an emergency national priority. It is quite sad that trusted politicians and leaders are at the forefront of this gruesome, frightening, injustice and endemic corruption of selling public lands. While our leaders are invested in a fiduciary trust and authority to protect the common good, the rule of law and establish fair and justice governance system. Unfortunate, it is widespread practice, that trusted leaders and officials are the leading actors of corruption, delegitimizing government authority and seeking tribal protection for their wrong doings.

Mr. President, we also welcome your act of forward looking strategy, commitment and assurance to protect the public properties. Our research and writings found that illegal land appropriation, grabbing and evictions is widespread in Mogadishu. Based on lessons learned from other post conflict situations, if land issues are not addressed urgently, it can be a cause of renewed arm conflict and obstacle for peacebuilding efforts, hindering the return of the rule of the law and reconstituting public trust and confidence. Thus, effective governance of land administration is a fundamental prerequisite for peace building. Previously, the authors of this paper informed the former president Mr. H.S. Mohamoud about the growing illegal practice of public land appropriation, the occupation of private properties and the urgent need for solutions. Unfortunately, no attention was given to this public outcry.

The purpose of this paper is to highlight some of key issues and challenges of Mogadishu's land administration practice. The paper also aims to identify key intervention priorities and explore possible solutions to help the upcoming national committee. We recommend the mandate of the National

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Committee (proposed by the president) should not be limited to the protection of public lands. It is important to establish a comprehensive land administration strategy including appropriate legislations, policies, governance system, reliable cadastral information and registry. Special court should be established for land disputes and give justices to the victims of land grabbing. Although this paper will focus on Mogadishu land issues, we acknowledge land grabbing and disputes exist in all major urban centers. There is also unprecedented and alarming rural land appropriation and grabbing include agriculture land (entire communities were evicted from their homes), fencing of communal grazing lands, and water points for private purpose uses. Rural land grabbing will be addressed in separate document. Land disputes are everywhere and we need to pay close attention to this gruesome practice.

Extent of Land of Issues in Mogadishu

In post conflict situation, land grabbing and selling public properties to private interest groups is a fundamental problem and worldwide issue. United Nations and International Community have recognized that illegal land appropriation is a major obstacle for peace building and restoring law and order. Similar to many post conflict situations, Mogadishu has witnessed a widespread appropriation of public lands, government properties, eviction of poor people and illegal occupation to private properties. Unfortunately, government official and trusted Mayors are at the center of this illegal practice.

Sadly, heritage buildings and national iconic landmarks were also fraudulently sold or illegally assigned for private uses. We have documented that 700 years buildings and iconic monuments were destroyed. For many years, many scholars have lobbied to establish a heritage conservation policies and guidelines to protect Mogadishu's heritage buildings and historical sites². After decades of conflict and neglect, much of Mogadishu – including its historic heart – lies in ruin. Somalia's architectural heritage was neglected in the past. It was subject to degradation and deterioration, to violent transformation and destruction during previous regimes. The dramatic events of the past years have produced further alterations and devastation. The uncontrolled use of land has compromised some stretches of incomparable beauty of Lido I and II, the beautiful beaches in Mogadishu.

Significant quantities of money are being invested in sectors such as construction, which is transforming the city – in many ways for the better. Yet there is a danger that this transformation also sees the erasure of Mogadishu's unique urban and architectural heritage. The history of Mogadishu stretches back more than a millennium, and in that time it has been shaped by diverse cultural, socio-economic and architectural influences – Arabian, Indian, Swahili and more recently Italian. But rather than be sensitive to the underlying historical and cultural foundations upon which contemporary Mogadishu lies, historical land and archeological sites are given to foreign governments.

MARQAATI (an anti-corruption NGO) documented that several public gardens of the city were sold illegally to private individuals or interest groups. The location and the names of these public lands can be found at <https://marqaati.org/en/2014/12/in-pictures-public-land-illegally-sold-in-mogadishu/>. Public gardens were discretely reserved as public open space for the purpose of collective use and enjoyment. Unfortunately, these public places are now turned into private restaurants and gas stations. The fraudulent sale of public lands is not limited to public gardens, but includes the appropriation of public properties, market areas, public parking and transportation corridors.

It is undeniable that Mogadishu Mayors in the past and in the present are deeply immersed in corruption and fraudulent practice of selling public lands and properties. It is ultra-lucrative business and unlikely to stop unless rigorous policies, legislations and enforcement mechanisms are in place. The fundamental problem is lack of overarching land policy, legal framework and regulatory schemes, lack of transparency

² Somalia is the only country that didn't ratify the UNESCO World Heritage Convention. We hope that the present government and the new Mayor of Mogadishu take an immediate action to bring the Country back to the World of Communities.

and oversight of local institutions, lack of government accountability and ineffective enforcement system of land governance and administration. The absence of good governance system and institutional capacity give a rise to an opportunistic corruption, speculation and injustice.

In addition to public land sales, the following are some of the relevant land issues in Mogadishu:

Land Grabbing – The act of grabbing or occupying illegally public properties or private lands is a serious and growing problem. Typically, land grabbing is associated with reprehensible acts such as faking deeds and registration of property rights through corrupt practices, speculation of land values and illegal trading of land and properties.

Growing informal and unplanned land occupation – in the last three decades Mogadishu has experienced enormous expansion of informal settlements and unplanned development. This is mainly the result of the failure of formal land use planning to address the needs of growing population. Unlawful occupation will create challenges for land tenure security, land use-planning, provision of basic service and public health issues.

Overlapping and Uncoordinated Land Administration System – Mogadishu's land administration system lacks coordination and efficiency. Currently the mayor's office, the land department or the planning department makes land decisions. The overlapping of multiple departments creates confusion, contradicting decisions and inefficient land administration. There is also a confusion, who has a signing authority and decision making on land administration.

Growing Land and Property Disputes – disputes regarding land ownership and occupation of private property are the result of three decades of conflict. Mogadishu administration has failed to implement effective process for dispute resolution and resolving land claims.

Speculation of the Land Market - Land prices are skyrocketing in Mogadishu

Eviction of Poor People – in particularly poor and minorities from occupied unplanned settlements and allocating to powerfully interest groups.

All these illegal actions will ultimately jeopardize efforts of peace building and the restoration law and order.

Mogadishu Land Legislation

This section briefly provides context and background of existing land legislations. The intent is twofold 1) to clarify who has authority to sell, expropriate and allocate land in Mogadishu 2) Provide a foundation to build on the long overdue legal framework for land administration.

It is important to note the last land legislation was passed and adopted in December 17, 1980 by the National Assembly of the Revolutionary Government. Since then, no land legislations were passed and adopted by subsequent parliaments. Therefore, the 1980 land law remains as the principle land legislation. All administrative powers, rulings and decisions must be within the intent and the scope of the 1980 legislation. Decisions outside the boundaries of this legislation should be cancelled.

It is also important to note, land laws for the city of Mogadishu were drafted and collectively passed by either the Supreme Revolutionary Council or the National Assembly of the Revolutionary Government. The role of the Mogadishu Mayor was not to develop land legislations, but to establish effective mechanisms and procedures to implement and administer existing land legislations.

The following are pertinent land legislations adopted and passed by various governments:

Legislation	Brief Description
Colonial Regime 1914-1950	The colonial regime had introduced the Property Based Lease Legislation, together with a series of regulatory rules to define the private ownership of the land, authority to expropriate and resign unoccupied land. This legislation applied mainly in Mogadishu and the agriculture land in the Shebelle regions. The law was largely in placed to serve the colonial needs for residential and agriculture development.
First Democratic Government (1960 to 1970)	Shortly after the independence, the Government created a land reform commission. The commission drafted land legislation in 1960, 1967 and 1969. None of the proposed legislations was passed by the parliament. De Facto, the colonial land laws coupled with customary and Sharia law were applied during this period.
Revolutionary Government (1970 – 1991)	The revolutionary government had passed several important land reforms.
Law for Social Protection Law 67 of 1 Nov. 1970	The Supreme Revolutionary Council passed and adopted the Law of Social Protection and states, “all forms of tribal association, rights and privileges including rights over land and water abolished and claimed by the state”.
Law of Urban Land Distribution Law 41 of 13 Sept. 1973	The first comprehensive urban land legislation in the country. The legislation was passed by the Supreme Revolutionary Council and signed by the President of the Council. The legislation contains important provisions of land ownership, definitions of private and public domain properties, distribution, uses and management of land. Article 7 of the legislation states that land in the Democratic Republic of Somalia, regardless of who uses it, is public property. Article 6 s(1) states that land of public domain and the property of municipalities cannot be sold commercially and their titles cannot be transferred to anyone else.
Administration of Building Land for Banadir Region Law 10 of 17 December, 1980	This is the most current land legislation in the country. It was passed by the Permanent Committee of the National Assembly and signed by the president of the country. Some of the key provisions of this law include: <ul style="list-style-type: none"> - Article 1- Transfer of land administration from Ministry of public Works to Municipal Government of Mogadishu - Article 1 – reaffirming the validity and the effectiveness of Law 41 of 13 September 1973 - Municipality is responsible for planning. - Land that is not in the overall plan cannot be allocated - Other provisions include the Mayors authority on land matters, ability to expropriate, & land registration.

Unless rescinded or amended, the Law 10 of 17 December of 1980 is still in effect and remains the main legislation of land administration in Mogadishu. The implementation and the administration of the land laws remain with the Mayor of the city.

Mogadishu Governance Capacity

A Professional engineer was inaugurated as the new Mayor of Mogadishu and the Governor of the Banadir Region. We wish the best for him and hope to succeed in establishing fair and justice governance system.

The Mayor of Mogadishu has an important role in contributing to the efforts of peace building and reconstituting the rule of the law. The Mayor is directly responsible for building an effective governance system for the city including institutional capacity, structures, processes, procedures, control and accountability mechanisms for public finance, public engagement, and relationship building with the Federal Government and leadership in the exercise of administrative authority and delivering equitable public services. The new mayor is expected to protect the vulnerable communities, ensuring the rule of the law, re-establishing and strengthen credible, transparent and accountable public administration.

Given the current condition, building an effective governance system is a mammoth task. Mogadishu administration is lacking both human and institutional capacity. The current management structure of the city is huge, complex and confusing. There are almost 30 or more divisions and departments within the city administration including Governor of Banadir Region, Mayor of Mogadishu, District Commissioners and head of various departments. The roles and the functions of these different divisions and departments are not clear. On many occasions, they make overlapping and contradicting decisions. The first task for the new Mayor is to reform the governance structure of the city, establish a clear process of decision-making, public finance management and enforcement mechanisms.

Recommendations – Building Effective Strategy for Land Administration

President Farmajo announced to establish a national level committee to address land issues and challenges in Mogadishu. The president's decree for stopping the illegal selling and appropriation of public lands and properties is in effect as in January 19, 2018. However, enforceable mechanism is required to implement this noble decision. On the other hand, it is not clear what would be the role and the mandate of the national committee. Does the president have in mind transferring land administration from the municipal government to the upcoming national committee or to the Ministry of Public Works, Reconstruction and Housing? These questions need further clarifications. In the meantime, the following intervention must be priority for improving land administration in Mogadishu:

- Land administration is complex and requires a collaborative and coordinated approach between the Federal, and Municipal governments
- Federal Government must be responsible for developing and adopting land policies and legislations, while municipal government is responsible for the implementation and the day-to-day administration.
- The Ministry of Public Work, Reconstruction and Housing must manage and oversight the ownership of all public lands, while municipality is delegated operational and administrative responsibility for public uses.
- Prior to 1980 amendment, the Ministry of Public Works, Reconstruction and Housing was responsible for managing and the administration of public lands.
- The Minister of Public Works, Reconstruction and Housing must cancel or renegotiate public lands that where illegally signed to private interest groups or individual (Law 10 of December 17, 1980, gives authority to the government to repossess land that was illegally transferred).
- The Public Works, Reconstruction and Housing Minister must also document all public lands and properties in the city
- The Federal Government and the Parliament must urgently rescind, update or reconfirm the validity of the Social Protection Law of 1970. This law states that all lands are owned by the state. This is a fundamental problem and the root causes of land grabbing practice. The government must also update the existing land legislation of 1980.
- Establish a special and independent court within the proposed Land Commission to address land disputes

- Engage residents in identifying land issues and seek feedback for possible solutions.

In addition to the above, it is important to improve the capacity of land administration department in city. The following are some of task that needs immediate attention:

- Develop clear mandate or terms of reference for the scope of work and the authority of the land department
- Establish land cadastral and registry system
- Build the human and institutional capacity of the land administration department
- Develop a Master Plan for the city to accommodate the growing population.
- Integration of the department of land administration and city planning functions.

We recommend to the new Mayor that land department (administration and development) to be reconsidered and revised as it is today. Land development shall be part in the department of urban planning, urban design, gardening and landscaping, building permit. It isn't thinkable to have a department of urban planning without being involved in the land development issues.

About ASAS|Foundation – Institute for Governance Solutions

ASAS|Foundation was created to help organizations and government institutions to build capacity and effective governance system to make informed choices and sound decisions. Somali Government and International Community are currently undertaken unprecedented efforts in restoring and rebuilding institutional infrastructures including roads, hospitals, schools, law and order institutions and government ministers. Yet, paid a relatively little attention in building institutional capacity and governance system to manage effectively, efficiently and equitably. To aid Somali leaders and the international community at the forefront of this rapid transformation, the ASAS|Foundation, as capacity builder, trainer, advisor and consultant, provides technical support, resources and tools to enhance governance capacity and effective management system.

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